

**EXHIBIT 1**

**ABBREVIATIONS AND DEFINITIONS**

(Attached)

## **EXHIBIT 1**

### **ABBREVIATIONS AND DEFINITIONS**

Unless otherwise specified, wherever the following abbreviations or terms are used in this DBA and the Technical Provisions, they shall have the meanings set forth below:

<b>AAP</b>	AASHTO Accreditation Program
<b>AASHTO</b>	American Association of State Highway and Transportation Officials
<b>ACHP</b>	Advisory Council on Historic Preservation
<b>ACI</b>	American Concrete Institute
<b>ACORD</b>	Association for Cooperative Operations Research and Development
<b>ACM</b>	Asbestos-containing materials
<b>ADA</b>	Americans with Disabilities Act, 42 U.S.C. § 12101, et seq.
<b>ADT</b>	Average Daily Traffic
<b>ALJ</b>	Administrative Law Judge
<b>ANSI</b>	American National Standards Institute
<b>APS</b>	Accessible Pedestrian Signal
<b>AREMA</b>	American Railway Engineering and Maintenance of Way Association
<b>ASB</b>	Asphalt Bond Breaker
<b>ASTM</b>	American Society of Testing and Materials
<b>ATC</b>	Alternative Technical Concept
<b>ATP</b>	Acceptance Test Plan
<b>AWS</b>	American Welding Society
<b>BMP</b>	Best Management Practice
<b>BO</b>	Biological Opinion
<b>CADD</b>	Computer Aided Drafting and Design
<b>CAP</b>	(Environmental) Compliance Action Plan
<b>CCI</b>	Construction Cost Index
<b>CCTV</b>	Closed Circuit Television
<b>CEPP</b>	Comprehensive Environmental Protection Program
<b>CFR</b>	Code of Federal Regulations
<b>CGP</b>	Construction General Permit
<b>CMP</b>	Construction Monitoring Plan
<b>CP</b>	Communications Plan
<b>CPCD</b>	Concrete Pavement Construction Design
<b>CQAF</b>	(Independent) Construction Quality Acceptance Firm
<b>CQAM</b>	(Independent) Construction Quality Acceptance Manager
<b>CQMP</b>	Construction Quality Management Plan

<b>CRCP</b>	Continuously Reinforced Concrete Pavement
<b>CSBE</b>	Cement Stabilized Backfill Embankment
<b>CSJ</b>	Control Section Job
<b>CTB</b>	Cement Treatment Base
<b>CTE</b>	Coefficient Thermal Expansion
<b>CTMS</b>	Computerized Traffic Management System
<b>CWA</b>	Clean Water Act
<b>CP</b>	Communication Plan
<b>DBA</b>	Design-Build Agreement
<b>DBE</b>	Disadvantaged Business Enterprise
<b>DMS</b>	Dynamic Message Signs
<b>DQMP</b>	Design Quality Management Plan
<b>DSS</b>	Decent, Safe and Sanitary (dwelling)
<b>DUC</b>	DB Contractor Utility Coordinator
<b>DWC</b>	Deferred Work Component
<b>ECI</b>	Environmental Compliance Inspector
<b>ECM</b>	Environmental Compliance Manager
<b>ECMP</b>	Environmental Compliance and Mitigation Plan
<b>EDMS</b>	Electronic Document Management System
<b>EMS</b>	Environmental Management System
<b>EMT</b>	Electrical Metallic Tubing
<b>ENR</b>	Engineering News Record
<b>EPD</b>	Escrowed Proposal Documents
<b>EPIC</b>	Environmental Permits, Issues and Commitments
<b>EPTP</b>	Environmental Protection Training Program
<b>ESA</b>	Endangered Species Act of 1973, as amended
<b>ESAL</b>	Equivalent Single-Axle Load
<b>ET</b>	Environmental Team
<b>FEIS</b>	Final Environmental Impact Statement
<b>FEMA</b>	Federal Emergency Management Agency
<b>FHWA</b>	Federal Highway Administration
<b>FIS</b>	Flood Insurance Study
<b>FM</b>	Farm to Market Road
<b>FWCA</b>	Fish and Wildlife Coordination Act
<b>FONSI</b>	Finding of No Significant Impact
<b>FTP</b>	File Transfer Protocol
<b>GAAP</b>	Generally Accepted Accounting Principles
<b>GIS</b>	Geographical Information System

<b>GPS</b>	Global Positioning System
<b>HCR</b>	Highway Condition Report
<b>HEC</b>	Hydraulic Engineering Circular
<b>HMMP</b>	Hazardous Materials Management Plan
<b>HVAC</b>	Heating Ventilation and Air Conditioning
<b>ID</b>	Identification
<b>IH</b>	Interstate Highway
<b>IRI</b>	International Roughness Index
<b>ISO</b>	International Standards Organization
<b>ITP</b>	Instructions to Proposers
<b>ITS</b>	Intelligent Transportation System
<b>IWP</b>	Investigative Work Plan
<b>LOMR</b>	Letters of Map Revision
<b>LPA</b>	Local Public Agency
<b>LRFD</b>	Load and Resistance Factor Design
<b>MMP</b>	Maintenance Management Plan
<b>MOA</b>	Memorandum of Agreement
<b>MOU</b>	Memorandum of Understanding
<b>MPH</b>	Miles Per Hour
<b>MPLS</b>	Multiple Protocol Label Switching
<b>MS4</b>	Municipal Separate Storm Sewer System
<b>MSDS</b>	Material Safety Data Sheet
<b>MSE</b>	Mechanically Stabilized Earth
<b>MUTCD</b>	Manual of Uniform Traffic Control Devices
<b>NAVD</b>	North American Vertical Datum
<b>NBIS</b>	National Bridge Inspection Standards
<b>NBI</b>	National Bridge Inventory
<b>NCHRP</b>	National Cooperative Highway Research Program
<b>NCR</b>	Non-Conformance Report
<b>NEPA</b>	National Environmental Policy Act
<b>NHPA</b>	National Historical Preservation Act
<b>NOI</b>	Notice of Intent
<b>NPDES</b>	National Pollutant Discharge Elimination System
<b>NTP</b>	Notice to Proceed
<b>NTCIP</b>	National Transportation Communications for ITS Protocol
<b>OSHA</b>	Occupational Safety and Health Administration
<b>OSR</b>	Old San Antonio Road
<b>PA</b>	Programmatic Agreement



<b>PBS</b>	Project Baseline Schedule
<b>PBS-1</b>	Preliminary Project Baseline Schedule
<b>PC</b>	Point of Curvature
<b>PCC</b>	Point of Compound Curvature
<b>PCO</b>	Potential Change Order
<b>PDF</b>	Portable Document Format
<b>PI</b>	Plasticity Index or Point of Intersection, as appropriate
<b>PM</b>	Project Manager
<b>PMP</b>	Project Management Plan
<b>POB</b>	Point of Beginning
<b>POC</b>	Point of Commencing
<b>PRC</b>	Point of Reverse Curvature
<b>PSL</b>	Project Specific Location
<b>PSQCM</b>	Professional Services Quality Control Manager
<b>PT</b>	Point of Tangency
<b>PUA</b>	Possession and Use Agreement
<b>PUAA</b>	Project Utility Adjustment Agreement
<b>PVC</b>	Polyvinyl Chloride
<b>QA</b>	Quality Assurance
<b>QC</b>	Quality Control
<b>QMP</b>	Quality Management Plan
<b>QS</b>	Qualifications Submittal
<b>RDVCS</b>	Regional Data and Video Communications System
<b>RFI</b>	Request For Information
<b>RCP</b>	Reinforced Concrete Pipe
<b>RFP</b>	Request for Proposals
<b>RFQ</b>	Request for Qualifications
<b>RID</b>	Reference Information Document(s)
<b>ROD</b>	Record of Decision
<b>ROW</b>	Right of Way
<b>ROWIS</b>	Right of Way Information System
<b>ROW AM</b>	Right of Way Acquisition Manager
<b>RP</b>	Recycling Plan
<b>RPLS</b>	Registered Professional Land Surveyor
<b>RQD</b>	Rock-Quality Designation
<b>SF</b>	Square Foot
<b>SH</b>	State Highway
<b>SHPO</b>	State Historic Preservation Officer

<b>SHSD</b>	Standard Highway Sign Design for Texas
<b>SI</b>	Serviceability Index
<b>SIR</b>	Site Investigation Report
<b>SOAH</b>	Texas State Office of Administrative Hearings
<b>SUE</b>	Subsurface Utility Engineering
<b>SW3P</b>	Storm Water Pollution Prevention Plan
<b>TAC</b>	Texas Administrative Code
<b>TBPLS</b>	Texas Board of Professional Land Surveying
<b>TCEQ</b>	Texas Commission on Environmental Quality
<b>TCLP</b>	Toxicity Characteristic Leaching Procedure
<b>TDLR</b>	Texas Department of Licensing and Regulation
<b>TCP</b>	Traffic Control Plan
<b>TDWR</b>	Terminal Doppler Weather Radar
<b>THC</b>	Texas Historical Commission
<b>TMC</b>	Traffic Management Center
<b>TMP</b>	Traffic Management Plan
<b>TMUTCD</b>	Texas Manual on Uniform Traffic Control Devices
<b>TP</b>	Technical Provisions
<b>TPDES</b>	Texas Pollutant Discharge Elimination System
<b>TPWD</b>	Texas Parks and Wildlife Department
<b>TxDOT</b>	Texas Department of Transportation
<b>UAAA</b>	Utility Adjustment Agreement Amendment
<b>UAFM</b>	Utility Adjustment Field Modification
<b>UAR</b>	TxDOT Utility Accommodation Rules
<b>UCS</b>	User Classification Sub-system
<b>UDC</b>	Utility Design Coordinator
<b>UJUA</b>	Utility Joint Use Agreement
<b>UM</b>	Utility Manager
<b>USPAP</b>	Uniform Standards of Professional Appraisal Practice
<b>US</b>	United States Highway
<b>USACE</b>	United States Army Corps of Engineers
<b>USFWS</b>	United States Fish and Wildlife Service
<b>USPAP</b>	Uniform Standard of Professional Appraisal Practices
<b>UTM</b>	Universal Transverse Mercator
<b>UTP</b>	Unshielded Twisted Pair
<b>VE</b>	Value Engineering
<b>VGA/HDMI</b>	Video Graphics Adaptor/High Definition Multimedia Interface
<b>WBS</b>	Work Breakdown Structure

**Abbreviated Utility Assembly** shall mean the collection of plans and other information and materials which DB Contractor is required to submit to TxDOT in connection with each Utility proposed to remain at its original location within the Project ROW, as more particularly described in Section 6.3.4.5 of the Technical Provisions; a single Abbreviated Utility Assembly may address more than one such Utility.

**Acceleration Costs** shall mean those fully documented increased costs reasonably incurred by DB Contractor (that is, costs over and above what DB Contractor would otherwise have incurred) which are directly and solely attributable to increasing the rate at which the Work is performed in an attempt to complete necessary elements of the Work earlier than otherwise anticipated, such as for additional equipment, additional crews, lost productivity, overtime and shift premiums, increased supervision and any unexpected material, equipment or crew movement necessary for re-sequencing in connection with acceleration efforts and/or a Recovery Schedule.

**Acquisition Packages** shall mean the packages of documentation and information for the acquisition of parcels for the Project ROW described in Section 7.3.5 of the Technical Provisions.

**Acquisition Survey Document Package(s)** shall mean the packages of documentation and information for the acquisition of parcels for the Project ROW described in Section 7.3.1 of the Technical Provisions.

**Additional Properties** shall mean any real property (which term is inclusive of all permanent estates and interests in real property), improvements and fixtures outside of the Schematic ROW that (a) will be acquired in connection with the Project, including (i) rest area sites, (ii) the DB Contractor-Designated ROW and (iii) real property, improvements and fixtures that must be acquired due to a TxDOT-Directed Change, or (b) that must be acquired due to a Necessary Basic Configuration Change. The term **“Additional Properties”** shall include any air space, surface rights and subsurface rights within such additional real property area that TxDOT directs DB Contractor to acquire for the Project. The term **“Additional Properties”** specifically excludes: (i) Replacement Utility Property Interests and (ii) any temporary easements or other real property interests that DB Contractor may deem necessary or advisable to acquire, at its own cost and expense, for work space, contractor lay-down areas, material storage areas, borrow sites, or other convenience of DB Contractor.

**Adjacent Work** shall mean any project, work, improvement or development to be planned, designed or constructed which could or does impact the Project and/or is adjacent to the Project. Examples of Adjacent Work include proposed subdivisions, other roads constructed by Governmental Entities, site grading and drainage and other development improvement plans and Utility projects.

**Adjust** shall mean to perform a Utility Adjustment.

**Adjustment Standards** means the standard specifications, standards of practice, and construction methods that a Utility Owner customarily applies to facilities (comparable to those being Adjusted on account of the Project) constructed by the Utility Owner (or for the Utility Owner by its contractors), at its own expense. Unless the context requires otherwise, references in the DBA Documents to a Utility Owner's "applicable Adjustment Standards" refer to those that are applicable pursuant to Section 6.7.3.5 of the DBA.

**Administrative Settlement Committee** shall mean a committee appointed by the District Engineer or his designee consisting of the ROW Administrator or his designee and two or more members who will analyze pertinent information and reach consensus on whether an administrative settlement should or should not be recommended.

**Aesthetics and Landscaping Plan** shall mean the plan the DB Contractor prepares in conformance with the Project's final aesthetic concept as more particularly described in Section 15.2.2 of the Technical Provisions.

**Affected Third Parties Plan** shall have the meaning set forth in Section 5.4 of the Technical Provisions.

**Affidavit of Property Interest** shall mean the document describing an Existing Utility Property Interest claimed by a Utility Owner, as more particularly described in Section 6.2.4.1 of the Technical Provisions.

**Affiliate** shall mean:

- (a) any shareholder, member, partner or joint venture member of DB Contractor,
- (b) any Person which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, DB Contractor or any of its shareholders, members, partners or joint venture members; and
- (c) any Person for which ten percent or more of the equity interest in such Person is held directly or indirectly, beneficially or of record by (i) DB Contractor, (ii) any of the shareholders, members, partners or joint venture members of DB Contractor, or (iii) any Affiliate of DB Contractor under clause (b) of this definition.

For purposes of this definition the term "control" shall mean the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, by contract, family relationship or otherwise. "**Affiliated**" shall mean having the status of an Affiliate.

**Alternate Procedure** shall mean the alternate procedure for processing Utility Adjustments for FHWA approval pursuant to 23 CFR Section 645.119, which was approved by the FHWA for TxDOT by letter dated October 16, 1973.

**Alternate Procedure List** shall mean the list of Utilities to be Adjusted (and related information) which TxDOT will submit to the FHWA, as the same may be amended from time to time.

**Alternative Technical Concept (ATC)** shall have the meaning set forth in Section 3.1 of the ITP.

**Antiquities Permit** shall mean the permit(s) required under the Antiquities Code of Texas enacted in 1969, to be obtained from the Texas Historical Commission as per Section 4.3.2 of the Technical Provisions.

**Archaeologist** shall mean a member of the Project Environmental Team responsible for assessment of cultural resources potentially impacted by the Work as more particularly described in Section 4.4 of the Technical Provisions.

**Assembly** shall mean the additional Utility Assembly that DB Contractor shall prepare for any Project Utility Adjustment Agreement to cover all Utility Adjustments addressed in the corresponding Utility Adjustment Agreement Amendment as more particularly described in Section 6.3.4.5 of the Technical Provisions.

**Authorized Representative** shall have the meaning set forth in Section 24.6.1 of the Agreement.

**Base Scope** shall have the meaning set forth in Recital B to the DBA.

**Base Scope Work** shall mean all Work required under the DBA Documents applicable to the Base Scope.

**Basic Configuration** shall mean the following elements defining the Project as set forth in the Schematic Design for the Base Scope or the Option Preliminary Schematic, as applicable:

- (a) the Schematic ROW and control of access as shown in the Schematic Design plans;
- (b) the number of lanes for the Schematic Design;
- (c) the approximate location of ramps, except that Theoretical Gores for frontage road ramps and Theoretical Gores along the mainlanes for the southbound Loop 1604 to eastbound SH 151 direct connector shall remain in the location shown in the Schematic Design;
- (d) lengths of the auxiliary lanes as shown in the Schematic Design;

- (e) turn lane storage lengths as shown in the Schematic Design; and
- (f) the approximate location of interchanges and the type of interchanges.

**Basic Costs** shall mean the costs for the following, whether incurred by DB Contractor directly or reimbursed by DB Contractor to a Utility Owner: (i) Professional Services associated with, and construction, of a Utility Adjustment, plus (ii) acquisition of New Utility Property Interests or compensation to the Utility Owner for relinquishment of Existing Utility Property Interests within the Final ROW required for a Utility Adjustment.

**Best Management Practices (BMP)** shall have the meaning set forth in *Storm Water Management For Construction Activities: Developing Pollution Prevention Plans and Best Management Practices* (EPA Document 832 R 92-005).

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

- (a) any upgrading which is required by the Project;
- (b) replacement devices or materials that are of equivalent standards although not identical;
- (c) replacement of devices or materials no longer regularly manufactured with an equivalent or next higher grade or size;
- (d) any upgrading required by applicable Law;
- (e) replacement devices or materials that are used for reasons of economy (e.g., non-stocked items may be uneconomical to purchase);
- (f) any upgrading required by the Utility Owner’s written “standards” meeting the requirements described in Section 6.1.2.2 of the Technical Provisions; or
- (g) any discretionary decision by a Utility Owner that is contemplated within a particular standard described in clause (f) above.

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

**Business Day** shall mean days on which TxDOT is officially open for business.

**Certificate of Final Acceptance** shall mean the certificate issued by TxDOT indicating that a Segment has achieved the conditions for Final Acceptance.

**Certificate of Final Warranty Acceptance** shall mean the certificate issued by TxDOT indicating that the Project has achieved the conditions for Final Warranty Acceptance.

**Certificate of Substantial Completion** shall mean the certificate issued by TxDOT indicating that a Segment has achieved the conditions for Substantial Completion.

**Change in Law** shall mean: (a) the adoption of any Law after the Proposal Due Date, or (b) any change in any Law or in the interpretation or application thereof by any Governmental Entity after the Proposal Due Date, in each case that is materially inconsistent with Laws in effect on the Proposal Due Date; excluding, however, any such Change in or new Law that also constitutes or causes a change in or new Adjustment Standards, as well as any change in or new Law passed or adopted but not yet effective as of the Proposal Due Date. The term “**Change in Law**” also excludes any change in or new Law relating to DB Contractor’s general business operations, including licensing and registration fees, income taxes, gross receipts taxes, social security, Medicare, unemployment and other payroll-related taxes.

**Change of Control** means any assignment, sale, financing, grant of security interest, transfer of interest or other transaction of any type or description, including by or through voting securities, asset transfer, contract, merger, acquisition, succession, dissolution, liquidation or otherwise, that results, directly or indirectly, in a change in possession of the power to direct or control or cause the direction or control of the management of DB Contractor or a material aspect of its business. A Change of Control of a shareholder, member, partner or joint venture member of DB Contractor may constitute a Change of Control of DB Contractor if such shareholder, member, partner or joint venture member possesses the power to direct or control or cause the direction or control of the management of DB Contractor. Notwithstanding the foregoing, the following shall not constitute a Change of Control:

- (a) A change in possession of the power to direct or control the management of DB Contractor or a material aspect of its business due solely to a bona fide transaction involving beneficial interests in the ultimate parent organization of a shareholder, member, partner or joint venture member of DB Contractor, (but not if the shareholder, member, partner or joint venture member is the ultimate parent organization), unless the transferee in such transaction is at the time of the transaction suspended or debarred or subject to a proceeding to suspend or debar from bidding, proposing or contracting with any federal or State department or agency;
- (b) An upstream reorganization or transfer of direct or indirect interests in DB Contractor so long as there occurs no change in the entity with ultimate

power to direct or control or cause the direction or control of the management of DB Contractor;

- (c) A transfer of interests between managed funds that are under common ownership or control other than a change in the management or control of a fund that manages or controls DB Contractor; or
- (d) The exercise of minority veto or voting rights (whether provided by applicable Law, by DB Contractor's organizational documents or by related member or shareholder agreements or similar agreements) over major business decisions of DB Contractor, provided that if such minority veto or voting rights are provided by shareholder or similar agreements, TxDOT has received copies of such agreements.

**Change Order** shall mean a written order issued by TxDOT to DB Contractor delineating changes in the Work within the general scope of the DBA Documents or in the terms and conditions of the DBA Documents in accordance with Section 13 of the DBA and establishing, if appropriate, an adjustment to the Price or a Completion Deadline.

**Change Order Work** shall mean all efforts and costs necessary to accomplish a Change Order.

**Claim** shall mean: (a) a demand by DB Contractor, which is or potentially could be disputed by TxDOT, for a time extension under the DBA Documents or payment of money or damages from TxDOT to DB Contractor or (b) a demand by TxDOT, which is or potentially could be disputed by DB Contractor, for payment of money or damages from DB Contractor to TxDOT.

**Code** shall have the meaning set forth in Recital A of the DBA.

**Communications Plan (CP)** shall mean the TxDOT-DB Contractor Communications Plan as described in Section 2.6 of the Technical Provisions.

**Competent Person** shall mean an individual who, by way of training and/or experience, is knowledgeable of applicable health and safety standards, is capable of identifying workplace hazards, is designated, and has authority to take appropriate actions as referred to in OSHA standards and documents.

**Completion Deadline(s)** shall mean the Substantial Completion Deadline(s) and/or Final Acceptance Deadline(s), as the case may be.

**Comprehensive Environmental Protection Program (CEPP)** shall mean the document obligating DB Contractor to protect the environment and document the measures taken during the performance of the Work to avoid and minimize impacts on the environment, as further described in Section 4 of the Technical Provisions.



**Construction Documents** shall mean all shop drawings, working drawings, fabrication plans, material and hardware descriptions, specifications, construction quality control reports, construction quality assurance reports and samples necessary or desirable for construction of the Project (or Segment of the Project, as applicable) and/or the Utility Adjustments in accordance with the DBA Documents.

**Construction General Permit** shall mean a permit under the TPDES program for the management of storm water discharges from construction sites as more particularly described in Section 4.3.2 of the Technical Provisions.

**Construction Monitoring Plan (CMP)** shall mean the plan indicating times, locations, and other conditions under which monitoring of construction activities are to be performed to maintain and ensure compliance with Environmental Laws and the DBA Documents as more particularly described in Section 4.3.6 of the Technical Provisions.

**Construction Quality Acceptance Firm (CQAF)** shall mean the independent firm identified in the Proposal (or such other firm approved by TxDOT in its sole discretion) responsible for performing independent quality assurance material testing, inspection, and audits of the CQP. The initial approved CQAF is Raba Kistner Infrastructure, Inc.

**Construction Quality Acceptance Manager (CQAM)** shall mean the person appointed by the CQAF who is responsible for management and quality acceptance functions, as more particularly described in Section 2.2.8.1.3 of the Technical Provisions.

**Construction Quality Control Manager (CQCM)** shall mean the person assigned by DB Contractor who is responsible for management of the quality control aspect of the CQMP, as more particularly described in Section 2.2.8.1.1 of the Technical Provisions.

**Construction Quality Management Plan (CQMP)** shall mean the plan that establishes quality control and quality acceptance procedures for the Work as more particularly described in Section 2.2.8 of the Technical Provisions.

**Construction Work** means all Work to build or construct, make, form, manufacture, furnish, install, supply, deliver or equip the Project and/or the Utility Adjustments. Construction Work includes landscaping.

**Corridor Structure Type Study and Report** shall mean a preliminary bridge type study report to evaluate potential superstructure and substructure configurations which may be suitable for the proposed bridges based on span lengths, deck widths, soil parameters, hydraulic and scour issues, environmental issues, wetland impacts, safety and maintenance of traffic, highway alignments, constructability, aesthetic requirements, future widening, construction schedule and costs. The Corridor Structure Type Study Report recommends configurations for the proposed bridges based on the

above analysis and also provides the rationale for recommending the proposed alternatives as more particularly described in Section 13 of the Technical Provisions.

**Cost and Schedule Proposal** shall mean DB Contractor's proposal furnished to TxDOT pursuant to a Request for Change Proposal in accordance with Section 13.2.1.4 of the DBA.

**Cost to Cure** shall mean an appraisal method applied to estimate a proper adjustment for damages to a property that can be physically and economically corrected, as described in further detail in the TxDOT Appraisal and Review Manual.

**Critical Path** shall mean each critical path on the Project Schedule, which ends on the Substantial Completion Deadline or the Final Acceptance Deadline, as applicable (i.e. the term shall apply only following consumption of all available Float in the schedule for Substantial Completion or Final Acceptance, as applicable). The lower case term "critical path" shall mean the activities and durations associated with the longest chain(s) of logically connected activities through the Project Schedule with the least amount of positive slack or the greatest amount of negative slack.

**Cultural Resource Management Personnel** shall mean the persons designated by the Environmental Compliance Manager to provide expertise in monitoring impacts to cultural resources during the course of the Work pursuant to Section 4.4.4 of the Technical Provisions, and their respective staffs.

**Customer Groups** shall mean groups, Persons and entities having a perceived stake or interest in the Project, including: the media, elected officials, Governmental Entities, general public residing or working within the general vicinity of the Project or traveling within or across the limits of the Project, business owners within or adjacent to the Project, Utility Owners, operating railroads, community groups, local groups (neighborhood associations, business groups, chambers of commerce, convention and visitors bureaus, contractors, etc.) and other Persons or entities affected by the Project, including those identified in Section 3.2.4 of the Technical Provisions.

**Day(s)** or **day(s)** shall mean calendar days unless otherwise expressly specified.

**DBA Documents** has the meaning set forth in Section 1.2 of the Design-Build Agreement.

**DB Contractor** shall mean Williams Brothers Construction Co., Inc., a Texas corporation, together with its successors and assigns.

**DB Contractor Default** has the meaning set forth in Section 16.1.1 of the DBA.

**DB Contractor-Designated ROW** shall mean any permanent interest in real property (which term is inclusive of all estates and interests in real property), improvements and fixtures outside of the Schematic ROW that DB Contractor determines is necessary or advisable to be acquired for the Project and which acquisition is approved by TxDOT to be acquired at DB Contractor's cost and expense.

The term specifically includes any easements required for drainage for the Project and any air space, surface rights and subsurface rights within the DB Contractor-Designated ROW. The term specifically excludes the Replacement Utility Property Interests, any temporary easements or other temporary real property interests that DB Contractor may deem necessary or advisable to acquire, at its own cost and expense, for excessive work space, contractor lay-down areas, material storage areas, or other convenience of DB Contractor.

**DB Contractor-Initiated VE** has the meaning set forth in Section 22.1 of the DBA.

**DB Contractor-Related Entities** shall mean: (a) DB Contractor, (b) DB Contractor's shareholders, partners, joint venturers and/or members, (c) Subcontractors (including Suppliers), (d) any other Persons performing any of the Work, (e) any other Persons for whom DB Contractor may be legally or contractually responsible, and (f) the employees, agents, officers, directors, shareholders, representatives, consultants, successors, assigns and invitees of any of the foregoing.

**DB Contractor Release(s) of Hazardous Materials** means (a) Release(s) of Hazardous Material, or the exacerbation of any such release(s), attributable to the culpable actions, culpable omissions, negligence, intentional misconduct, or breach of applicable Law or contract by any DB Contractor-Related Entity; (b) Release(s) of Hazardous Materials arranged to be brought onto the Site or elsewhere by any DB Contractor-Related Entity; regardless of cause; or (c) use, containment, storage, management, handling, transport and disposal of any Hazardous Materials by any DB Contractor-Related Entity in violation of the requirements of the DBA Documents or any applicable Law or Governmental Approval.

**DBE Performance Plan** shall mean DB Contractor's plan for meeting the DBE participation goals set forth in Section 7.1 of the DBA.

**DBE Special Provisions** shall mean TxDOT's special provisions for the TxDOT Disadvantaged Business Enterprise Program adopted pursuant to 49 CFR Part 26, which special provisions are set forth in Exhibit 6 to the DBA.

**Decent, Safe and Sanitary (DSS) Dwelling** shall mean the condition of a dwelling such that it meets applicable housing and occupancy codes as defined in 49 CFR Part 24.

**Demolition and Abandonment Plan** shall mean the plan prepared by DB Contractor and which considers the types and sizes of Utilities and structures that will be abandoned during the Term as more particularly described in Section 10.2 of the Technical Provisions.

**Design-Build Agreement (DBA)** shall mean this Design-Build Agreement including all exhibits and attachments hereto, as such documents may be amended, supplemented, amended and restated, or otherwise modified from time to time in accordance with the terms hereof.

**Design Documents** shall mean all drawings (including plans, profiles, cross-sections, notes, elevations, sections, details and diagrams), specifications, reports, studies, calculations, electronic files, records and submittals necessary for, or related to, the design of the Project (or Segment of the Project, as applicable) and/or the Utility Adjustments in accordance with the DBA Documents, the Governmental Approvals and applicable Law.

**Design Exception** shall mean a deviation from one or more of the twelve controlling criteria found in Chapter 1, Section 2, of the TxDOT Roadway Design Manual. The procedures for requesting a Design Exception are found in the TxDOT Project Development Process Manual.

**Design Firm** shall mean the qualified Registered Professional Engineer's firm responsible for the design of the Project.

**Design Quality Assurance Firm (DQAF)** shall mean the independent firm identified in the Proposal (or such other firm approved by TxDOT in its sole discretion) responsible for performing independent Professional Services quality assurance and audits of the DQMP. The initial approved DQAF is Raba Kistner Infrastructure, Inc.

**Design Quality Assurance Manager (DQAM)** shall mean the person appointed by the DQAF who is responsible for management and quality assurance functions, as more particularly described in Section 2.2.7.4 of the Technical Provisions.

**Design Quality Management Plan (DQMP)** shall mean the plan prepared by DB Contractor setting forth the internal quality control and quality assurance procedures to be followed during performance of Professional Services, as more particularly described in Section 2.2.7 of the Technical Provisions.

**Design Speed** means the speed used to determine the various geometric design features of the roadway.

**Design Waiver** shall mean a deviation from the minimum requirements in a non-controlling category as identified in the TxDOT Roadway Design Manual.

**Design Work** means all Work of design, engineering or architecture for the Project, Project ROW acquisition or Utility Adjustments.

**Deviations** shall mean: (a) any proposed or actual change, deviation, modification, alteration or exception from the Technical Provisions, or (b) a change in the Work or other requirements of the DBA Documents issued under Section 13 of the DBA. "**Deviation**" includes a deviation from one or more of the twelve controlling criteria found in Chapter 1, Section 2, of the TxDOT Roadway Design Manual.

**Differing Site Condition** shall mean: (a) subsurface or latent conditions encountered at the actual boring holes identified in the geotechnical reports included in the Reference Information Documents, which differ materially from those conditions indicated in the geotechnical reports for such boring holes; or (b) subsurface or surface

physical conditions of an unusual nature, differing materially from those ordinarily encountered in the area and generally recognized as inherent in the type of work provided for in the DBA. The term shall specifically exclude all such conditions of which DB Contractor had actual or constructive knowledge as of the Proposal Due Date. The foregoing definition specifically excludes: (i) discovery of Unknown Karst Features; (ii) changes in surface topography; (iii) variations in subsurface moisture content and variations in the water table; (iv) Utility facilities; (v) Hazardous Materials, including contaminated groundwater; (vi) acquisition of real property for drainage purposes; and (vii) any conditions which constitute or are caused by a Force Majeure Event.

**Directive Letter** shall have the meaning set forth in Section 13.1.1.2 of the DBA.

**Disadvantaged Business Enterprise** or **DBE** shall have the meaning set forth in Exhibit 6 to the DBA.

**Dispute** means any Claim, dispute, disagreement or controversy between TxDOT and DB Contractor concerning their respective rights and obligations under the DBA Documents including concerning any alleged breach or failure to perform and remedies.

**Dispute Resolution Procedures** means collectively, the procedures established under Sections 19.3, 19.4 and 19.3.5 of the DBA and the applicable portions of Section 201.112 of the Code and the dispute resolution procedures established thereunder as described in Title 43 of the Texas Administrative Code, Section 9.2, as the same may be amended from time to time.

**Drainage Design Report** shall mean the report documenting all components of the Project's drainage system as more particularly described in Section 12.2.1 of the Technical Provisions.

**Draw Request** shall mean a Draw Request and Certificate in the form of Exhibit 15 to the DBA.

**Early Start of Construction** shall mean the initiation of construction before the Final Design Plans have been approved by TxDOT, as more particularly described in Section 2.2.6.9 of the Technical Provisions.

**Effective Date** shall mean the date of the DBA or such other date as shall be mutually agreed upon in writing by TxDOT and DB Contractor.

**Electronic Data Management System (EDMS)** shall mean the secure data management system provided by DB Contractor containing all of the data DB Contractor is required to submit to TxDOT in connection with the Work and compatible with data systems, standards and procedures employed by TxDOT, as more particularly described in Section 2.1.2.1 of the Technical Provisions.

**Element** means an individual component, system or subsystem of the Project or of a Utility Adjustment included in the Construction Work, and shall include at a

minimum a breakdown into the items described in the Performance and Measurement Table Baseline, further subdivided by Auditable Section where appropriate.

**Emergency** means any unplanned event, beyond the control of DB Contractor-Related Entities and not resulting from the actions or omissions of DB Contractor-Related Entities, within the Project Right of Way that (a) presents an immediate or imminent threat to the long term integrity of any part of the infrastructure of the Project, to the environment, to property adjacent to the Project or to the safety of Users or the public, or (b) is recognized by the Texas Department of Public Safety as an emergency.

**Emergency Services** shall mean law enforcement, ambulance service and other similar services from agencies with whom DB Contractor establishes protocols for incident response, safety and security procedures, as set forth in the Emergency Management Plan.

**Engineer in Responsible Charge** shall mean the professional engineer accountable for direction, control and supervision to assure that the Work has been critically examined and evaluated for compliance with appropriate professional standards and the requirements of the DBA Documents.

**ENR Construction Cost Index** shall mean the 12-month "Construction Cost Index" published by Engineering News-Record, Two Penn Plaza, 9th Floor, New York, NY 10121.

**Environmental Approvals** shall mean all Governmental Approvals arising from or required by any Environmental Law in connection with development of the Base Scope and/or, if TxDOT exercises its option to include the Option in the Project, all Governmental Approvals arising from or required by any Environmental Law in connection with development of the Option, as applicable, including New Environmental Approvals and those approvals identified in Section 4 of the Technical Provisions.

**Environmental Commitment (Environmental Permits, Issues and Commitments) (EPIC)** shall mean an environmental requirement that must be fulfilled before, during or after construction. Environmental Commitments include commitments to avoid impacts in specified areas, complete environmental investigations before construction impacts, or to perform specified actions after completion of construction.

**Environmental Commitments Document** shall mean: (i) the document describing anticipated Environmental Commitments pertaining to the Base Scope released to Proposers on or before the Proposal Due Date, including any updates provided to Proposers on or before such date; and (ii) the document describing anticipated Environmental Commitments pertaining to the Option based on the Option Environmental Schematic.

**Environmental Compliance and Mitigation Plan (ECMP)** shall mean the DB Contractor's plan, to be prepared under the CEPP described in the Project Management Plan, for performing all environmental mitigation measures set forth in the Environmental Approvals, and for complying with all other conditions and requirements

of the Environmental Approvals, as more particularly described in Section 4.3.2 of the Technical Provisions.

**Environmental Compliance Inspectors (ECIs)** shall mean the person(s) retained or employed by DB Contractor who provide on-site monitoring of the Project and the Work under direction of the Environmental Compliance Manager as more particularly described in Section 4.4.3 of the Technical Provisions.

**Environmental Compliance Manager (ECM)** shall mean the person retained or employed by DB Contractor who has the authority and responsibility for monitoring, documenting, and reporting environmental compliance for the Work as more particularly described in Section 4.4.1 of the Technical Provisions.

**Environmental Law** shall mean any Law applicable to the Project or the Work regulating or imposing liability or standards of conduct that pertains to the environment, Hazardous Materials, contamination of any type whatsoever, or environmental health and safety matters, and any lawful requirements and standards that pertain to the environment, Hazardous Materials, contamination of any type whatsoever, or environmental health and safety matters, set forth in any permits, licenses, approvals, plans, rules, regulations or ordinances adopted, or other criteria and guidelines promulgated, pursuant to Laws applicable to the Project or the Work, as such have been or are amended, modified, or supplemented from time to time (including any present and future amendments thereto and reauthorizations thereof) including those relating to:

- (a) The manufacture, processing, use, distribution, existence, treatment, storage, disposal, generation, and transportation of Hazardous Materials;
- (b) Air, soil, surface and subsurface strata, stream sediments, surface water, and groundwater;
- (c) Releases of Hazardous Materials;
- (d) Protection of wildlife, Threatened or Endangered Species, sensitive species, wetlands, water courses and water bodies, historical, archeological, and paleontological resources, and natural resources;
- (e) The operation and closure of underground storage tanks;
- (f) Health and safety of employees and other persons; and
- (g) Notification, documentation, and record keeping requirements relating to the foregoing.

Without limiting the above, the term “**Environmental Laws**” shall also include the following:

- (i) The National Environmental Policy Act (42 U.S.C. §§ 4321 *et seq.*), as amended;
- (ii) The Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 *et seq.*), as amended;
- (iii) The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq.*);
- (iv) The Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. §§ 11001 *et seq.*), as amended;
- (v) The Clean Air Act (42 U.S.C. §§ 7401 *et seq.*), as amended;
- (vi) The Federal Water Pollution Control Act, as amended by the Clean Water Act (33 U.S.C. §§ 1251 *et seq.*);
- (vii) The Resource Conservation and Recovery Act (42 U.S.C. §§ 6901, *et seq.*), as amended;
- (viii) The Toxic Substances Control Act (15 U.S.C. §§ 2601 *et seq.*), as amended;
- (ix) The Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 *et seq.*), as amended;
- (x) The Oil Pollution Act (33 U.S.C. §§ 2701, *et seq.*), as amended;
- (xi) The Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§ 136 *et seq.*), as amended;
- (xii) The Federal Safe Drinking Water Act (42 U.S.C. §§ 300 *et seq.*), as amended;
- (xiii) The Federal Radon and Indoor Air Quality Research Act (42 U.S.C. §§ 7401 *et seq.*), as amended;
- (xiv) The Occupational Safety and Health Act (29 U.S.C. §§ 651 *et seq.*);
- (xv) The Endangered Species Act (16 U.S.C. §§ 1531 *et seq.*), as amended;
- (xvi) The Fish and Wildlife Coordination Act (16 U.S.C. §§ 661 *et seq.*), as amended;
- (xvii) The National Historic Preservation Act (16 U.S.C. §§ 470 *et seq.*), as amended;
- (xviii) The Coastal Zone Management Act (33 U.S.C. §§ 1451 *et seq.*), as amended;



- (xix) The Texas Health and Safety Code, including Chapter 382 (the Clean Air Act), Chapter 383 (the Clean Air Financing Act), Chapter 361 (the Texas Solid Waste Disposal Act), Chapter 362 (the Solid Waste Resource Recovery Financing Act), Chapter 363 (the Municipal Solid Waste Act), Chapter 364 (the County Solid Waste Control Act), Chapter 370 (the Texas Toxic Chemical Release Reporting Act), Chapter 371 (the Texas Used Oil Collection, Management, and Recycling Act), Chapter 401 (the Texas Radioactive Materials and Other Sources of Radiation Act), Chapter 402 (the Texas Low-Level Radioactive Waste Disposal Authority Act), Chapter 502 (the Texas Hazard Communication Act), Chapter 505 (the Texas Manufacturing Project Community Right-To-Know-Act), Chapter 506 (the Texas Public Employer Community Right-To-Know-Act), and Chapter 507 (the Texas Non-manufacturing Facilities Community Right-To-Know-Act);
- (xx) The Texas Natural Resources Code, including Chapter 40 (the Texas Oil Spill Prevention and Response Act of 1991);
- (xxi) The Texas Water Code;
- (xxii) The Texas Parks and Wildlife Code;
- (xxiii) The Texas Agriculture Code, including Chapter 76 (Pesticide and Herbicide Regulation) and Chapter 125 (the Agricultural Hazard Communication Act);
- (xxiv) The Texas Asbestos Health Protection Act (Chapter 1954, Texas Occupations Code); and
- (xxv) The Surface Coal Mining and Reclamation Act (Chapter 134, Texas Natural Resources Act).

**Environmental Management System** shall mean the system and program that the Environmental Compliance Manager supervises. The system and program includes monitoring field activities for environmental compliance by environmental inspectors, producing weekly reports, providing an environmental training program including a training staff, and developing an environmental team as more particularly described in Section 4.3.1 of the Technical Provisions.

**Environmental Monitoring Report** shall mean the method by which DB Contractor documents compliance with the CMP as described in Section 4.3.6 of the Technical Provisions.

**Environmental Protection Training Program (EPTP)** shall mean that program to be initiated by DB Contractor and overseen by TxDOT personnel to ensure the Work is conducted in accordance with the Environmental Commitments and environmental requirements set forth in all Environmental Laws and Environmental Approvals

applicable to the Project as more particularly described in Section 4.3.3 of the Technical Provisions.

**Environmental Team (ET)** shall mean the personnel team appointed by DB Contractor, and led by the ECM, to ensure compliance with all Environmental Laws and Environmental Approvals applicable to the Project as more particularly described in Section 4.4 of the Technical Provisions.

**Environmental Training Staff** shall mean Project personnel with experience as set forth in the Technical Provisions and appointed by the ECM to develop and implement an Environmental Protection Training Program as more particularly described in Section 4.4 of the Technical Provisions.

**Error** shall mean an error, omission, inconsistency, inaccuracy, deficiency or other defect.

**Escrowed Proposal Documents (EPDs)** shall have the meaning set forth in Section 21.1 of the DBA.

**Event of Default** shall have the meaning set forth in Section 16.1.3 of the DBA.

**Executive Director** shall mean the executive director of the Texas Department of Transportation, or his or her successor.

**Existing Utility Property Interest** shall mean any right, title or interest in real property (e.g., a fee or an easement) claimed by a Utility Owner as the source of its right to maintain an existing Utility in such real property, which is compensable in eminent domain.

**Expendable Materials** shall mean: (a) tangible personal property that loses its distinct and separate identity when incorporated into real property (examples include framing lumber, bricks, steel, re-bar, concrete) and (b) consumable items, defined as nondurable tangible personal property that is used to improve real property and that, after being used once for its intended purpose, is completely used or destroyed so that it has no salvage value (examples include non-reusable concrete forms, non-reusable drop cloths, barricade tape, natural gas, and electricity).

**Federal Requirements** shall mean the provisions required to be part of federal-aid construction contracts, including the provisions set forth in Exhibit 3 to the DBA.

**Final Acceptance** shall mean: (a) for each Segment, as applicable, the occurrence of all of the events and satisfaction of all of the conditions set forth in Section 20.3.2 of the DBA, as and when confirmed by TxDOT's issuance of a Certificate of Final Acceptance for such Segment, and (b) for the Project, Final Acceptance of the Project as provided in Section 20.3.6 of the DBA.

**Final Acceptance Deadline** shall mean each of the deadlines as determined pursuant to Section 4.2.2 of the DBA, as such deadlines may be adjusted by Change Order pursuant to the DBA.

**Final Design** shall mean, depending on the context: (a) the Final Design Documents; (b) the design concepts set forth in the Final Design Documents; or (c) the process of development of the Final Design Documents.

**Final Design Documents** shall mean the complete final construction drawings (including plans, profiles, cross-sections, notes, elevations, sections, details and diagrams), specifications, reports, studies, calculations, electronic files, records, and submittals necessary or related to the construction of the Project (or Segment of the Project, as applicable) and any Utility Adjustments, and satisfying the requirements presented in Section 2.2.6.7 of the Technical Provisions.

**Final Design Submittal** shall mean the submittal by DB Contractor for review and comment by TxDOT of Design Documents certified by the DQAM demonstrating compliance with the DBA Documents and incorporating all Intermediate Design Submittal review comments, as more particularly described in Section 2.2.6.5 of the Technical Provisions.

**Final Payment** shall mean payment by TxDOT of the final installment of the Price for the Base Scope Work and/or the Option Work (if TxDOT exercises its option to include the Option in the Project), as applicable.

**Final Reconciliation** means the process described in Section 12.4 for determining the undisputed amount owed to DB Contractor after Final Acceptance, and a schedule for payment of such amount.

**Final Warranty Acceptance** shall mean the occurrence of all of the events and satisfaction of all of the conditions set forth in Section 11.1.6 of the DBA, as and when confirmed by TxDOT's issuance of a Certificate of Final Warranty Acceptance.

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

**Force Majeure Event** shall mean any of the events listed in clauses (a) through (j) below, subject to the exclusions listed in clauses (i) through (viii) below, which materially and adversely affects DB Contractor's obligations, provided such events are beyond the control of the DB Contractor-Related Entities and are not due to an act, omission, negligence, recklessness, intentional misconduct, breach of contract or Law of any of the DB Contractor-Related Entities, and further provided that such events (or the effects of such events) could not have been avoided by the exercise of caution, due diligence, or reasonable efforts by DB Contractor:

- (a) Any earthquake, tornado, hurricane (Category 3 and higher) or other natural disaster that (1) causes direct physical damage to the Project and (2) has been proclaimed a disaster or state of emergency by the President of the United States, the Governor of the State of Texas, or the Federal Highway Administrator, unless such damage is caused by the DB Contractor's action or inaction or the DB Contractor's means and methods of construction;
- (b) Any epidemic in the geographic vicinity of the Project;
- (c) Any blockade, rebellion, war, riot, act of sabotage or civil commotion that causes direct physical damage to the Project;
- (d) The discovery at, near or on the Project ROW (excluding DB Contractor-Designated ROW) of any archaeological, paleontological or cultural resources provided that the existence of such resources or substances was not disclosed in, or ascertainable from, the RFP Documents, was not otherwise known to DB Contractor prior to the Proposal Due Date and would not have become known to DB Contractor by undertaking reasonable investigation prior to the Proposal Due Date;
- (e) The discovery at, near or on the Project ROW (excluding DB Contractor-Designated ROW) of any Threatened or Endangered Species (regardless of whether the species is listed as threatened or endangered as of the Proposal Due Date), provided that the presence of such species was not disclosed in, or ascertainable from, the RFP Documents, was not otherwise known to DB Contractor prior to the Proposal Due Date and would not have become known to DB Contractor by undertaking reasonable investigation prior to the Proposal Due Date;
- (f) Any Change in Law, which (1) requires a material modification of the Project design, (2) requires DB Contractor to obtain a new major State or federal environmental approval not previously required for the Project, (3) results in an increase in DB Contractor's costs directly attributable to the Change in Law of at least \$500,000, or (4) specifically targets the Project or DB Contractor;
- (g) Any Third Party Release of Hazardous Materials or TxDOT Release of Hazardous Materials which: (1) occurs after the Proposal Due Date (and for Third Party Releases, also after the date TxDOT makes the parcel available to DB Contractor for the Work) and before the end of the Term, (2) is required to be reported to a Governmental Entity, (3) renders use of the roadway or construction area unsafe or potentially unsafe absent assessment, containment and/or remediation, and (4) with respect to Third Party Releases of Hazardous Materials, does not result from DB Contractor's failure to exercise reasonable efforts to protect the Site from third parties;

- (h) Issuance of a temporary restraining order or other form of injunction by a court that prohibits prosecution of a material portion of the Work;
- (i) The suspension, termination, interruption, denial or failure to obtain or non-renewal of any TxDOT-Provided Approval, except to the extent that such suspension, termination, interruption, denial or failure to obtain or non-renewal arises from failure by any DB Contractor-Related Entity to locate or design the Project or carry out the work in accordance with the TxDOT-Provided Approvals or other Governmental Approval; and
- (j) The addition of any new condition or requirement in the Environmental Approvals based on the Schematic Design and the Schematic ROW, subject to the limitations and conditions described in Section 6.9.2 of the DBA.

The term “**Force Majeure Event**” shall be limited to the matters listed above and specifically excludes from its definition the following matters which might otherwise be considered a force majeure event:

- (i) any fire or other physical destruction or damage, or delays to the Project which occur by action of the elements, including lightning, explosion, drought, rain, flood, snow, storm, except as specified in clause (a) above;
- (ii) except as provided in clause (b) above, malicious or other acts intended to cause loss or damage or other similar occurrence, including vandalism or theft;
- (iii) any strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence;
- (iv) the suspension, termination, interruption, denial, failure to obtain, non-renewal or change in any requirements of any Governmental Approval, except for any such matter falling within the scope of clause (e), (h), (i) or (j) above;
- (v) any increased costs or delays related to any Utility Adjustment Work or failure to obtain any approval, work or other action from a Utility Owner, except to the extent directly due to any of the matters listed in clauses (a) through (j) above;
- (vi) the presence at, near or on the Site, as of the Effective Date, of any Hazardous Material, including substances disclosed in the Reference Information Documents, as well as any substances contained in any structure required to be demolished in whole or in part or relocated as part of the Work;
- (vii) any Change in Law which has the effect of modifying a Utility Owner’s required specifications, standards of practice and/or construction methods

for the Utility Adjustment Work to be furnished or performed by DB Contractor (or reimbursed by DB Contractor), which occurs after the Proposal Due Date but prior to the date on which the applicable Utility Agreement is signed by the Utility Owner; and

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

**Generally Accepted Accounting Principles (GAAP)** shall mean such accepted accounting practice as, in the opinion of the accountant, conforms at the time to a body of generally accepted accounting principles in the United States.

**Geotechnical Engineering Reports** shall mean the reports documenting the assumptions, conditions and results of geotechnical investigations and analysis, as more particularly described in Section 8.2.1 of the Technical Provisions.

**Good Industry Practice** shall mean the exercise of the degree of skill, diligence, prudence, and foresight which would reasonably and ordinarily be expected from time to time from a skilled and experienced designer, engineer, constructor or maintenance contractor seeking in good faith to comply with its contractual obligations, complying with all applicable Laws and engaged in the same type of undertaking under circumstances and conditions similar to those within the same geographic area as the Project.

**Governmental Approval** shall mean any permit, license, consent, concession, grant, franchise, authorization, waiver, variance or other approval, guidance, protocol, mitigation agreement, or memoranda of agreement/understanding, and any amendment or modification of any of them provided by Governmental Entities, including State, local, or federal regulatory agencies, agents, or employees, which authorize or pertain to the Work or the Project, but excluding any such approvals given by or required from any Governmental Entity in its capacity as a Utility Owner.

**Governmental Entity** shall mean any federal, State or local government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity other than TxDOT.

**Guaranteed Obligations** shall have the meaning set forth in the Guaranty.

**Guarantor** shall mean each of the entities which provided a guaranty in the form of Exhibit 13 of some or all of the obligations of DB Contractor under the DBA Documents.

**Guaranty** shall mean each guaranty executed by a Guarantor guaranteeing some or all of the obligations of DB Contractor under the DBA Documents.

**Hazardous Materials** shall mean any element, chemical, compound, material or substance, whether solid, liquid or gaseous, which at any time is defined, listed,

classified or otherwise regulated in any way under any Environmental Laws, or any other such substances or conditions (including mold and other mycotoxins or fungi) which may create any unsafe or hazardous condition or pose any threat to human health and safety. The term “**Hazardous Materials**” includes the following:

- (a) Hazardous wastes, hazardous material, hazardous substances, hazardous constituents, and toxic substances or related materials, whether solid, liquid, or gas, including substances defined as or included in the definition of “hazardous substance”, “hazardous waste”, “hazardous material”, “extremely hazardous waste”, “acutely hazardous waste”, “radioactive waste”, “radioactive materials”, “bio-hazardous waste”, “pollutant”, “toxic pollutant”, “contaminant”, “restricted hazardous waste”, “infectious waste”, “toxic substance”, “toxic waste”, “toxic material”, or any other term or expression intended to define, list or classify substances by reason of properties harmful to health, safety or the indoor or outdoor environment (including harmful properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, “TCLP” toxicity” or “EP toxicity” or words of similar import under any applicable Environmental Laws);
- (b) Any petroleum, including crude oil and any fraction thereof, and including any refined petroleum product or any additive thereto or fraction thereof or other petroleum derived substance; and any waste oil or waste petroleum byproduct or fraction thereof or additive thereto;
- (c) Any drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources;
- (d) Any flammable substances or explosives;
- (e) Any radioactive materials;
- (f) Any asbestos or asbestos-containing materials;
- (g) Any lead and lead-based paint;
- (h) Any radon or radon gas;
- (i) Any methane gas or similar gaseous materials;
- (j) Any urea formaldehyde foam insulation;
- (k) Electrical equipment which contains any oil or dielectric fluid containing regulated levels of polychlorinated biphenyls;
- (l) Pesticides;

- (m) Any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Entity or which may or could pose a hazard to the health and safety of the owners, operators, users or any Persons in the vicinity of the Project or to the indoor or outdoor environment; and
- (n) Soil, or surface water or ground water, contaminated with Hazardous Materials as defined above.

**Hazardous Materials Delay** has the meaning set forth in Section 13.8.4.2 of the DBA.

**Hazardous Materials Management** shall mean procedures, practices and activities to address and comply with Environmental Laws and Environmental Approvals with respect to Hazardous Materials encountered, impacted, caused by or occurring in connection with the Work, as well as investigation and remediation of such Hazardous Materials. Hazardous Materials Management may include sampling, stock-piling, storage, backfilling in place, asphalt batching, recycling, treatment, clean-up, remediation, transportation and/or off-site disposal of Hazardous Materials, whichever is the most cost-effective approach authorized under applicable Law.

**Hazardous Materials Management Plan (HMMP)** shall mean the plan prepared by DB Contractor for the safe handling, storage, treatment and/or disposal of Hazardous Materials both within and outside the Project ROW, as more particularly described in Section 4.3.5 of the Technical Provisions.

**Hazardous Materials Manager** shall mean the person designated by the Environmental Compliance Manager to provide expertise in the safe handling of Hazardous Materials, as more particularly described in Section 4.4.7 of the Technical Provisions.

**Historian** shall mean a member of the project Environmental Team responsible for assessment of historic resources potentially impacted by the Work as more particularly described in Section 4.4 of the Technical Provisions.

**Identified Utility** shall mean any Utility impacted by the Project to which any one or more of the following applies:

- (a) The Utility line is shown on the Utility Strip Map (irrespective of whether correct ownership is shown).
- (b) The Utility type (e.g., gas, water, communication, electric) is shown on the Utility Strip Map (differences in material, e.g., clay vs. plastic, shall not be considered a difference in type).
- (c) The Utility is an overhead Utility existing as of the Proposal Due Date or which commenced installation prior to the Proposal Due Date.



- (d) The Utility is an extension of an Identified Utility (including a Service Line extending from an Identified Utility).
- (e) The Utility is located in the same trench as an Identified Utility (e.g. communication duct bank and joint communication cable facilities).

Any appurtenance, including manholes, pedestals, handholes, fire hydrants, and Fxboxes, not shown on the Utility Strip Map that is a component or extension of an Identified Utility is considered a part of the Identified Utility.

If a Utility falls within any of the categories listed above, then it is an Identified Utility regardless of any discrepancy between (i) the information provided on the Utility Strip Map, and (ii) the actual characteristics of that Utility with respect to its size, its horizontal or vertical location, its ownership, its type (e.g., gas, water, communication, electric), or any other characteristic. Without limiting the generality of the foregoing, if a Utility is shown on the Utility Strip Map as being on public right of way, and it is in fact located on private right of way, or vice versa, that discrepancy is of no relevance in determining whether or not that Utility is an Identified Utility.

**Incident** shall mean a localized disruption to the free flow of traffic on or safety of users of the Project that is beyond the control of DB Contractor and does not result from actions or omissions of DB Contractor.

**Incidental Utility Adjustment Work** shall mean all of the following work that DB Contractor is responsible for performing, or causing to be performed, at its own expense and that is necessary or determined by DB Contractor to be required for the construction and/or accommodation of the Project:

- (a) Service Line Utility Adjustments including appurtenances (excluding any Service Line Utility Adjustment for which the owner of the affected real property has been compensated pursuant to Section 7 of the Technical Provisions - Right of Way, and provided that DB Contractor shall obtain all temporary rights of entry needed for such Adjustments in accordance with Section 7 of the Technical Provisions - Right of Way);
- (b) Temporary Utility Adjustments;
- (c) Utility Appurtenance Adjustments;
- (d) Temporary Protections in Place; and
- (e) Resurfacing and re-striping of streets (including sidewalks) and reconstruction of curb, gutter, sidewalks and landscaping where necessary due to Utility Adjustment Work, whether performed by the Utility Owner or by DB Contractor.

**Indemnified Parties** shall mean TXDOT, the State, the Texas Transportation Commission, FHWA, the Program Manager and their respective successors, assigns, officeholders, officers, directors, agents, representatives, consultants and employees.

**Instructions to Proposers (ITP)** shall mean the Instructions to Proposers issued by TxDOT on April 26, 2013 as part of the RFP with respect to the Project, including all exhibits, forms and attachments thereto and any subsequent addenda.

**Intellectual Property** means all current and future legal and/or equitable rights and interests in know-how, patents (including applications), copyrights (including moral rights), trade marks (registered and unregistered), service marks, trade secrets, designs (registered and unregistered), utility models, circuit layouts, plant varieties, business and domain names, inventions, solutions embodied in technology, and other intellectual activity, and applications of or for any of the foregoing, subsisting in or relating to the Project, Project design data or Project traffic data. Intellectual Property includes traffic management algorithms, and software used in connection with the Project (including but not limited to software used for management of traffic on the Project), and software source code. Intellectual Property is distinguished from physical construction and equipment itself and from drawings, plans, specifications, layouts, depictions, manuals and other documentation that disclose Intellectual Property.

**Intelligent Transportation System (ITS)** shall mean the system to monitor traffic flow, detect traffic and traffic operational conditions and communicate relevant traffic information to users of the Project as more particularly described in Section 17 of the Technical Provisions.

**Investigative Work Plan (IWP)** shall mean a plan prepared by DB Contractor addressing the methods, techniques, and analytical testing requirements to adequately characterize the extent of impacts by Hazardous Materials to an area of concern.

**Job Training and Small Business Opportunity Plan** shall mean the plan set forth in Exhibit 8 to the DBA.

**Karst Species Specialist** mean a member of the Project Environmental Team responsible for the investigation of karst features and identification of karst species potentially impacted by the Work as more particularly described in Section 4.4 of the Technical Provisions.

**Key Personnel** shall mean the following positions: (1) Project Manager; (2) Design Manager; (3) Construction Manager; (4) Professional Services Quality Control Manager; (5) Design Quality Assurance Manager; (6) Construction Quality Control Manager; (7) Construction Quality Acceptance Manager; (8) Environmental Compliance Manager; and (9) Safety Manager.

**Key Personnel Liquidated Damages** shall mean the liquidated damages described in Section 7.4 of the DBA.

**Key Subcontractor** shall mean the Subcontractors identified on Exhibit 21.

**Law** or **Laws** shall mean: (a) any statute, law, code, regulation, ordinance, rule or common law; (b) any binding judgment (other than regarding a Claim or Dispute); (c) any binding judicial or administrative order or decree (other than regarding a Claim or Dispute); (d) any written directive, guideline, policy requirement or other governmental restriction (including those resulting from the initiative or referendum process, but excluding those by TxDOT within the scope of its administration of the DBA Documents); or (e) any similar form of decision of or determination by, or any written interpretation or administration of any of the foregoing by, any Governmental Entity; in each case which is applicable to or has an impact on the Project or the Work, whether taking effect before or after the Effective Date, including Environmental Laws. "**Laws**", however, excludes Governmental Approvals.

**License Agreement** shall mean any license agreement for construction, maintenance, and use of railroad ROW between an operating railroad and TxDOT as more particularly described in Section 14.3.2 of the Technical Provisions.

**Lien** shall mean any pledge, lien, security interest, mortgage, deed of trust or other charge or encumbrance of any kind, or any other type of preferential arrangement (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any lease in the nature of a security instrument and the filing of or agreement to file any financing statement under the Uniform Commercial Code of any jurisdiction).

**Liquidated Damages** shall mean Key Personnel Liquidated Damages and Liquidated Damages for Delay.

**Liquidated Damages for Delay** shall mean the liquidated damages specified in Sections 17.1 of the DBA.

**Losses** shall mean any loss, damage, injury, liability, obligation, cost, response cost, expense (including attorneys', accountants' and expert witnesses' fees and expenses (including those incurred in connection with the enforcement of any indemnity or other provision of the DBA)), fee, charge, judgment, penalty, fine or Third Party Claims. Losses include injury to or death of persons, damage or loss of property, and harm or damage to natural resources.

**Maintenance Management Plan** shall mean the plan prepared by DB Contractor and which defines the process and procedures for the maintenance of the Project for the Term of DBA as more particularly described in Section 19.2 of the Technical Provisions.

**Major Culvert** shall mean a culvert that provides an opening of more than 35 square feet in a single or multiple installations. A major culvert may consist of a single round pipe, pipe arch, open or closed-bottom box, bottomless arch, or multiple installations of these structures placed adjacent or contiguous as a unit. Certain major culverts are classified as bridges when they provide an opening of more than 20 feet,

measured parallel to the roadway; such culverts may be included in the bridge inventory.

**Major River Crossing** shall mean a crossing with a 100-year storm event flow in excess of 10,000 cubic feet per second (cfs).

**Major Subcontracts** shall mean a Subcontract in excess of \$3,000,000.

**Major Subcontractor** shall mean a Subcontractor who has entered into a Major Subcontract with DB Contractor.

**Management Plans** shall mean all of the management plans listed in Section 2 of the Technical Provisions.

**Maximum Payment Schedule** shall mean the curve described in Section 4.3.2 of the DBA which constitutes a cap on the aggregate amount of payments which may be made to DB Contractor hereunder at any specified time.

**Minor Culvert** shall mean any culvert that is not classified as a Major Culvert.

**Municipal Separate Storm Sewer System (MS4)** shall mean the classification of a storm water sewer system of communities that exceed population thresholds established under the TPDES program as more particularly described in Section 4.3.2 of the Technical Provisions.

**National Wetland Inventory** shall mean the system of mapping wetlands in the U.S. by the U.S. Fish and Wildlife Service.

**Natural Resource Biologist** shall mean the team member designated by the Environmental Compliance Manager to provide expertise on monitoring impacts on wildlife and the natural environment due to construction activities related to the Work as more particularly described in Section 4.4.5 of the Technical Provisions.

**Necessary Basic Configuration Change** shall mean a material change in the Basic Configuration that (a) is necessary to meet the requirements of the DBA Documents as a direct result of an Error in the Schematic Design for the Base Scope or an Error in the Option Preliminary Schematic for the Option, as applicable (with the understanding that a change shall be deemed “necessary” only if the Error causes DB Contractor to be unable to meet the requirements of the DBA Documents without a material change in the Basic Configuration); (b) necessitates the acquisition of real property falling within clause (b) of the definition of Additional Properties; (c) could not be avoided by the exercise of caution, due diligence or reasonable effort by DB Contractor, such as the construction of retaining walls or other reasonable mitigation efforts; and (d) could not be avoided through the granting of a waiver, Deviation or Design Exception from the requirements of the DBA Documents by TxDOT.

**New Environmental Approval** shall mean: (a) any Environmental Approval required for the Project, other than TxDOT-Provided Approvals, and (b) any revision, modification, or amendment to any TxDOT-Provided Approval.

**New Utility** shall mean a Utility installed within the Schematic ROW after the Proposal Due Date, not contained in the Utility Strip Map, and not otherwise known to DB Contractor prior to the Proposal Due Date.

**Nonconforming Work** shall mean Work that does not conform to the requirements of the DBA Documents, the Governmental Approvals, applicable Law or the Design Documents.

**Notice of Intent (NOI)** shall mean the notice of intent prepared and submitted by DB Contractor to the TCEQ under the Construction General Permit for storm water discharges from construction sites as more particularly described in Section 4.3.2 of the Technical Provisions.

**Notice of Partial Termination for Convenience** shall mean written notice issued by TxDOT to DB Contractor terminating part of the Work of DB Contractor for convenience under Section 15.1 of the DBA.

**Notice of Termination for Convenience** shall mean written notice issued by TxDOT to DB Contractor terminating the Work of DB Contractor for convenience under Section 15.1 of the DBA.

**NTP1** means a written notice issued by TxDOT to DB Contractor authorizing DB Contractor to proceed with the portion of the Base Scope Work and the Option Environmental Schematic Work described in Section 4.1.3 of the DBA.

**NTP1 Payment Bond Amount** has the meaning set forth in Section 8.1.2 of the DBA.

**NTP1 Performance Bond Amount** has the meaning set forth in Section 8.1.1 of the DBA.

**NTP2** means a written notice issued by TxDOT to DB Contractor pursuant to Section 4.1.4 of the DBA authorizing DB Contractor to proceed with the remaining Work and other activities pertaining to the Base Scope.

**NTP2 Payment Bond Amount** has the meaning set forth in Section 8.1.4 of the DBA.

**NTP2 Performance Bond Amount** has the meaning set forth in Section 8.1.3 of the DBA.

**NTP3** means a written notice issued by TxDOT to DB Contractor authorizing DB Contractor to proceed with the portion of the Option Work described in Section 4.1.6 of the DBA.

**NTP3 Payment Bond Amount** has the meaning set forth in Section 8.1.8 of the DBA.

**NTP3 Performance Bond Amount** has the meaning set forth in Section 8.1.7 of the DBA.

**NTP4** means a written notice issued by TxDOT to DB Contractor pursuant to Section 4.1.7 of the DBA authorizing DB Contractor to proceed with the remaining Work and other activities pertaining to the Option.

**NTP4 Payment Bond Amount** has the meaning set forth in Section 8.1.10 of the DBA.

**NTP4 Performance Bond Amount** has the meaning set forth in Section 8.1.9 of the DBA.

**Off-Peak Times** shall mean those time periods which are not Peak Times, as defined herein.

**Open Book Basis** shall mean providing TxDOT all underlying assumptions and data associated with pricing or compensation (whether of DB Contractor or TxDOT) or adjustments thereto, including assumptions as to costs of the Work, schedule, composition of equipment spreads, equipment rates, labor rates, productivity, estimating factors, design and productivity allowance, contingency and indirect costs, risk pricing, discount rates, interest rates, and other items reasonably required by TxDOT to satisfy itself as to the reasonableness of the amount.

**Option** shall have the meaning set forth in Recital B to the Agreement.

**Option Environmental Schematic** shall mean the schematic plans for the Option approved by TxDOT in its sole discretion for incorporation into the Option Environmental Commitments Document.

**Option Preliminary Schematic** shall mean the preliminary schematic plans included in the RID as of the Proposal Due Date.

**Option Work** shall mean all Work required under the DBA Documents applicable to the Option.

**Ordinary Surface Finish** shall have the meaning set forth in Section 13.3.1 of the Technical Provisions.

**Party** shall mean DB Contractor or TxDOT, as the context may require, and "**Parties**" shall mean DB Contractor and TxDOT, collectively.

**Payment Bond** shall mean the NTP1 Payment Bond described in Section 8.1.2, NTP2 Payment Bond described in Section 8.1.4, the NTP3 Payment Bond described in

Section 8.1.8 and/or the NTP4 Payment Bond described in Section 8.1.10, as applicable.

**PCO Notice** shall have the meaning set forth in Section 13.3.2.3 of the DBA.

**Peak Times** shall mean the periods from 6:00 a.m. to 9:00 a.m. and 4:00 p.m. to 7:00 p.m., Monday through Friday, local Central time in San Antonio, Texas.

**Performance Bond** shall mean the NTP1 Performance Bond described in Section 8.1.1, the NTP2 Performance Bond described in Section 8.1.3, the NTP3 Performance Bond described in Section 8.1.7 and/or the NTP4 Performance Bond described in Section 8.1.9, as applicable.

**Person** shall mean any individual, corporation, joint venture, limited liability company, company, voluntary association, partnership, trust, unincorporated organization or Governmental Entity.

**Plans** means (only where capitalized) contract drawings, working drawings, supplemental drawings, detail sheets or exact reproductions thereof, which show the location, character, dimensions and details of the Construction Work to be done.

**Possession and Use Agreement** shall have the meaning set forth in Section 7.4 of the Technical Provisions.

**PMP Elements** shall have the meaning set forth in Section 2 of the Technical Provisions.

**Preliminary Design Submittal** shall mean the submittal by DB Contractor for review and comment by TxDOT of horizontal and vertical geometrics, bridge clearances and limits of Work as required under Section 2.2.6.5 of the Technical Provisions.

**Preliminary Bridge Layouts** shall mean the bridge layouts prepared subsequent to the Corridor Structure Type Study Report described in Section 13.1 of the Technical Provisions.

**Preliminary Project Baseline Schedule (PBS-1)** shall mean the original Project Schedule submitted with the Proposal.

**Price** shall mean the price set forth in Section 12.1.1 of the DBA, as it may be modified from time to time in accordance with the express provisions of the DBA.

**Professional Services** shall mean all Work performed under the DBA other than Construction Work, including the following services and Work: (a) design and engineering; (b) right of way acquisition services; (c) surveying; (d) Utility Adjustment design; and (e) environmental permitting and compliance services.

**Professional Services Quality Control Manager (PSQCM)** shall mean the person assigned by DB Contractor with responsibility to cause the methods and

procedures contained in the approved DQMP to be implemented and followed by DB Contractor's design staff in the performance of the Work, as more particularly described in Section 2.2.7.4.1 of the Technical Provisions.

**Program Manager** shall mean HNTB Corporation or such other Person (including the entity, as well as its personnel) designated in writing by TxDOT as its Program Manager.

**Progress Payment Certificate** shall have the meaning set forth in Section 12.7 of the DBA.

**Progress Report** shall mean the monthly report that DB Contractor must prepare and submit to TxDOT as more particularly described in Section 2.1.1.2.4 of the Technical Provisions.

**Project** shall have the meaning set forth in Recital B to the DBA. The term "**Project**" shall include the Option only if TxDOT exercises its option to include the Option in the Work in accordance with Section 12.1.1.2 of the DBA.

**Project Baseline Schedule (PBS)** shall mean the schedule consistent with the Completion Deadlines, submitted by DB Contractor for approval as a condition of NTP2 and NTP4, as applicable, setting forth the approved schedule of Work against which any subsequent schedule amendments are tracked, as more particularly described in Section 2.1.1.2 of the Technical Provisions.

**Project Management Plan (PMP)** shall mean the document complying with BS ENO ISO 9001 and BS EN ISO 14001, as appropriate, and approved by TxDOT, describing quality assurance and quality control activities necessary to manage the design, construction, operation and maintenance of the Project, containing the TxDOT-approved component parts, plans and documentation described in Section 2 and Attachment 2-1 to the Technical Provisions.

**Project Manager (PM)** shall mean the individual designated by DB Contractor and approved in writing by TxDOT in the position to take full responsibility for the prosecution of the Work and will act as a single point of contact on all matters on behalf of DB Contractor, pursuant to Section 2.2.2 of the DBA.

**Project ROW or Project Right of Way** shall mean the Schematic ROW and the Additional Properties, but excluding therefrom any portion of the Schematic ROW eliminated from the Project by a Change Order.

**Project Schedule** shall mean one or more, as applicable, of the logic-based critical path schedules (the Project Baseline Schedule, the Project Status Schedule and the Project Recovery Schedule) for all Work leading up to and including Final Acceptance, and for tracking the performance of such Work, as the same may be revised and updated from time to time in accordance with Section 2.1.1.2 of the Technical Provisions.



**Project Specific Locations** shall mean areas in which DB Contractor proposes Project-specific activities in connection with the Work not within the Project ROW boundaries identified in the Environmental Approvals, such as construction work sites, field office locations, temporary work areas, staging areas, storage areas, and earth work material borrow sites.

**Project Status Schedule Update** shall mean the update of the Project Schedule to reflect the current status of the Project, as more particularly described in Section 2.1.1.2.2 of the Technical Provisions.

**Project Utility Adjustment Agreement (PUAA)** shall mean an agreement between DB Contractor and a Utility Owner which sets forth terms and conditions for one or more Utility Adjustments, as the same may be amended or supplemented from time to time and as more particularly described in Section 6.1.3.1 of the Technical Provisions. A document is a "**Project Utility Adjustment Agreement**" if it meets the foregoing definition, without regard to the title of the document.

- (a) **Project Utility Adjustment Agreement (DB Contractor-Managed)** shall mean a Project Utility Adjustment Agreement providing for design and construction by DB Contractor of the Utility Adjustment(s) addressed therein.
- (b) **Project Utility Adjustment Agreement (Owner-Managed)** shall mean a Project Utility Adjustment Agreement providing for design and construction by the Utility Owner of the Utility Adjustment(s) addressed therein.

**Proposal** shall mean DB Contractor's original Proposal submitted in response to the RFP, including any clarifications.

**Proposal Due Date** shall mean July 30, 2013, the deadline for submission of the Proposal to TxDOT.

**Proposer** shall mean each entity that was shortlisted based on TxDOT's evaluation of submissions in response to the Request for Qualifications for the Project issued on January 18, 2013, as amended.

**Proprietary Intellectual Property** shall mean Intellectual Property created, used, applied or reduced to practice in connection with the Project or the Work that derives commercial value from its protection as a trade secret under applicable Law or from its protection under patent law.

**Protection in Place** shall mean any action taken to avoid damaging a Utility which does not involve removing or relocating that Utility, including staking the location of a Utility, exposing the Utility, avoidance of a Utility's location by construction equipment, installing steel plating or concrete slabs, encasement in concrete, temporarily de-energizing power lines, and installing physical barriers. The term includes both temporary measures and permanent installations meeting the foregoing definition.

**Public Information Act** shall mean the Texas Government Code Chapter 552.001 *et seq.*, as amended from time to time.

**Punch List** shall mean the itemized list of the Work which remains to be completed after Substantial Completion has been achieved and before Final Acceptance, the existence, correction and completion of which will have no material or adverse effect on the normal and safe use and operation of the Project.

**Quality Management Plan (QMP)** shall mean the set of TxDOT-approved plans for quality management and control of the Project and Work, as described in Section 2.2 of the Technical Provisions.

**Quitclaim Deed** shall mean a quitclaim deed to be executed by a Utility Owner relinquishing its rights to maintain a Utility in a particular location, as more particularly described in Section 6.2.4.4 of the Technical Provisions.

**Recognized Environmental Condition** shall have the meaning set forth in ASTM E-1527-05.

**Record Drawings** means construction drawings and related documentation revised to show significant changes made during the construction process; usually based on marked-up Final Design Documents furnished by DB Contractor; also known as as-built plans.

**Recovery Schedule** shall mean the schedule DB Contractor is required to provide under Section 4.5 of the DBA.

**Reference Information Documents (RID)** shall mean those documents posted by TxDOT to <http://www.txdot.gov/inside-txdot/projects/studies/san-antonio/loop1604/rid2.html> or to <https://portal.txspd.com/sites/lp1604/rfp/default.aspx>. Except as expressly provided in the DBA Documents, the Reference Information Documents are not considered DBA Documents and were provided to DB Contractor for informational purposes only and without representation or warranty by TxDOT.

**Registered Professional Engineer** shall mean a person who is duly licensed and registered by the Texas Board of Professional Engineers to engage in the practice of engineering in the State.

**Registered Professional Land Surveyor (RPLS)** shall mean a person registered by the Texas Board of Professional Land Surveying to practice the profession of land, boundary, or property surveying or other similar professional practices.

**Reimbursable Hazardous Materials Costs** shall mean DB Contractor's actual costs of performance of Hazardous Materials Management, determined in accordance with Section 13.8.4 of the DBA, provided that the 25% and 145% mark-ups allowed under Section 13.7.1 of the DBA shall be reduced to 12.5% and 130%, and the 15% mark-up allowed under Section 13.7.2 of the DBA shall be reduced to 7.5%.

**Release of Hazardous Materials** shall mean any spill, leak, emission, release, discharge, injection, escape, leaching, dumping or disposal of Hazardous Materials into the soil, air, water, groundwater or environment, including any exacerbation of an existing release or condition of Hazardous Materials contamination.

**Released for Construction Documents** shall mean DB Contractor's Design Documents issued for the purpose of construction that have been reviewed and accepted by TxDOT, as applicable, authorizing construction.

**Replacement Housing Calculation** shall mean the opportunity to provide the displaced person with the financial assistance to purchase or rent and occupy a comparable replacement dwelling without involuntarily incurring additional financial means due to the displacement.

**Replacement Utility Property Interest** shall mean any permanent right, title or interest in real property outside of the Project ROW (e.g., a fee or an easement) which is acquired for a Utility being reinstalled in a new location as a part of the Utility Adjustment Work. The term specifically excludes any statutory right of occupancy or permit granted by a Governmental Entity for occupancy of its real property by a Utility.

**Request for Change Order** shall mean a written notice issued by DB Contractor to TxDOT under Section 13.3.2.5 of the DBA, advising TxDOT that DB Contractor seeks a Change Order.

**Request for Change Proposal** shall mean a written notice issued by TxDOT to DB Contractor under Section 13.2.1 of the DBA, advising DB Contractor that TxDOT may issue a TxDOT-Directed Change or wishes to evaluate whether to initiate such a change pursuant to Section 13.2.1 of the DBA.

**Request for Information (RFI)** shall mean a written request prepared by DB Contractor after Design Documents have been released for construction to initiate the process for potential design changes or clarifications.

**Request for Partnering** shall have the meaning set forth in Section 13.3.2.2 of the DBA.

**Request for Proposals (RFP)** shall have the meaning set forth in Recital E of the DBA.

**Reserved Rights** shall mean all of the following:

- (a) TxDOT's right to use, possess, develop and enjoy any real and personal property over, on, under or adjacent to the Project ROW for other transportation or related facilities, including tunnels, flyovers, frontage roads, local roads, interchanges and fixed guide-ways; and
- (b) all right to use, and use of:

- (i) all electrical, fiber optic and wireless conduit, cable, capacity, towers, antennas and associated equipment or other telecommunications equipment, hardware and capacity existing over, on, under or adjacent to any Project ROW installed by anyone, whether before or after the Effective Date, and all software which executes such equipment and hardware and related documentation, to the extent not necessary and required for traffic management for the Project or for other project purposes;
- (ii) any area or space over, on, under or adjacent to the Project ROW for development and operation of any office, commercial, industrial, residential, retail or mixed use real estate project, including revenue-generating service or rest areas;
- (iii) any equipment, facilities or capabilities for ITS studies or applications installed by or on behalf of TxDOT and the right to install any such equipment, facilities or capabilities; and
- (iv) any area or space over, on, under or adjacent to the Project ROW for any other commercial or non-commercial development or use.

**Retainage Bond** shall mean the bond required in accordance with Section 8.1.5 of the DBA and/or the supplemental bond required in accordance with Section 8.1.11, as applicable.

**RFP Documents** shall mean all of the information and materials supplied to DB Contractor in connection with the issuance of the RFQ, the RFP, including Instructions to Proposers, the DBA Documents and the Reference Information Documents and any addenda issued in connection therewith.

**RFQ** shall have the meaning set forth in Recital C of the DBA.

**Right of Entry (ROE) Agreement** shall mean a written agreement between the record title owner and DB Contractor granting TxDOT, DB Contractor or assignees permission to enter the applicable parcel that is to be acquired.

**Right of Way (ROW) Acquisition Plan** shall mean DB Contractor's plan, approved by TxDOT in accordance with Section 7 of the Technical Provisions, for any acquisition of real property for the Project.

**ROW Administrator** shall mean TxDOT's representative responsible for the management of all matters pertaining to real property for the Project.

**ROW Acquisition Manager** shall mean DB Contractor's representative responsible for the preparation and quality review of all documents required for any acquisition of Project ROW in accordance with Section 7 of the Technical Provisions.

**Rules** shall mean Title 43, Part 1, Chapter 9, Subchapter I of the Texas Administrative Code.

**Safety and Health Plan** shall mean the plan describing DB Contractor's policies, plans and controls to ensure the health and safety of personnel and the general public affected by the Project, as more particularly described in Section 2.5 of the Technical Provisions.

**Schedule Activity** shall mean the smallest division of the Work at each WBS level to be tracked in the Project Schedule. Schedule Activities are activities critical in ensuring the timely completion of the Project. In addition to construction tasks, Schedule Activities include quality assurance tasks, environmental tasks, fabrication of structural steel and precast and prestressed concrete structures, material and equipment procurement, Utility Adjustment Work and delivery to the site or storage locations and maintenance of traffic tasks.

**Schematic Design** shall mean: (a) with respect to the Base Scope, the schematic plans for the Base Scope incorporated into the Environmental Commitments Document for the Base Scope and included in the RID; and (b) with respect to the Option, (i) the Option Preliminary Schematic or (ii) the Option Environmental Schematic once incorporated into the Environmental Commitments Document for the Option and included in the RID.

**Schematic ROW** shall mean any real property (which term is inclusive of all estates and interests in real property), including detention ponds as well as improvements and fixtures, within the proposed ROW lines established on the Schematic Design, as such limits may be adjusted from time to time in accordance with the DBA Documents. The term specifically includes all air space, surface rights, and subsurface rights within the limits of the ROW.

**Segment** shall have the meaning set forth in Recital B to the DBA.

**Service Line** shall mean a utility line, up to and including the meter, that connects the main line and services to individuals, businesses and other entities.

**Site** shall mean Project ROW, Replacement Utility Property Interests, and any temporary rights or interests that DB Contractor may acquire at its own cost and expense in connection with the Project.

**Site Investigative Report (SIR)** shall mean the report summarizing the DB Contractor's Hazardous Materials investigative work as required by Section 4.3.4 of the Technical Provisions.

**Small Bridge** shall mean a bridge that is not crossing a Major River Crossing.

**Source Code** and **Source Code Documentation** shall mean software written in programming languages, such as C and Fortran, including all comments and procedural code, such as job control language statements, in a form intelligible to trained

programmers and capable of being translated into object or machine readable code for operation on computer equipment through assembly or compiling, and accompanied by documentation, including flow charts, schematics, statements of principles of operations, architectural standards, and commentary, explanations and instructions for compiling, describing the data flows, data structures, and control logic of the software in sufficient detail to enable a trained programmer through study of such documentation to maintain and/or modify the software without undue experimentation. Source Code and Source Code Documentation also include all modifications, additions, substitutions, updates, upgrades and corrections made to the foregoing items.

**State** shall mean the State of Texas.

**State Highway (SH)** means a highway designated as part of the state highway system under Section 201.103, Texas Transportation Code.

**Subcontract** shall mean any agreement by DB Contractor with any other Person, Subcontractor or Supplier to perform any part of the Work or provide any materials, equipment or supplies for any part of the Work, or any such agreement at a lower tier, between a Subcontractor and its lower tier Subcontractor or a Supplier and its lower tier Supplier, at all tiers.

**Subcontractor** shall mean any Person with whom DB Contractor has entered into any Subcontract to perform any part of the Work or provide any materials, equipment or supplies for the Project on behalf of DB Contractor and any other Person with whom any Subcontractor has further subcontracted any part of the Work, at all tiers.

**Subcontractor Dispute** shall have the meaning set forth in Section 19.4 of the DBA.

**Submittal** shall mean any document, work product or other written or electronic end product or item required under the DBA Documents to be delivered or submitted to TxDOT.

**Substantial Completion** shall mean for each Segment the occurrence of all of the events and satisfaction of all of the conditions set forth in Section 20.1.1.2 of the DBA, as and when confirmed by TxDOT's issuance of a Certificate of Substantial Completion for such Segment.

**Substantial Completion Deadline** shall mean the deadlines as determined pursuant to Section 4.2.1 of the DBA, as such deadlines may be adjusted by Change Order pursuant to the DBA.

**Supplemental Utility Assembly** shall mean the collection of agreements, plans and other information and materials which DB Contractor is required to submit to TxDOT in connection with each Utility Adjustment being added to an existing PUAA by means of a UAAA as more particularly described in Section 6 of the Technical Provisions.

**Supplier** shall mean any Person not performing work at or on the Site which supplies machinery, equipment, materials, hardware, software, systems or any other appurtenance to the Project to DB Contractor or to any Subcontractor in connection with the performance of the Work. Persons who merely transport, pick up, deliver or carry materials, personnel, parts or equipment or any other items or persons to or from the Site shall not be deemed to be performing Work at the Site.

**Surety** shall mean each properly licensed surety company, insurance company or other Person approved by TxDOT, which has issued any Payment Bond, Performance Bond, or Warranty Bond.

**Tangible Net Worth** shall mean the difference between (the sum of paid-in capital stock plus preferred stock plus retained earnings) less (the sum of treasury stock plus minority interest plus intangible assets e.g., goodwill, patents, licenses), all determined in accordance with Generally Accepted Accounting Principles and as interpreted by the Securities and Exchange Commission in connection with financial statements filed pursuant to the Securities Exchange Act of 1934.

**Technical Provisions (TP)** means the Project-specific technical provisions entitled “Technical Provisions for the Loop 1604 Western Extension Project” and all exhibits and attachments thereto, as such documents may be amended, supplemented, amended and restated, or otherwise modified from time to time in accordance with the terms of this DBA.

**Term** shall mean the period of time commencing upon issuance by TxDOT of NTP1 and continuing thereafter through Final Acceptance of the Project, unless terminated earlier in accordance with this DBA.

**Termination for Convenience** shall mean a termination of the DBA made pursuant to Section 15.1 of the DBA.

**Texas Accessibility Standards** shall mean the standards for accessibility and regulations issued by the Texas Department of Licensing and Regulation.

**Theoretical Gores** shall have the meaning set forth in the *Texas Manual on Uniform Traffic Control Devices*.

**Third Party Claims** shall mean any and all claims, disputes, disagreements, causes of action, demands, suits, actions, judgments, investigations or proceedings brought by a Person that is not a Party with respect to damages, injuries, liabilities, obligations, losses, costs, penalties, fines or expenses (including attorneys’ fees and expenses) sustained or incurred by such Person.

**Third Party Release(s) of Hazardous Material** shall mean any and all spills of Hazardous Material on the Schematic ROW by a third party who is not acting in a capacity of a DB Contractor-Related Entity that occurs on or after the date TxDOT makes available to DB Contractor the affected parcel.

**Threatened or Endangered Species** shall mean any species listed by the USFWS as threatened or endangered pursuant to the Endangered Species Act, as amended, 16 U.S.C. §§ 1531, *et seq.* or any species listed as threatened or endangered pursuant to the State endangered species act.

**Time and Materials Change Order** shall mean a Change Order issued in accordance with Section 13.7 of the DBA.

**Traffic Control Coordinator** shall mean the person designated by DB Contractor to oversee the implementation of the traffic control plans, as more particularly described in Section 18 of the Technical Provisions.

**Traffic Management Plan** shall mean the plan prepared by DB Contractor for the management of traffic during construction, as more particularly described in Section 18.2.1 of the Technical Provisions.

**TxDOT** shall mean the Texas Department of Transportation, any assignee and any other entity succeeding to the powers, authorities and responsibilities of TxDOT invoked by or under the DBA Documents.

**TxDOT Administrative Settlement Committee** shall mean the committee established within TxDOT under the direction of the Right of Way Administrator.

**TxDOT-Caused Delays** shall mean unavoidable delays arising from the following matters and no others, but only to the extent that they (i) materially adversely affect a Critical Path, (ii) are not mitigated by or susceptible to handling by a work around or consumption of Project Float, and (iii) are not due to an act, omission, negligence, recklessness, intentional misconduct, breach of contract or violation of Law or a Governmental Approval of or by any of the DB Contractor-Related Entities:

- (a) TxDOT-Directed Changes;
- (b) failure or inability of TxDOT to make available within the time periods set forth in Section 6.4.2 or Section 6.4.4 of the DBA, as applicable, and subject to the risk allocation contained therein, Schematic ROW, or any Additional Properties that must be acquired due to a TxDOT-Directed Change or Necessary Basic Configuration Change;
- (c) failure of TxDOT to provide responses to proposed schedules, plans, Design Documents, condemnation and acquisition packages, and other Submittals and matters for which response is required under the DBA Documents as an express prerequisite to DB Contractor's right to proceed or act (which, for the avoidance of doubt, does not include Submittals and matters governed by Section 3.1.5 of the DBA, within the time periods (if any) indicated in the DBA Documents, or if no time period is indicated, within a reasonable time, taking into consideration the nature, importance and complexity of the submittal or matter, following delivery of written



notice from DB Contractor requesting such action in accordance with the terms and requirements of the DBA Documents;

- (d) failure or inability of TxDOT make available certain TxDOT-furnished ITS equipment specified in Section 17.2.11 of the Technical Provisions, provided that DB Contractor provided adequate notice to TxDOT for retrieval of such TxDOT-furnished ITS equipment in accordance with said Section; and
- (e) uncovering, removing and restoring Work pursuant to Section 5.4.3 of the DBA, if such Work exposed or examined is in conformance with the requirements of the DBA Documents, the Governmental Approvals and applicable Law, unless such conforming Work was performed or materials used without adequate notice to and opportunity for prior inspection by TxDOT.

Any suspension of Work arising from litigation shall not be considered a TxDOT-Caused Delay (although it may qualify as a Force Majeure Event under clause (g) of the definition of “**Force Majeure Event**”) despite the fact that TxDOT may specifically direct DB Contractor to suspend the Work.

**TxDOT Consultant(s)** shall mean any firm or persons under contract to TxDOT to perform services for or on the behalf of TxDOT.

**TxDOT-Directed Changes** shall mean any changes in the scope of the Work or terms and conditions of the DBA Documents (including changes in the standards applicable to the Work) that increase DB Contractor’s costs by more than \$10,000, which TxDOT has directed DB Contractor to perform as described in Section 13.2 of the DBA, including Suspensions of the Work by TxDOT for more than 48 hours per suspension or 96 hours total in accordance with Section 14.1 of the DBA.

**TxDOT-Initiated VE** has the meaning as set forth in Section 22.1 of the DBA.

**TxDOT-Provided Approvals** shall mean the Environmental Approval(s) set forth in Exhibit 4 to the DBA.

**TxDOT Release(s) of Hazardous Material** means, except as provided below, the introduction in, on or under the Project ROW of Hazardous Material directly by TxDOT, or by its contractors, subcontractors, agents or employees acting in such capacity (other than any DB Contractor-Related Entity). “**TxDOT Release(s) of Hazardous Material**” excludes, however, (i) any Hazardous Materials so introduced that were in or part of construction materials and equipment incorporated into the Project and (ii) any Hazardous Materials so introduced that were in, on or under DB Contractor-Designated ROW.

**TxDOT’s Recoverable Costs** means:

- (a) The costs of any assistance, action, activity or Work undertaken by

TxDOT which DB Contractor is liable for or is to reimburse under the terms of the DBA Documents, including the charges of third party contractors and reasonably allocated wages, salaries, compensation and overhead of TxDOT staff and employees performing such action, activity or Work; plus

- (b) Third-party costs TxDOT incurs to publicly procure any such third party contractors; plus
- (c) Reasonable fees and costs of attorneys (including the reasonably allocable fees and costs of TxDOT's Office of General Counsel or the Texas Attorney General's Office), financial advisors, engineers, architects, insurance brokers and advisors, investigators, traffic and revenue consultants, risk management consultants, other consultants, and expert witnesses, as well as court costs and other litigation costs, in connection with any such assistance, action, activity or Work, including in connection with defending claims by and resolving disputes with third party contractors; plus
- (d) Interest on all the foregoing sums at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, commencing on the date due under the applicable terms of the DBA Documents and continuing until paid.

**TxDOT Standard Specifications** shall mean the Texas Department of Transportation Standard Specifications for Construction of Highways, Streets and Bridges, adopted by the Texas Department of Transportation including all revisions thereto applicable on the Effective Date.

**TxDOT Traffic Engineering Standard Sheets** shall mean the traffic related drawings and standards provided on TxDOT's webpage for Statewide TxDOT CAD Standard Plan Files.

**TxDOT Utility Manual** shall mean the Utility Manual issued by the Right of Way Division of TxDOT on November 5, 1990, as the same may be amended, supplemented or replaced from time to time.

**Unidentified Utility(ies)** shall mean any Utility impacted by the Project (other than a Service Line) which is neither an Identified Utility nor a New Utility, including any Utility which would be a New Utility but for the fact that it is an extension of an Identified Utility.

**Uniform Act** shall mean the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act, P.L. 91-646, as amended.

**Unknown Hazardous Materials** means Hazardous Materials that meet all of the following criteria:

- (a) The Hazardous Materials are in, on or under the Schematic ROW, or parcels added to the Site by a TxDOT-Directed Change or required due to a Force Majeure Event or Necessary Basic Configuration Change as of the date TxDOT makes available to DB Contractor the affected parcel or detention pond, as applicable;
- (b) The existence of such Hazardous Materials was not disclosed in, or ascertainable from, the RFP Documents, was not otherwise known to DB Contractor prior to the Proposal Due Date and would not have become known to DB Contractor by undertaking reasonable investigation prior to the Proposal Due Date; and
- (c) The Hazardous Materials are not required to be removed and disposed of due to a DB Contractor Release of Hazardous Materials.

For purposes of this definition, “makes available” means (i) the Effective Date for parcels acquired as of the Effective Date or (ii) as to parcels not yet acquired as of the Effective Date, the date DB Contractor first receives access to the parcel in accordance with the DBA Documents. The term Unknown Hazardous Materials does not include Hazardous Materials falling within paragraph (g) of the definition for Force Majeure Event.

**Unknown Karst Feature** means any karst feature that meets the following criteria:

- (a) The feature is within the Schematic ROW or Additional Properties required due to a TxDOT-Directed Change, Force Majeure Event or Necessary Basic Configuration Change;
- (b) The existence of the feature was not disclosed in, or ascertainable from, the RFP Documents, including but not limited to the Karst Invertebrate Technical Report, dated as of March 27, 2013, and the Electrical Resistivity Survey at Loop 1604 and State Highway 151, dated as of April 2013, each of which is provided in the RID; it being understood that if any karst feature is discovered in a geographic area described in Table 2 of such survey as having a medium, medium-high or high void likelihood, such feature shall not be considered an Unknown Karst Feature; and
- (c) The existence of the feature was not otherwise known to DB Contractor prior to the Proposal Due Date.

**Unknown Karst Feature Delay** shall have the meaning set forth in Section 13.8.6.1 of the DBA.

**Update of an Appraisal** shall have the meaning set forth in Section 7.3.5.1.12 of the Technical Provisions.

**User(s)** means the registered owner of a vehicle traveling on the Project or any portion thereof.

**Utility** or **utility** shall mean a public, private, cooperative, municipal and/or government line, facility or system used for the carriage, transmission and/or distribution of cable television, electric power, telephone, telegraph, water, gas, oil, petroleum products, steam, chemicals, hydrocarbons, telecommunications, sewage, storm water not connected with the drainage of the Project, and similar substances that directly or indirectly serve the public. The term “Utility” or “utility” specifically excludes: (a) storm water facilities providing drainage for the Project ROW, (b) street lights and traffic signals, and (c) ITS and IVHS facilities. The necessary appurtenances to each utility facility shall be considered part of such utility. Without limitation, any Service Line, up to and including the meter, connecting directly to a utility shall be considered an appurtenance to that utility, regardless of the ownership of such Service Line.

**Utility Accommodation Rules (UAR)** shall mean the Utility Accommodation Rules issued by TxDOT, at 43 Tex. Admin. Code, Part 1, Chapter 21, Subchapter C, as the same may be amended, supplemented or replaced by TxDOT from time to time.

**Utility Adjustment** shall mean each relocation (temporary or permanent), abandonment, Protection in Place, removal (of previously abandoned Utilities as well as of newly abandoned Utilities), replacement, reinstallation, and/or modification of existing Utilities necessary to accommodate construction, operation, maintenance and/or use of the Project; provided, however, that the term “**Utility Adjustment**” shall not refer to any of the work associated with facilities owned by any railroad. For any Utility crossing the Project ROW, the Utility Adjustment Work for each crossing of the Project ROW by that Utility shall be considered a separate Utility Adjustment. For any Utility installed longitudinally within the Project ROW, the Utility Adjustment Work for each continuous segment of that Utility located within the Project ROW shall be considered a separate Utility Adjustment.

**Utility Adjustment Agreement Amendment (UAAA)** shall mean an agreement between DB Contractor and the Utility Owner that amends a Project Utility Adjustment Agreement, as more particularly described in Section 6.1.3 of the Technical Provisions.

**Utility Adjustment Field Modifications** has the meaning set forth in Section 6.4.7 of the Technical Provisions.

**Utility Adjustment Concept Plan** shall mean a conceptual design document for Utility Adjustments for the entire Project, which shows all of the approximate existing locations, and DB Contractor’s recommendation for all of the Adjusted locations, of each Utility impacted by the Project, as more particularly described in Section 6.3.3 of the Technical Provisions.

**Utility Adjustment Plans** shall mean the set of plans, specifications, and cost estimates prepared by DB Contractor and approved by the corresponding Utility Owner

in connection with the design work for any Utility Adjustment, as more particularly described in Section 6.3.4.1 of the Technical Provisions.

**Utility Adjustment Submittals** shall mean Submittals, submitted in accordance herewith and with any Project Utility Adjustment Agreement, in each case arising out of or relating to the relevant Utility Adjustments.

**Utility Adjustment Work** shall mean all efforts and costs necessary to accomplish the required Utility Adjustments, including all coordination, design, design review, permitting, construction, inspection, maintenance of records, relinquishment of Existing Utility Property Interests, preparation of Utility Joint Use Acknowledgements, and acquisition of Replacement Utility Property Interests, whether provided by DB Contractor or by the Utility Owners. The term also includes any reimbursement of Utility Owners which is DB Contractor's responsibility pursuant to Section 6.7 of the DBA. Any Utility Adjustment Work furnished or performed by DB Contractor is part of the Work; any Utility Adjustment Work furnished or performed by a Utility Owner is not part of the Work.

**Utility Agreement** shall mean a UAAA or a PUAA, as the context may require.

**Utility Appurtenance Adjustment** shall mean the adjustment of Utility appurtenances (e.g. manholes, valve boxes, and vaults) for line and grade upon completion of roadway work.

**Utility Assembly** shall mean the collection of agreements, plans and other information and materials which DB Contractor is required to submit to TxDOT in connection with each Utility Adjustment (or group of Utility Adjustments subject to the same Project Utility Adjustment Agreement and any applicable Amendments), as more particularly described in Section 6.3.4.5 of the Technical Provisions. Depending on the context, the term also refers to Supplemental Utility Assemblies and Abbreviated Utility Assemblies.

**Utility Assembly Checklist** shall mean a checklist listing the required components of a Utility Assembly, as referenced in Section 6.3.4.5 of the Technical Provisions.

**Utility Assembly Number** or **Assembly Tracking Number** shall mean the unique number given by the DB Contractor to each Utility Assembly using the form "YYY-U-XXXX." The "YYY" shall refer to the assigned number of the highway and "XXXX" shall refer to the 4-digit number assigned to each Utility Assembly (beginning with 0500 and numbered consecutively thereafter). The Utility Assembly Number shall be referenced on each corresponding Utility Agreement.

**Utility Coordinator or DB Contractor Utility Coordinator (DUC)** shall mean the utility staff personnel designated by the DB Contractor to coordinate the utility adjustments, the adjustment agreements, the adjustment costs, the Utility Assemblies, and coordinate all meetings held with either the Utility Owner and/or TxDOT and its consultants.

**Utility Design Coordinator (UDC)** shall mean the Registered Professional Engineer designated by the DB Contractor to be responsible to coordinate the Utility Adjustment design with the overall highway design features during the Work, as more particularly described in Section 6.2.3 of the Technical Provisions.

**Utility Enhancement** shall mean a Betterment or a Utility Owner Project, as referenced in Section 6.7.2 of the DBA,

**Utility Joint Use Agreement** or **Utility Joint Use Acknowledgment** shall mean an agreement between TxDOT and a Utility Owner that establishes the rights and obligations of TxDOT and the Utility Owner with respect to occupancy of the Project ROW by a Utility owned by such Utility Owner.

**Utility Manager (UM)** shall mean the senior staff utility administrator designated by DB Contractor to be responsible for coordination and oversight of Utility operations during the Work, as more particularly described in Section 6.2.3 of the Technical Provisions.

**Utility Owner** shall mean the owner or operator of any Utility (including both privately held and publicly held entities, cooperative utilities, and municipalities and other governmental agencies).

**Utility Owner Delay** shall have the meaning set forth in Section 6.7.5.2 of the DBA.

**Utility Owner Project** shall mean the design and construction by or at the direction of a Utility Owner (or by DB Contractor pursuant to Section 6.7.2.3 of the DBA) of a new Utility other than as part of a Utility Adjustment. Betterments are not Utility Owner Projects. Utility Owner Projects shall be entirely the financial obligation of the Utility Owner.

**Utility Strip Map** shall mean the map depicting existing Utilities identified by TxDOT which are included in the Reference Information Documents.

**Utility Tracking Report** shall mean the report prepared by DB Contractor and which lists all Utilities located within the Project ROW or otherwise potentially affecting the Project as more particularly described in Section 6.5.2 of the Technical Provisions.

**Value Engineering (VEs)** shall have the meaning set forth in Section 22.1 of the DBA.

**Warranty(ies)** shall have the meaning set forth in Section 11.1.1 of the DBA.

**Warranty Bond** shall have the meaning set forth in Section 8.1.7 of the DBA.

**Warranty Term** shall have the meaning set forth in Section 11.1.2 of the DBA.

**Water Quality Specialist** shall mean the person designated by the Environmental Compliance Manager to provide expertise in water quality, as more particularly described in Section 4.4.6 of the Technical Provisions.

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

**[END OF DEFINITIONS]**

## **EXHIBIT 2**

### **DB CONTRACTOR'S PROPOSAL COMMITMENTS, ATCS AND SCHEMATICS**

**Appendix 1:**            **Proposal Commitments**

**Appendix 2:**            **ATCs**

**Appendix 3:**            **Schematics**



## **APPENDIX 1 TO EXHIBIT 2**

### **PROPOSAL COMMITMENTS**

#### **SUBSTANTIAL COMPLETION DEADLINES**

<b>Description</b>	<b>Substantial Completion Date</b>
Proposal Commitment Date for Substantial Completion of Base Scope	NTP1 plus 910 calendar days
Proposal Commitment Date for Substantial Completion of Option	NTP3 plus 700 calendar days

#### **KEY PERSONNEL**

The Design-Build Contractor commits to provide the following individuals to serve as the following Key Personnel:

<b>Name of Key Personnel</b>	<b>Key Personnel Position</b>
Leon Wright	Project Manager
James Rozek, PE	Design Manager
Keith Mittel	Construction Manager
Shannon Hebb, PE	Professional Services Quality Control Manager
Juan Villareal, PE	Design Quality Assurance Manager
Aaron Allen, PE	Construction Quality Control Manager
Ronald Seal, PE	Construction Quality Acceptance Manager
Mary Kelly, PE	Environmental Compliance Manager
John Fleck	Safety Manager

#### **OTHER PROPOSAL COMMITMENTS**

<b>Comment No.</b>	<b>Proposal Location</b>	<b>Proposal Commitment</b>
1	Vol 1: Sec D.1.1, Page 2	Prior to the issuance of NTP1, DB Contractor will conduct a workshop with TxDOT to establish communication protocols that will facilitate timely decision making and advance the Project in compliance with the DBA. The workshop will also include discussions on DB Contractor's Project approach, the risks that we have identified, and the necessary team approach to mitigate them.
2	Vol 1: Sec D.1.1.1, Page 4	DB Contractor's MOT plan will be unique, and will utilize techniques familiar to TxDOT San Antonio District.
3	Vol 1: Sec	DB Contractor will place and maintain sufficient signs,

	D.1.1.1(a), Page 5	barricades, and warning devices to warn the public and provide for the safe movement of traffic and the construction zone safety. Positive barrier protection will also be provided for the safety of construction crew workers, especially at areas of significant close-proximity traffic and open excavations.
4	Vol 1: Sec D.1.1.1(a), Page 5	Accommodating high traffic volumes during special events will be part of the MOT.
5	Vol 1: Sec D.1.1.1(a), Page 5	DB Contractor has evaluated the benefit of the Superstreet configuration along the corridor. DB Contractor will utilize this traffic flow for as long as possible during the construction of the Project.
6	Vol 1: Sec D.1.1.1(a), Page 5	Along Loop 1604 between Culebra Road and Tausch Drive, conversion of the existing two-way frontage road to a one-way facility will be done at the beginning, and this will help motorists become accustomed early on to the ultimate Loop 1604 configuration.
7	Vol 1: Sec D.1.1.1(b), Page 6	Loop 1604 overpasses that impact existing cross-streets will be constructed in single phases.
8	Vol 1: Sec D.1.1.1(b), Page 8	Throughout Phase 1 construction of the Option, traffic will not be impacted, and yet greater than 60% of the Loop 1604/SH 151 interchange project would be completed.
9	Vol 1: Sec D.1.1.1(b), Page 8	The one-time shift of traffic in the Option would be done in a manner that is beneficial to TxDOT and the traveling public, since the SB-EB Direct Connector would be opened to traffic quickly. The receiving roadways would already be in-place, and, once the DC is in operation, drivers would immediately see the improvements in traffic patterns and circulation; particularly with the heavy truck percentages, motorists will observe enhancements in both operations as well as safety.
10	Vol 1: Sec D.1.1.2, Page 12	DB Contractor's approach to surface structures will be to minimize the size, length and depth of the necessary excavation, as well as to perform field investigation early in the design to determine the potential and extent of the Karst features. DB Contractor expects Karst features in the Option Work, and is prepared to manage them on the entire Project, if encountered.
11	Vol 1: Sec D.1.1.2(a), Page 13	Regarding WB ATC #13, DB Contractor understands that it will have to modify the TxDOT standard in order to utilize this ATC.
12	Vol 1: Sec D.1.1.2(a), Page 13	DB Contractor also evaluated Helotes Creek structures and determined that it was necessary to lengthen the SB frontage road structure by 30 feet to improve the hydraulics based on modeling analysis.

13	Vol 1: Sec D.1.1.2(a), Page 13	DB Contractor decided to avoid moving the large culverts on the north end of the bridges at Shaenfield Road and were able to place our abutment between the turn around and the culvert.
14	Vol 1: Sec D.1.1.2(a), Page 14	By judiciously selecting the joint placement and unit configurations, DB Contractor has been able to minimize the number of expansion joints.
15	Vol 1: Sec D.1.1.2(a), Page 14	The implementation of the Hill Country aesthetics makes this inherent to a certain extent, but DB Contractor will take it a step further. For example, the bent caps on the cross-street bridges have been standardized. The similar, repetitive design makes fabrication and construction easier and improved the overall quality of the Project.
16	Vol 1: Sec D.1.1.2(a), Page 15	DB Contractor chose the multi-shaft foundation for the DC for increased stability, efficiency and a smaller environmental impact to minimize the potential of hitting a Karst feature.
17	Vol 1: Sec D.1.1.2(b), Page 16	No noise walls are envisioned at the submission of the Proposal, however, the EA for the Option will be provided in late 2014. DB Contractor is prepared to produce the design for the noise walls which will meet the requirements for noise abatement, aesthetics, and good engineering practice in San Antonio.
18	Vol 1: Sec D.1.1.2(c), Page 16	Where the existing culverts will not support the proposed fill, the existing culvert and end treatments will be removed.
19	Vol 1: Sec D.1.1.3(d), Page 20	DB Contractor will utilize existing materials, to the maximum extent possible, to conserve resources and reduce Project costs such as recycled asphalt pavement or (RAP).
20	Vol 1: Sec D.1.2, Page 22	Raba Kistner Infrastructure, Inc. will serve as the independent Environmental team for the Project.
21	Vol 1: Sec D.1.2, Page 22	Environmental conditions will not become an excuse to miss schedule commitments.
22	Vol 1: Sec D.1.3 (c), Page 33	Once the Utility Adjustment Team evaluates the relocation plans for accuracy and compliance with requirements, DB Contractor will conduct a: <ul style="list-style-type: none"> <li>• Interdisciplinary Design Review with a design lead from each discipline to verify that there are no conflicts with other Project features such as bridge bents, storm drains, retaining walls or other utilities.</li> <li>• Review of construction staging, constructability and traffic maintenance plans to determine if temporary utility connections are necessary to verify scheduling of the utility relocation construction.</li> </ul>
23	Vol 1: Sec	To maintain utility services, construction schedule, traffic

	D.1.3 (c), Page 33	mobility and other phases of construction, the design and construction of utilities will be implemented during the Project construction phase 1 for the Base Scope and Option Work.
24	Vol 1: Sec D.1.4.1 (a), Page 35	DB Contractor has spent a substantial time and effort analyzing the Base Scope and has been able to successfully reduce the MOT phasing down to two simple phases: Phase 1 constructs the frontage roads continuous throughout the Project; Phase 2 shifts traffic to the frontage roads and constructs the mainlanes continuous throughout the Project. Once the mainlanes are opened to traffic, DB Contractor's final effort will be to perform the mill and overlay operations on the mainlanes, ramps, and frontage roads within the limits specified in the Technical Provisions.
25	Vol 1: Sec D.1.4.1 (b), Page 36	The Work Breakdown Structure was developed to Level six to provide sufficient detail and organization of all work under the DBA, and to provide a foundation for the preparation of the Project Baseline Schedule.
26	Vol 1: Sec D.1.4.2 (a), Page 37	Upon issuance of NTP3, DB Contractor will prepare its Karst preventative exploration program, which will sample excavation areas and foundation location to determine if a likely presence will require redesign from the proposal schematic design.
27	Vol 1: Sec D.2.1 (a), Page 42	Russell Smart's role as Deputy Design Manager provides an added benefit to TxDOT by establishing a single point of contact during over the shoulder design reviews.
28	Vol 1: Sec D.2.2 (b), Page 50	The following value added personnel will be 100% committed to their tasks until their respective roles are complete: Deputy Project Manager – Mac Qualls Deputy Design Manager/ Roadway Design Lead – Russell Smart, PE Document Controls Manager – Lynette Birdsong Project Scheduler – James Miller, PE Drainage Design Lead – Steve Bak, PE MOT Design Lead – Harold Scheffler, PE Bridge Design Lead – Miguel Trevino, PE Geotechnical Design Lead – John Jenkins, PE
29	Vol 1: Sec D.2.4 (a), Page 56	Watering the work area is the most common practice for controlling dust and will be DB Contractor's immediate plan. However, should the San Antonio area be susceptible to seasonal droughts, DB Contractor will explore other alternatives such as spray-on binders and chemical treatments.
30	Vol 1: Sec D.2.4 (a),	"White noise" backup alarms will be implemented for all night work operations. Another noise reduction measure

	Page 56	implemented at night will be the “no banging tailgates” policy.
31	Vol 1: Sec D.2.4 (a), Page 56	A three-phase approach will be employed for the Option Work that is straight forward and be easily understood by the traveling public. The final element will consist of performing milling and overlay within the defined limits, per the Technical Provisions.
32	Vol 1: Sec D.2.7.2, Page 66	The Design team will use PB’s Project Solve <sup>2</sup> for internal online collaboration and information management, and Project Wise for CADD management.
33	Vol 1: Sec D.2.7.2, Page 66	All design will be performed in Microstation.
34	Vol 1: Sec D.2.7.2, Page 67	In addition to meeting the co-location requirements of Section 2.8 of the Technical Provisions, DB Contractor commits that design work will be performed in its Texas offices located in Houston, Dallas and Austin.
35	Vol 1: Sec D.3.1, Page 79	Customer satisfaction and partnering surveys will be conducted routinely, providing DB Contractor with feedback to continually improve the QC and QA processes and procedures.
36	Vol 1: Sec D.3.1 (a), Page 79	Internal DB Contractor review will progress throughout the design with comments returned to the production team culminating in a design submittal and submittal review meetings.
37	Vol 1: Sec D.3.1 (a), Page 80	The QA Team will participate in the weekly construction coordination meetings.
38	Vol 1: Sec D.3.1 (a), Page 80	CQAF test results will be reviewed, authorized, and seamlessly transmitted to TxDOT’s I2MS within one day of test completion.
39	Vol 1: Sec D.3.1 (a), Page 80	The CQAM will prepare a monthly summary of inspections and tests, including results and resolution of nonconformance. These results will be transmitted to DB Contractor management and TxDOT and will be reviewed at quarterly Management Review meetings.
40	Vol 1: Sec D.3.1 (a), Page 80	DB Contractor’s independent quality firm, Raba Kistner Infrastructure (RKI), responsible for design and construction QA, will use ELVIS to document all QA design reviews and QA/Environmental Compliance Management (ECM) construction inspections and testing data.
41	Vol 1: Sec D.3.1 (c), Page 82	Weekly, during construction, DB Contractor will provide a three-week look-ahead schedule to planned activities to the CQAF and TxDOT. Daily, DB Contractor will communicate changes to the daily scheduled work to the CQAF and TxDOT.

42	Vol 1: Sec D.3.1 (c), Page 82	TxDOT will have direct access to the designers and 'over the shoulder reviews' will be encouraged.
43	Vol 1: Sec D.3.1 (c), Page 82	Weekly meetings will be held with the construction QA and QC managers, along with TxDOT, to review and concur with NCR dispositions.
44	Vol 1: Sec D.3.1 (c), Page 82	The Project Manager Leon Wright will hold monthly Quality Meetings with the Quality Management Leadership Team and TxDOT in order to measure the program's effectiveness and any proposed changes to the QMP.

## **APPENDIX 2 TO EXHIBIT 2**

### **ATCS**

The following bulleted list contains the DB Contractor's approved alternative technical concepts (ATCs), as well as approved ATCs of unsuccessful Proposers that the DB Contractor may incorporate into the Project. The Deviations set forth in the ATC submittals are approved by TxDOT subject to satisfaction of any conditions set forth in the letters from TxDOT to DB Contractor or the unsuccessful Proposer. Such Deviations, subject to satisfaction of any listed "conditions," expressly supersede any conflicting provisions in the Technical Provisions, as provided in Section 1.2.2 of the Design-Build Agreement. The conditions of approval are listed in Attachment 1 to this Appendix 2 to Exhibit 2. The ATCs, to the extent utilized by DB Contractor, shall otherwise meet all requirements of the Technical Provisions.

- WB ATC #13 – Change Bars A in Slab from #5 to #4
- WB ATC #14 – Removal of Overlay Design Load
- WB ATC #19 – Integrated Structural Sub Layers
- JDA ATC #6 – Replace OSBs (overhead sign bridges) with COSS (cantilevered overhead sign structures) and Ground Mount Signs
- JDA ATC #9 – Reuse Existing Traffic Signal Equipment

**ATTACHMENT 1 TO APPENDIX 2 TO EXHIBIT 2**

**APPROVED ALTERNATIVE TECHNICAL CONCEPTS FOR USE ON THE PROJECT**

<b>ATC #</b>	<b>Brief Description</b>	<b>Decision</b>	<b>Conditions of Approval</b>
WB ATC #13	Change Bars A in Slab from #5 to #4	Conditionally Approved	Appropriate TxDOT standards will need to be modified by the DB Contractor.
WB ATC #14	Removal of Overlay Design Load	Conditionally Approved	A deviation from the Bridge Design requirements will be required.
WB ATC #19	Integrated Structural Sub Layers	Approved	Not applicable
JDA ATC #6	Replace OSBs with COSS and Ground Mount Signs	Approved	Not applicable
JDA ATC #9	Reuse Existing Traffic Signal Equipment	Conditionally Approved	DB Contractor shall warranty the existing equipment as new equipment.



## **APPENDIX 3 TO EXHIBIT 2**

### **SCHEMATICS**

The attached CD contains DB Contractor's Schematics, which formed the basis of DB Contractor's Proposal.

**EXHIBIT 3**  
**FEDERAL REQUIREMENTS**

<b><u>Exhibit Description</u></b>	<b><u>No. of Pages</u></b>
Attachment 1 – Federal Requirements for Federal-Aid Construction Projects	2
Attachment 2 – FHWA Form 1273	21
Attachment 3 – Wage Determination of the Secretary of Labor	3
Attachment 4 – Equal Employment Opportunity	5
Attachment 5 – Affirmative Action	5
Attachment 6 – Lobbying Certification	1
Attachment 7 – Compliance with Buy America Requirements	2
Attachment 8 – Certification of Nondiscrimination in Employment	1
Attachment 9 – On-the-Job Training Program	1

## **ATTACHMENT 1 TO EXHIBIT 3**

### **FEDERAL REQUIREMENTS FOR FEDERAL-AID CONSTRUCTION PROJECTS**

GENERAL. — Regardless of whether the Work herein proposed will be financed in whole or in part with Federal funds, all of the statutes, rules and regulations promulgated by the Federal Government that would be applicable to work financed in whole or in part with Federal funds will apply to such work. The “Required Contract Provisions, Federal-Aid Construction Contracts, Form FHWA 1273,” are included in this Exhibit 3. Whenever in said required contract provisions references are made to:

- (a) “contracting officer” or “authorized representative”, such references shall be construed to mean TxDOT or its Authorized Representative;
- (b) “contractor”, “prime contractor”, “bidder”, “Federal-aid construction contractor”, “prospective first tier participant” or “First Tier Participant”, such references shall be construed to mean DB Contractor or its authorized representative;
- (c) “contract”, “prime contract”, “Federal-aid construction contract” or “design-build contract”, such references shall be construed to mean the Design-Build Agreement (“DBA”) between DB Contractor and TxDOT for the Project;
- (d) “subcontractor”, “supplier”, “vendor”, “prospective lower tier participant”, “lower tier prospective participant”, “Lower Tier Participant” or “lower tier subcontractor”, such references shall be construed to mean any Subcontractor or Supplier; and
- (e) “department”, “agency”, “department or agency with which this transaction originated” or “contracting agency”, such references shall be construed to mean TxDOT, except where a different department or agency or officer is specified.

PERFORMANCE OF PREVIOUS CONTRACT. — In addition to the provisions in Section II, “Nondiscrimination,” and Section VI, “Subletting or Assigning the Contract,” of the Form 1273 required contract provisions, DB Contractor shall comply with the following:

The bidder shall execute the CERTIFICATION WITH REGARD TO THE PERFORMANCE OF PREVIOUS CONTRACTS OR SUBCONTRACTS SUBJECT TO THE EQUAL OPPORTUNITY CLAUSE AND THE FILING OF REQUIRED REPORTS located in the proposal. No request for subletting or assigning any portion of the contract in excess of \$10,000 will be considered under the provisions of Section VI of the required contract provisions unless such request is accompanied by the CERTIFICATION referred to above, executed by the proposed subcontractor.

NON-COLLUSION PROVISION. — The provisions in this section are applicable to all contracts except contracts for Federal Aid Secondary Projects. Title 23, United States Code, Section 112, requires as a condition precedent to approval by the Federal Highway Administrator of the contract for this work that each bidder file a sworn statement executed by, or on behalf of, the person, firm, association, or corporation to whom such contract is to be awarded, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted bid. A form to

make the non-collusion affidavit statement required by Section 112 as a certification under penalty of perjury rather than as a sworn statement as permitted by 28 U.S.C., Sec. 1746, is included in the Proposal.

PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN SUBCONTRACTING. — Part 26, Title 49, Code of Federal Regulations applies to the Project. Pertinent sections of said Code are incorporated within other sections of the DBA and the TxDOT Disadvantaged Business Enterprise Program adopted pursuant to 49 CFR Part 26.

#### CONVICT PRODUCED MATERIALS

a. FHWA Federal-aid projects are subject to 23 CFR § 635.417, Convict produced materials.

b. Materials produced after July 1, 1991, by convict labor may only be incorporated in a Federal aid highway construction project if such materials have been: (i) produced by convicts who are on parole, supervised release, or probation from a prison, or (ii) produced in a prison project in which convicts, during the 12 month period ending July 1, 1987, produced materials for use in Federal aid highway construction projects, and the cumulative annual production amount of such materials for use in Federal aid highway construction does not exceed the amount of such materials produced in such project for use in Federal aid highway construction during the 12 month period ending July 1, 1987.

#### ACCESS TO RECORDS

a. As required by 49 CFR 18.36(i)(10), DB Contractor and its subcontractors shall allow FHWA and the Comptroller General of the United States, or their duly authorized representatives, access to all books, documents, papers, and records of DB Contractor and subcontractors which are directly pertinent to any grantee or subgrantee contract, for the purpose of making audit, examination, excerpts, and transcriptions thereof. In addition, as required by 49 CFR 18.36(i)(11), DB Contractor and its subcontractors shall retain all such books, documents, papers and records for three years after final payment is made pursuant to any such contract and all other pending matters are closed.

b. DB Contractor agrees to include this section in each Subcontract at each tier, without modification except as appropriate to identify the subcontractor who will be subject to its provisions.

**ATTACHMENT 2 TO EXHIBIT 3**  
**REQUIRED CONTRACT PROVISIONS**  
**FEDERAL-AID CONSTRUCTION CONTRACTS**

**FHWA Form 1273**  
**Revised May 1, 2012**

- I. General**
- II. Nondiscrimination**
- III. Nonsegregated Facilities**
- IV. Davis-Bacon and Related Act Provisions**
- V. Contract Work Hours and Safety Standards Act Provisions**
- VI. Subletting or Assigning the Contract**
- VII. Safety: Accident Prevention**
- VIII. False Statements Concerning Highway Projects**
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act**
- X. Compliance with Governmentwide Suspension and Debarment Requirements**
- XI. Certification Regarding Use of Contract Funds for Lobbying**

**I. GENERAL**

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment,

termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

## II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

**1. Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

“It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training.”

**2. EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

**3. Dissemination of Policy:** All members of the contractor’s staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor’s EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor’s EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor’s EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor’s procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor’s EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor’s EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

**4. Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: “An Equal Opportunity Employer.” All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to

yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

**5. Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

## **6. Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this



subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

**8. Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

**9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of

materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

**10. Assurance Required by 49 CFR 26.13(b):**

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

**11. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

### **III. NONSEGREGATED FACILITIES**

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

### **IV. DAVIS-BACON AND RELATED ACT PROVISIONS**

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

#### **1. Minimum wages**

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as

provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

## **2. Withholding**

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## **3. Payrolls and basic records**

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee ( e.g. , the last four digits of the employee's social security number).

The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### **4. Apprentices and trainees**

##### **a. Apprentices (programs of the USDOL).**

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

##### **b. Trainees (programs of the USDOL).**

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified

in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

**6. Subcontracts.** The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

**7. Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes



between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

#### **10. Certification of eligibility.**

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

### **V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

**1. Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**2. Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

**3. Withholding for unpaid wages and liquidated damages.** The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

**4. Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

## **VI. SUBLETTING OR ASSIGNING THE CONTRACT**

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and

engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

## **VII. SAFETY: ACCIDENT PREVENTION**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

## **VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential

that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

“Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both.”

## **IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

## **X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

### **1. Instructions for Certification – First Tier Participants:**

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and

Voluntary Exclusion-Lower Tier Covered Transactions,” provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

\* \* \* \* \*

## **2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:**

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

## **2. Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of

its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

\* \* \* \* \*

#### **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-- Lower Tier Participants:**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\* \* \* \* \*

### **XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative



agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT 3 TO EXHIBIT 3**  
**FEDERAL PREVAILING WAGE RATE**

(Attached; subject to change)

The wage rates listed are those predetermined by the Secretary of Labor and State Statute to be the minimum wages paid. To determine the applicable wage rate zone, a list entitled "TEXAS COUNTIES IDENTIFIED BY WAGE RATE ZONES" is provided in the contract. Any wage rate that is not listed must be submitted to the Engineer for approval. IMPORTANT NOTICE FOR STATE PROJECTS; only the controlling wage rate zone applies to the contract. Effective 1-4-2013

CLASS. #	CLASSIFICATION DESCRIPTION	ZONE TX07 1/4/13	ZONE TX08 1/4/13	ZONE TX11 1/4/13	ZONE TX12 1/4/13	ZONE TX14 1/4/13	ZONE TX16 1/4/13	ZONE TX18 1/4/13	ZONE TX34 1/4/13	ZONE TX35 1/4/13	ZONE TX37 1/4/13	ZONE TX38 1/4/13	ZONE TX40 1/4/13	ZONE TX41 1/4/13	ZONE TX54 1/4/13	ZONE TX56 1/4/13	ZONE TX63 1/4/13
1428	Agricultural Tractor Operator						\$12.69					\$12.35			\$11.75		
1300	Asphalt Distributor Operator	\$14.87	\$13.48	\$13.88			\$15.55	\$15.72	\$13.28	\$15.32	\$15.62	\$14.36	\$14.25	\$14.03	\$13.75	\$14.06	\$14.40
1303	Asphalt Paving Machine Operator	\$13.40	\$12.25	\$12.35	\$13.87		\$14.36	\$14.20	\$13.26	\$13.99	\$14.68	\$12.92	\$13.44	\$12.53	\$14.00	\$14.32	\$12.99
1106	Asphalt Raker	\$12.28	\$10.61	\$12.02	\$14.21		\$12.12	\$11.64	\$11.44	\$12.69	\$12.05	\$11.34	\$11.67	\$11.40	\$12.59	\$12.36	
1112	Batching Plant Operator, Asphalt																
1115	Batching Plant Operator, Concrete																
1214	Blaster																
1615	Boom Truck Operator						\$18.36										
1444	Boring Machine Operator																
1305	Broom or Sweeper Operator	\$11.21	\$10.33	\$10.08			\$11.04	\$11.62		\$11.74	\$11.41	\$10.30		\$10.23	\$10.60	\$12.68	\$11.05
1144	Communications Cable Installer																
1124	Concrete Finisher, Paving and Structures	\$13.55	\$12.46	\$13.16	\$12.85		\$12.56	\$12.77	\$12.44	\$14.12	\$13.04	\$13.38		\$12.80	\$12.79	\$12.98	\$13.32
1318	Concrete Pavement Finishing Machine Operator						\$15.48			\$16.05		\$19.31				\$13.07	
1315	Concrete Paving, Curing, Float, Texturing Machine Operator											\$16.34				\$11.71	
1333	Concrete Saw Operator									\$14.48	\$17.33					\$13.99	
1399	Concrete/Gunite Pump Operator																
1344	Crane Operator, Hydraulic 80 tons or less						\$18.36			\$18.12	\$18.04	\$20.21			\$18.63	\$13.86	
1345	Crane Operator, Hydraulic Over 80 Tons																
1342	Crane Operator, Lattice Boom 80 Tons or Less	\$16.82	\$14.39	\$13.85			\$15.87			\$17.27		\$14.67			\$16.42	\$14.97	
1343	Crane Operator, Lattice Boom Over 80 Tons						\$19.38			\$20.52		\$17.49			\$25.13	\$15.80	
1306	Crawler Tractor Operator	\$13.96	\$16.63	\$13.62			\$15.67			\$14.07	\$13.15	\$13.38			\$14.60	\$13.68	\$13.50
1351	Crusher or Screen Plant Operator																
1446	Directional Drilling Locator						\$11.67										
1445	Directional Drilling Operator						\$17.24										
1139	Electrician	\$20.96		\$19.87			\$26.35		\$20.27	\$19.80		\$20.92				\$27.11	
1347	Excavator Operator, 50,000 pounds or less	\$13.46	\$12.56	\$13.67			\$12.88	\$14.38	\$13.49	\$17.19		\$13.88			\$14.09	\$12.71	\$14.42
1348	Excavator Operator, Over 50,000 pounds		\$15.23	\$13.52			\$17.71			\$16.99	\$18.80	\$16.22				\$14.53	
1150	Flagger	\$9.30	\$9.10	\$8.50		\$8.81	\$9.45	\$8.70		\$10.06	\$9.71	\$9.03		\$9.08	\$9.90	\$10.33	\$8.10
1151	Form Builder/Setter, Structures	\$13.52	\$12.30	\$13.38	\$12.91	\$12.71	\$12.87	\$12.38	\$12.26	\$13.84	\$12.98	\$13.07	\$13.61	\$12.82	\$14.73	\$12.23	\$12.25
1160	Form Setter, Paving & Curb	\$12.36	\$12.16	\$13.93	\$11.83	\$10.71	\$12.94			\$13.16	\$12.54	\$11.33	\$10.69		\$13.33	\$12.34	
1360	Foundation Drill Operator, Crawler Mounted									\$17.99						\$17.43	
1363	Foundation Drill Operator, Truck Mounted		\$16.86	\$22.05			\$16.93			\$21.07	\$20.20	\$20.76		\$17.54	\$21.39	\$15.89	
1369	Front End Loader Operator, 3 CY or Less	\$12.28	\$13.49	\$13.40			\$13.04	\$13.15	\$13.29	\$13.69	\$12.64	\$12.89			\$13.51	\$13.32	\$12.17
1372	Front End Loader Operator, Over 3 CY	\$12.77	\$13.69	\$12.33			\$13.21	\$12.86	\$13.57	\$14.72	\$13.75	\$12.32			\$13.19	\$13.17	
1329	Joint Sealer																
1172	Laborer, Common	\$10.30	\$9.86	\$10.08	\$10.51	\$10.71	\$10.50	\$10.24	\$10.58	\$10.72	\$10.45	\$10.30	\$10.25	\$10.03	\$10.54	\$11.02	\$10.15
1175	Laborer, Utility	\$11.80	\$11.53	\$12.70	\$12.17	\$11.81	\$12.27	\$12.11	\$11.33	\$12.32	\$11.80	\$11.53	\$11.23	\$11.50	\$11.95	\$11.73	\$12.37
1346	Loader/Backhoe Operator	\$14.18	\$12.77	\$12.97	\$15.68		\$14.12			\$15.18	\$13.58	\$12.87		\$13.21	\$14.13	\$14.29	

CLASS. #	CLASSIFICATION DESCRIPTION	ZONE TX07 1/4/13	ZONE TX08 1/4/13	ZONE TX11 1/4/13	ZONE TX12 1/4/13	ZONE TX14 1/4/13	ZONE TX16 1/4/13	ZONE TX18 1/4/13	ZONE TX34 1/4/13	ZONE TX35 1/4/13	ZONE TX37 1/4/13	ZONE TX38 1/4/13	ZONE TX40 1/4/13	ZONE TX41 1/4/13	ZONE TX54 1/4/13	ZONE TX56 1/4/13	ZONE TX63 1/4/13
1187	Mechanic	\$20.14	\$15.47	\$17.47			\$17.10			\$17.68	\$18.94	\$18.58		\$16.61	\$18.46	\$16.96	
1380	Milling Machine Operator	\$15.54	\$14.64	\$12.22			\$14.18			\$14.32	\$14.35	\$12.86			\$14.75	\$13.53	
1390	Motor Grader Operator, Fine Grade	\$17.49	\$16.52	\$16.88			\$18.51	\$16.69	\$16.13	\$17.19	\$18.35	\$17.07	\$17.74	\$17.47	\$17.08	\$15.69	\$20.01
1393	Motor Grader Operator, Rough	\$16.15	\$14.62	\$15.83		\$17.07	\$14.63	\$18.50		\$16.02	\$16.44	\$15.12		\$14.47	\$17.39	\$14.23	\$15.53
1413	Off Road Hauler			\$10.08			\$11.88			\$12.25		\$12.23			\$13.00	\$14.60	
1196	Painter, Structures						\$18.34						\$21.29			\$18.62	
1396	Pavement Marking Machine Operator	\$16.42		\$13.10			\$19.17	\$12.01		\$13.63	\$14.60	\$13.17		\$16.65	\$10.54	\$11.18	
1443	Percussion or Rotary Drill Operator																
1202	Piledriver															\$14.95	
1205	Pipelayer		\$11.87	\$14.64			\$12.79		\$11.37	\$13.24	\$12.66	\$13.24	\$11.17	\$11.67		\$12.12	
1384	Reclaimer/Pulverizer Operator	\$12.85					\$12.88			\$11.01		\$10.46					
1500	Reinforcing Steel Worker	\$13.50	\$14.07	\$17.53			\$14.00			\$16.18	\$12.74	\$15.83		\$17.10		\$15.15	
1402	Roller Operator, Asphalt	\$10.95		\$11.96			\$12.78	\$11.61		\$13.08	\$12.36	\$11.68			\$11.71	\$11.95	\$11.50
1405	Roller Operator, Other	\$10.36		\$10.44			\$10.50	\$11.64		\$11.51	\$10.59	\$10.30		\$12.04	\$12.85	\$11.57	
1411	Scraper Operator	\$10.61	\$11.07	\$10.85			\$12.27		\$11.12	\$12.96	\$11.88	\$12.43		\$11.22	\$13.95	\$13.47	
1417	Self-Propelled Hammer Operator																
1194	Servicer	\$13.98	\$12.34	\$14.11			\$14.51	\$15.56	\$13.44	\$14.58	\$14.31	\$13.83		\$12.43	\$13.72	\$13.97	
1513	Sign Erector																
1708	Slurry Seal or Micro-Surfacing Machine Operator																
1341	Small Slipform Machine Operator									\$15.96							
1515	Spreader Box Operator	\$12.60		\$13.12			\$14.04			\$14.73	\$13.84	\$13.68		\$13.45	\$11.83	\$13.58	
1705	Structural Steel Welder															\$12.85	
1509	Structural Steel Worker						\$19.29									\$14.39	
1339	Subgrade Trimmer																
1143	Telecommunication Technician																
1145	Traffic Signal/Light Pole Worker						\$16.00										
1440	Trenching Machine Operator, Heavy						\$18.48										
1437	Trenching Machine Operator, Light																
1609	Truck Driver Lowboy-Float	\$14.46	\$13.63	\$13.41	\$15.00	\$15.93	\$15.66			\$16.24	\$16.39	\$14.30	\$16.62	\$15.63	\$14.28	\$16.03	
1612	Truck Driver Transit-Mix									\$14.14							
1600	Truck Driver, Single Axle	\$12.74	\$10.82	\$10.75			\$11.79	\$13.53	\$13.16	\$12.31	\$13.40	\$10.30	\$11.61		\$11.97	\$11.46	
1606	Truck Driver, Single or Tandem Axle Dump Truck	\$11.33	\$14.53	\$11.95			\$11.68		\$14.06	\$12.62	\$11.45	\$12.28		\$13.08	\$11.68	\$11.48	\$11.10
1607	Truck Driver, Tandem Axle Tractor with Semi Trailer	\$12.49	\$12.12	\$12.50			\$12.81	\$13.16		\$12.86	\$16.22	\$12.50			\$13.80	\$12.27	
1441	Tunneling Machine Operator, Heavy																
1442	Tunneling Machine Operator, Light																
1706	Welder		\$14.02				\$15.97		\$13.74	\$14.84					\$13.78		
1520	Work Zone Barricade Servicer	\$10.30	\$12.88	\$11.46	\$11.70		\$11.85	\$10.77		\$11.68	\$12.20	\$11.22	\$11.51	\$12.96	\$10.54	\$11.67	

**Notes:**

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

The titles and descriptions for the classifications listed here are further detailed in the AGC of Texas' *Standard Job Classifications and Descriptions for Highway, Heavy, Utilities, and Industrial Construction in Texas*. AGC will make it available on its Web site for any contractor.

**TEXAS COUNTIES IDENTIFIED BY  
WAGE RATE ZONES: 7, 8, 11, 12, 14, 16, 18, 34, 35, 37, 38, 40, 41, 54, 56, 63**

County Name	Zone	County Name	Zone	County Name	Zone	County Name	Zone
Anderson	38	Donley	54	Karnes	37	Reagan	54
Andrews	54	Duval	41	Kaufman	35	Real	54
Angelina	38	Eastland	54	Kendall	16	Red River	38
Aransas	40	Ector	7	Kenedy	41	Reeves	18
Archer	35	Edwards	18	Kent	54	Refugio	37
Armstrong	7	El Paso	34	Kerr	37	Roberts	54
Atascosa	16	Ellis	35	Kimble	54	Robertson	16
Austin	56	Erath	38	King	54	Rockwall	35
Bailey	54	Falls	38	Kinney	18	Runnels	54
Bandera	16	Fannin	38	Kleberg	37	Rusk	11
Bastrop	16	Fayette	37	Knox	54	Sabine	38
Baylor	54	Fisher	54	Lamar	38	San Augustine	38
Bee	37	Floyd	54	Lamb	54	San Jacinto	56
Bell	16	Foard	54	Lampasas	16	San Patricio	40
Bexar	16	Fort Bend	56	LaSalle	41	San Saba	54
Blanco	37	Franklin	38	Lavaca	37	Schleicher	54
Borden	54	Freestone	38	Lee	37	Scurry	54
Bosque	38	Frio	37	Leon	38	Shackelford	54
Bowie	11	Gaines	54	Liberty	56	Shelby	38
Brazoria	56	Galveston	56	Limestone	38	Sherman	54
Brazos	16	Garza	54	Lipscomb	54	Smith	11
Brewster	18	Gillespie	37	Live Oak	37	Somervell	38
Briscoe	54	Glasscock	54	Llano	37	Starr	41
Brooks	41	Goliad	40	Loving	54	Stephens	54
Brown	54	Gonzales	37	Lubbock	7	Sterling	54
Burleson	16	Gray	54	Lynn	54	Stonewall	54
Burnet	37	Grayson	35	Madison	38	Sutton	18
Caldwell	16	Gregg	11	Marion	38	Swisher	54
Calhoun	40	Grimes	38	Martin	54	Tarrant	35
Callahan	35	Guadalupe	16	Mason	37	Taylor	7
Cameron	8	Hale	54	Matagorda	37	Terrell	18
Camp	38	Hall	54	Maverick	41	Terry	54
Carson	7	Hamilton	38	McCulloch	54	Throckmorton	54
Cass	38	Hansford	54	McLennan	16	Titus	38
Castro	54	Hardeman	54	McMullen	41	Tom Green	7
Chambers	56	Hardin	56	Medina	16	Travis	16
Cherokee	38	Harris	56	Menard	54	Trinity	38
Childress	54	Harrison	63	Midland	7	Tyler	38
Clay	35	Hartley	54	Milam	38	Upshur	11
Cochran	54	Haskell	54	Mills	54	Upton	54
Coke	54	Hays	16	Mitchell	54	Uvalde	41
Coleman	54	Hemphill	54	Montague	54	Val Verde	18
Collin	35	Henderson	38	Montgomery	56	Van Zandt	38
Collingsworth	54	Hidalgo	8	Moore	54	Victoria	14
Colorado	37	Hill	38	Morris	38	Walker	38
Comal	16	Hockley	54	Motley	54	Waller	56
Comanche	54	Hood	38	Nacogdoches	38	Ward	54
Concho	54	Hopkins	38	Navarro	38	Washington	38
Cooke	54	Houston	38	Newton	38	Webb	8
Coryell	16	Howard	54	Nolan	54	Wharton	37
Cottle	54	Hudspeth	18	Nueces	40	Wheeler	54
Crane	54	Hunt	35	Ochiltree	54	Wichita	12
Crockett	18	Hutchinson	54	Oldham	54	Wilbarger	54
Crosby	7	Irion	7	Orange	56	Willacy	41
Culberson	18	Jack	38	Palo Pinto	38	Williamson	16
Dallam	54	Jackson	37	Panola	38	Wilson	16

Dallas	35	Jasper	38	Parker	35	Winkler	54
Dawson	54	Jeff Davis	18	Parmer	54	Wise	35
Deaf Smith	54	Jefferson	56	Pecos	18	Wood	38
Delta	35	Jim Hogg	41	Polk	38	Yoakum	54
Denton	35	Jim Wells	37	Potter	7	Young	54
DeWitt	37	Johnson	35	Presidio	18	Zapata	41
Dickens	54	Jones	35	Rains	38	Zavala	41
Dimmit	41			Randall	7		

## **ATTACHMENT 4 TO EXHIBIT 3**

### **EQUAL EMPLOYMENT OPPORTUNITY**

#### **SPECIAL PROVISION**

**000---006**

#### **Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)**

1. As used in these specifications:
  - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
  - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
  - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
  - d. "Minority" includes:
    - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
    - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
    - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
    - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North American and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan.

Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing contracts in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the contract is being performed. Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any Office of Federal Contract Compliance Programs office or any Federal procurement contracting officer. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.
5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
  - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
  - b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.



- c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
- d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral Process has impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and Collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment

source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.
  - k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
  - l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
  - m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
  - n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
  - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
  - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the

Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. Nondiscrimination programs require that Federal-aid recipients, subrecipients, and contractors prevent discrimination and ensure nondiscrimination in all of their programs and activities, whether those programs and activities are federally funded or not. The factors prohibited from serving as a basis for action or inaction which discriminates include race, color, national origin, sex, age, and handicap/disability. The efforts to prevent discrimination must address, but not be limited to a program's impacts, access, benefits, participation, treatment, services, contracting opportunities, training opportunities, investigations of complaints, allocations of funds, prioritization of projects, and the functions of right-of-way, research, planning, and design.
11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

16. In addition to the reporting requirements set forth elsewhere in this contract, the Contractor and the subcontractors holding subcontracts, not including material suppliers, of \$10,000 or more, shall submit for every month of July during which work is performed, employment data as contained under Form PR 1391 (Appendix C to 23 CFR, Part 230), and in accordance with the instructions included thereon.

## **ATTACHMENT 5 TO EXHIBIT 3**

### **AFFIRMATIVE ACTION**

#### **SPECIAL PROVISION**

**000--004**

#### **Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)**

1. **General.** In addition to the affirmative action requirements of the Special Provision titled "Standard Federal Equal Employment Opportunity Construction Contract Specifications" as set forth elsewhere in this proposal, the Bidder's attention is directed to the specific requirements for utilization of minorities and females as set forth below.

2. **Goals.**

- a. Goals for minority and female participation are hereby established in accordance with 41 CFR 60-4.
- b. The goals for minority and female participation expressed in percentage terms for the Contractor's aggregate work force in each trade on all construction work in the covered area, are as follows:

<b>Goals for minority participation in each trade (per- cent)</b>	<b>Goals for female participation in each trade (per- cent)</b>
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See Table 1

6.9

- c. These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction. The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Standard Federal Equal Employment Opportunity Construction Contract Specifications Special Provision and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority and female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of

the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

- d. A contractor or subcontractor will be considered in compliance with these provisions by participation in the Texas Highway-Heavy Branch, AGC, Statewide Training and Affirmative Action Plan. Provided that each contractor or subcontractor participating in this plan must individually comply with the equal opportunity clause set forth in 41 CFR 60-1.4 and must make a good faith effort to achieve the goals set forth for each participating trade in the plan in which it has employees. The overall good performance of other contractors and subcontractors toward a goal in an approved plan does not excuse any covered contractor's or subcontractor's failure to make good faith efforts to achieve the goals contained in these provisions. Contractors or subcontractors participating in the plan must be able to demonstrate their participation and document their compliance with the provisions of this Plan.
3. **Subcontracting.** The Contractor shall provide written notification to the Department within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation pending concurrence of the Department in the award. The notification shall list the names, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.
4. **Covered Area.** As used in this special provision, and in the contract resulting from this solicitation, the geographical area covered by these goals for female participation is the State of Texas. The geographical area covered by these goals for other minorities are the counties in the State of Texas as indicated in Table 1.
5. **Reports.** The Contractor is hereby notified that he may be subject to the Office of Federal Contract Compliance Programs (OFCCP) reporting and record keeping requirements as provided for under Executive Order 11246 as amended. OFCCP will provide direct notice to the Contractor as to the specific reporting requirements that he will be expected to fulfill.

**Table 1**

<b>County</b>	<b>Goals for Minority Participation</b>	<b>County</b>	<b>Goals for Minority Participation</b>
Anderson	22.5	Concho	20.0
Andrews	18.9	Cooke	17.2
Angelina	22.5	Coryell	16.4
Aransas	44.2	Cottle	11.0
Archer	11.0	Crane	18.9
Armstrong	11.0	Crockett	20.0
Atascosa	49.4	Crosby	19.5
Austin	27.4	Culberson	49.0
Bailey	19.5	Dallam	11.0
Bandera	49.4	Dallas	18.2
Bastrop	24.2	Dawson	19.5
Baylor	11.0	Deaf Smith	11.0
Bee	44.2	Delta	17.2
Bell	16.4	Denton	18.2
Bexar	47.8	DeWitt	27.4
Blanco	24.2	Dickens	19.5
Borden	19.5	Dimmit	49.4
Bosque	18.6	Donley	11.0
Bowie	19.7	Duval	44.2
Brazoria	27.3	Eastland	10.9
Brazos	23.7	Ector	15.1
Brewster	49.0	Edwards	49.4
Briscoe	11.0	Ellis	18.2
Brooks	44.2	El Paso	57.8
Brown	10.9	Erath	17.2
Burleson	27.4	Falls	18.6
Burnet	24.2	Fannin	17.2
Caldwell	24.2	Fayette	27.4
Calhoun	27.4	Fisher	10.9
Callahan	11.6	Floyd	19.5
Cameron	71.0	Foard	11.0
Camp	20.2	Fort Bend	27.3
Carson	11.0	Franklin	17.2
Cass	20.2	Freestone	18.6
Castro	11.0	Frio	49.4
Chambers	27.4	Gaines	19.5
Cherokee	22.5	Galveston	28.9
Childress	11.0	Garza	19.5
Clay	12.4	Gillespie	49.4
Cochran	19.5	Glasscock	18.9
Coke	20.0	Goliad	27.4
Coleman	10.9	Gonzales	49.4
Collin	18.2	Gray	11.0
Collingsworth	11.0	Grayson	9.4
Colorado	27.4	Gregg	22.8
Comal	47.8	Grimes	27.4
Comanche	10.9	Guadalupe	47.8

<b>County</b>	<b>Goals for Minority Participation</b>	<b>County</b>	<b>Goals for Minority Participation</b>
Hale	19.5	Lavaca	27.4
Hall	11.0	Lee	24.2
Hamilton	18.6	Leon	27.4
Hansford	11.0	Liberty	27.3
Hardeman	11.0	Limestone	18.6
Hardin	22.6	Lipscomb	11.0
Harris	27.3	Live Oak	44.2
Harrison	22.8	Llano	24.2
Hartley	11.0	Loving	18.9
Haskell	10.9	Lubbock	19.6
Hays	24.1	Lynn	19.5
Hemphill	11.0	Madison	27.4
Henderson	22.5	Marion	22.5
Hidalgo	72.8	Martin	18.9
Hill	18.6	Mason	20.0
Hockley	19.5	Matagorda	27.4
Hood	18.2	Maverick	49.4
Hopkins	17.2	McCulloch	20.0
Houston	22.5	McLennan	20.7
Howard	18.9	McMullen	49.4
Hudspeth	49.0	Medina	49.4
Hunt	17.2	Menard	20.0
Hutchinson	11.0	Midland	19.1
Irion	20.0	Milam	18.6
Jack	17.2	Mills	18.6
Jackson	27.4	Mitchell	10.9
Jasper	22.6	Montague	17.2
Jeff Davis	49.0	Montgomery	27.3
Jefferson	22.6	Moore	11.0
Jim Hogg	49.4	Morris	20.2
Jim Wells	44.2	Motley	19.5
Johnson	18.2	Nacogdoches	22.5
Jones	11.6	Navarro	17.2
Karnes	49.4	Newton	22.6
Kaufman	18.2	Nolan	10.9
Kendall	49.4	Nueces	41.7
Kenedy	44.2	Ochiltree	11.0
Kent	10.9	Oldham	11.0
Kerr	49.4	Orange	22.6
Kimble	20.0	Palo Pinto	17.2
King	19.5	Panola	22.5
Kinney	49.4	Parker	18.2
Kleberg	44.2	Parmer	11.0
Knox	10.9	Pecos	18.9
Lamar	20.2	Polk	27.4
Lamb	19.5	Potter	9.3
Lampasas	18.6	Presidio	49.0
LaSalle	49.4	Rains	17.2



<b>County</b>	<b>Goals for Minority Participation</b>	<b>County</b>	<b>Goals for Minority Participation</b>
Randall	9.3	Webb	87.3
Reagan	20.0	Wharton	27.4
Real	49.4	Wheeler	11.0
Red River	20.2	Wichita	12.4
Reeves	18.9	Wilbarger	11.0
Refugio	44.2	Willacy	72.9
Roberts	11.0	Williamson	24.1
Robertson	27.4	Wilson	49.4
Rockwall	18.2	Winkler	18.9
Runnels	20.0	Wise	18.2
Rusk	22.5	Wood	22.5
Sabine	22.6	Yoakum	19.5
San Augustine	22.5	Young	11.0
San Jacinto	27.4	Zapata	49.4
San Patricio	41.7	Zavala	49.4
San Saba	20.0		
Schleicher	20.0		
Scurry	10.9		
Shackelford	10.9		
Shelby	22.5		
Sherman	11.0		
Smith	23.5		
Somervell	17.2		
Starr	72.9		
Stephens	10.9		
Sterling	20.0		
Stonewall	10.9		
Sutton	20.0		
Swisher	11.0		
Tarrant	18.2		
Taylor	11.6		
Terrell	20.0		
Terry	19.5		
Throckmorton	10.9		
Titus	20.2		
Tom Green	19.2		
Travis	24.1		
Trinity	27.4		
Tyler	22.6		
Upshur	22.5		
Upton	18.9		
Uvalde	49.4		
Val Verde	49.4		
Van Zandt	17.2		
Victoria	27.4		
Walker	27.4		
Waller	27.3		
Ward	18.9		
Washington	27.4		

### **ATTACHMENT 6 TO EXHIBIT 3**

#### **CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

By signing and submitting its proposal or bid, and by executing the DBA or Subcontract, each prospective DB Contractor and subcontractor (at all tiers) shall be deemed to have signed and delivered the following:

1. The prospective DB Contractor/subcontractor certifies, to the best of its knowledge and belief, that:
  - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
  - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, and shall include a copy of said form in its proposal or bid, or submit it with the executed DBA or Subcontract.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
3. DB Contractor/subcontractor shall require that the language of this certification be included in all lower tier Subcontracts which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.
4. The undersigned certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the undersigned understands and agrees that the provisions of 31 U.S.C. §3801, et seq., apply to this certification and disclosure, if any.

[Note: Pursuant to 31 U.S.C. §1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure or failure.]

## **ATTACHMENT 7 TO EXHIBIT 3**

### **COMPLIANCE WITH BUY AMERICA REQUIREMENTS**

DB Contractor shall comply with the Federal Highway Administration (FHWA) Buy America Requirement in 23 CFR 635.410, which permits FHWA participation in the DBA only if domestic steel and iron will be used on the Project. To be considered domestic, all steel and iron used and all products manufactured from steel and iron must be produced in the United States and all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes that protect or enhance the value of the material to which the coating is applied. This requirement does not preclude a minimal use of foreign steel and iron materials, provided the cost of such materials does not exceed 0.1% of the contract price under the DBA.

Concurrently with execution of the DBA, DB Contractor has completed and submitted, or shall complete and submit, to TxDOT a Buy America Certificate, in format below. After submittal, DB Contractor is bound by its original certification.

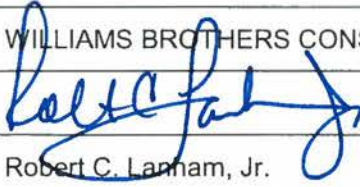
A false certification is a criminal act in violation of 18 U.S.C. 1001. Should this DBA be investigated, DB Contractor has the burden of proof to establish that it is in compliance.

At DB Contractor's request, TxDOT may, but is not obligated to, seek a waiver of Buy America requirements if grounds for the waiver exist. However, DB Contractor certifies that it will comply with the applicable Buy America requirements if a waiver of those requirements is not available or not pursued by TxDOT. A request for a waiver shall be treated as a Request for Change Order under Section 13.3 of the DBA.

## BUY AMERICA CERTIFICATE

The undersigned certifies on behalf of itself and all proposed Subcontractors (at all tiers) that only domestic steel and iron will be used in the Project.

- A. DB Contractor shall comply with the Federal Highway Administration ("FHWA") Buy America Requirements of 23 CFR 635.410, which permits FHWA participation in the DBA only if domestic steel and iron will be used on the Project. To be considered domestic, all steel and iron used and all products manufactured from steel and iron must be produced in the United States, and all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes which protect or enhance the value of the material to which the coating is applied. This requirement does not preclude a minimal use of foreign steel and iron materials, provided the cost of such materials does not exceed 0.1% of the Price.
- B. A false certification is a criminal act in violation of 18 U.S.C. 1001. Should this DBA be investigated, DB Contractor has the burden of proof to establish that it is in compliance.
- C. At DB Contractor's request, TxDOT may, but is not obligated to, seek a waiver of Buy America requirements if grounds for the waiver exist. However, DB Contractor certifies that it will comply with the applicable Buy America requirements if a waiver of those requirements is not available or not pursued by TxDOT.

DB CONTRACTOR	WILLIAMS BROTHERS CONSTRUCTION CO., INC.
SIGNATURE	
NAME (printed or typed)	Robert C. Lannam, Jr.
TITLE	President
DATE	12/5/13

## **ATTACHMENT 8 TO EXHIBIT 3**

### **CERTIFICATION OF NONDISCRIMINATION IN EMPLOYMENT**

2004 Specifications

#### **SPECIAL PROVISION**

**000---009**

#### **Certification of Nondiscrimination in Employment**

By signing this proposal, the bidder certifies that he has participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Orders 10925, 11114, or 11246, or if he has not participated in a previous contract of this type, or if he has had previous contract or subcontracts and has not filed, he will file with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

**Note:** The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1)), and must be submitted by bidders and proposed subcontractors only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally only contracts or subcontracts of \$10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

Proposed prime contractors and subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U. S. Department of Labor.

**ATTACHMENT 9 TO EXHIBIT 3**  
**ON-THE-JOB TRAINING PROGRAM**

2004 Specifications

**SPECIAL PROVISION**

**000—1676**

**On-the-Job Training Program**

- 1. Description.** The primary objective of this Special Provision is the training and advancement of minorities, women and economically disadvantaged persons toward journeyworker status. Accordingly, make every effort to enroll minority, women and economically disadvantaged persons to the extent that such persons are available within a reasonable area of recruitment. This training commitment is not intended, and shall not be used to discriminate against any applicant for training, whether or not he/she is a member of a minority group.
- 2. Trainee Assignment.** Training assignments are determined based on the past contract volume of federal-aid work performed with the Department. Contractors meeting the selection criteria will be notified of their training assignment at the beginning of the reporting year by the Department's Office of Civil Rights.
- 3. Program Requirements.** Fulfill all of the requirements of the On-the-Job Training Program including the maintenance of records and submittal of periodic reports documenting program performance. Trainees shall be paid at least 60% of the appropriate minimum journeyworker's rate specified in the contract for the first half of the training period, 75% for the third quarter and 90% for the last quarter, respectively. Contractors may be reimbursed \$0.80 per training hour at no additional cost to the Department.
- 4. Compliance.** The Contractor will have fulfilled the contractual responsibilities by having provided acceptable training to the number of trainees specified in their goal assignment. Noncompliance may be cause for corrective and appropriate measures pursuant to Article 8.6., "Abandonment of Work or Default of Contract," which may be used to comply with the sanctions for noncompliance pursuant to 23 CFR Part 230.

## **EXHIBIT 4**

### **TXDOT-PROVIDED APPROVALS**

1. Base Scope: TxDOT Finding of No Significant Impact (“State FONSI”) issued by the TxDOT Environmental Affairs Division, dated as of July 22, 2013.
2. Option (in the event that TxDOT elects to exercise its option to include the Option in the Project): Environmental review document with respect to the Option, to be issued after the Effective Date.

**EXHIBIT 5**

**MAXIMUM PAYMENT SCHEDULES**

(Attached)



Texas Department of Transportation  
Loop 1604 Western Extension Project

Maximum Payment Schedule  
Base Scope (Form M-2)

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

Months after NTP 1	(A) Anticipated Draw / Cash Flow	(B) Cumulative Draw / Cash Flow	Cash Flow % of Cumulative Draw (A / B)	Cumulative Cash Flow % of Maximum Draw (B / Maximum Payment)
1	\$1,782,462	\$1,782,462	2.2%	2.2%
2	\$577,102	\$2,359,564	2.9%	2.9%
3	\$640,436	\$3,000,000	3.7%	3.7%
4	\$17,105,872	\$20,105,872	24.7%	24.7%
5	\$5,555,150	\$25,661,022	31.5%	31.5%
6	\$5,970,352	\$31,631,374	38.8%	38.8%
7	\$2,868,718	\$34,500,092	42.3%	42.3%
8	\$2,999,359	\$37,499,452	46.0%	46.0%
9	\$2,869,989	\$40,369,440	49.5%	49.5%
10	\$2,038,446	\$42,407,886	52.0%	52.0%
11	\$1,655,544	\$44,063,431	54.1%	54.1%
12	\$1,419,751	\$45,483,182	55.8%	55.8%
13	\$1,733,042	\$47,216,224	57.9%	57.9%
14	\$1,682,981	\$48,899,205	60.0%	60.0%
15	\$898,925	\$49,798,130	61.1%	61.1%
16	\$1,717,525	\$51,515,655	63.2%	63.2%
17	\$3,483,569	\$54,999,224	67.5%	67.5%
18	\$2,541,103	\$57,540,327	70.6%	70.6%
19	\$2,475,747	\$60,016,074	73.6%	73.6%
20	\$2,380,195	\$62,396,269	76.5%	76.5%
21	\$2,381,380	\$64,777,649	79.5%	79.5%
22	\$2,235,514	\$67,013,163	82.2%	82.2%
23	\$2,343,997	\$69,357,160	85.1%	85.1%
24	\$1,750,938	\$71,108,098	87.2%	87.2%
25	\$2,343,193	\$73,451,290	90.1%	90.1%
26	\$1,642,748	\$75,094,038	92.1%	92.1%
27	\$1,383,124	\$76,477,162	93.8%	93.8%
28	\$1,357,182	\$77,834,344	95.5%	95.5%
29	\$1,871,734	\$79,706,078	97.8%	97.8%
30	\$1,814,655	\$81,520,732	100.0%	100.0%

TOTALS

\$81,520,732

Nominal Development Payments  
Design Build Price To Form M-1

MAXIMUM PAYMENT

\$81,520,732

**Texas Department of Transportation  
Loop 1604 Western Extension Project**

**Incremental Maximum Payment Schedule  
Option (Form M-4)**

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

Months after NTP 3	(A) Anticipated Draw / Cash Flow	(B) Cumulative Draw / Cash Flow	Cash Flow % of Cumulative Draw (A / B)	Cumulative Cash Flow % of Maximum Draw (B / Maximum Payment)
1	\$596,415	\$596,415	1.4%	1.4%
2	\$1,252,492	\$1,848,907	4.2%	4.2%
3	\$1,151,093	\$3,000,000	6.8%	6.8%
4	\$5,982,002	\$8,982,002	20.4%	20.4%
5	\$5,280,546	\$14,262,547	32.4%	32.4%
6	\$4,164,538	\$18,427,085	41.9%	41.9%
7	\$1,305,763	\$19,732,848	44.8%	44.8%
8	\$4,864,724	\$24,597,572	55.9%	55.9%
9	\$2,386,580	\$26,984,153	61.3%	61.3%
10	\$2,234,862	\$29,219,014	66.4%	66.4%
11	\$1,490,265	\$30,709,279	69.7%	69.7%
12	\$1,695,963	\$32,405,242	73.6%	73.6%
13	\$1,489,174	\$33,894,415	77.0%	77.0%
14	\$753,075	\$34,647,490	78.7%	78.7%
15	\$1,075,403	\$35,722,893	81.1%	81.1%
16	\$1,221,105	\$36,943,998	83.9%	83.9%
17	\$1,467,378	\$38,411,376	87.2%	87.2%
18	\$756,654	\$39,168,030	89.0%	89.0%
19	\$888,605	\$40,056,635	91.0%	91.0%
20	\$790,097	\$40,846,732	92.8%	92.8%
21	\$708,352	\$41,555,084	94.4%	94.4%
22	\$936,380	\$42,491,463	96.5%	96.5%
23	\$781,214	\$43,272,677	98.3%	98.3%
24	\$758,462	\$44,031,139	100.0%	100.0%

TOTALS

\$44,031,139

Nominal Development Payments  
Design Build Price To Form M-3

MAXIMUM PAYMENT

\$44,031,139

## **EXHIBIT 6**

### **SPECIAL PROVISION FOR THE DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**

#### **Disadvantaged Business Enterprise in Federal-Aid Construction for Design-Build Contracts**

**I. Description.** The purpose of this Special Provision is to carry out the U. S. Department of Transportation's (DOT) policy of ensuring nondiscrimination in the award and administration of DOT assisted contracts and creating a level playing field on which firms owned and controlled by individuals who are determined to be socially and economically disadvantaged can compete fairly for DOT assisted contracts. If the Disadvantaged Business Enterprise (DBE) goal is greater than zero, Article A, "Disadvantaged Business Enterprise in Federal-Aid Construction", of this Special Provision shall apply to this contract. If there is no DBE goal, Article B, "Race-Neutral DBE Participation", of this Special Provision shall apply to this contract. The percentage goal for DBE participation in the work to be performed under this contract will be shown on the proposal. For purposes of this Special Provision, the term "Contract" means the Design-Build Agreement (referred to sometimes as the "DBA"), the term "Bidder" means the selected Proposer for the Project, and the term "Contractor" means Design-Build Contractor under the DBA (referred to sometimes as the "DB Contractor").

#### **A. Article A. Disadvantaged Business Enterprise in Federal-Aid Construction.**

**1. Policy.** It is the policy of the DOT and the Texas Department of Transportation (henceforth the "Department") that DBEs, as defined in 49 CFR Part 26, Subpart A and the Department's DBE Program, shall have the opportunity to participate in the performance of contracts financed in whole or in part with Federal funds. The DBE requirements of 49 CFR Part 26, the Department's DBE Program, and the Contractor's approved DBE Performance Plan apply to this contract as follows:

**a.** The Contractor will solicit DBEs through reasonable and available means, as defined in 49 CFR Part 26, Appendix A and the Department's DBE Program, or show a good faith effort to meet the DBE goal for this contract.

**b.** The Contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

**c.** The requirements of this Special Provision shall be physically included in any subcontract.

**d.** By signing the contract proposal, the Bidder is certifying that the DBE goal as stated in the proposal will be met by obtaining commitments from eligible DBEs or that the Bidder will provide acceptable evidence of good faith effort to

meet the commitment, and that, if selected for the Design-Build Agreement, the Bidder will submit a DBE Performance Plan meeting the requirements set forth in Section A.2.m, below.

## **2. Definitions.**

- a.** “Department” means the Texas Department of Transportation.
- b.** “DOT” means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).
- c.** “Federal-Aid Contract” is any contract between the Texas Department of Transportation and a Contractor which is paid for in whole or in part with DOT financial assistance.
- d.** “DBE Joint Venture” means an association of a DBE firm and 1 or more other firm(s) to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.
- e.** “Disadvantaged Business Enterprise” or “DBE” means a firm certified through the Texas Unified Certification Program in accordance with 49 CFR Part 26.
- f.** “Good Faith Effort” means efforts to achieve a DBE goal or other requirement of this Special Provision which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.
- g.** “Manufacturer” is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.”
- h.** “Regular Dealer” is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages in, as its principal business and under its own name, the purchase and sale or lease of the products in question.

A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns and operates distribution equipment for the products. Any supplementing of regular dealers own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. Brokers,

packagers, manufacturers' representatives, or other persons who arrange or expedite transactions shall not be regarded as a regular dealer.

i. "Broker" is an intermediary or middleman that does not take possession of a commodity or act as a regular dealer selling to the public.

j. "Race-neutral DBE Participation" means any participation by a DBE through customary competitive procurement procedures.

k. "Race-conscious" means a measure or program that is focused specifically on assisting only DBEs, including women-owned businesses.

l. "Texas Unified Certification Program" or "TUCP" provides one-stop shopping to applicants for certification, such that applicants are required to apply only once for a DBE certification that will be honored by all recipients of federal funds in the state. The TUCP by Memorandum of Agreement established six member entities to serve as certifying agents for Texas in specified regions.

m. "DBE Performance Plan" means the plan submitted by the selected Bidder for a Design-Build project describing the methods to be employed for achieving TxDOT's DBE participation goals for the Project, including Bidder's exercise of good faith efforts. The selected Bidder's DBE Performance Plan is subject to TxDOT review, comment and approval prior to execution of the Design-Build Agreement. Each DBE Performance Plan must at a minimum include the following:

(1) Specific categories of services and work anticipated for DBE participation on the project;

(2) Identification of DBEs for performance of design work and other professional services, to the extent known at the date of submission of the DBE Performance Plan;

(3) Identification of DBEs for construction subcontracts, to the extent known at the date of submission of the DBE Performance Plan;

(4) Schedule for submission of DBE commitment agreements (using Form No. SMS. 4901), based on Bidder's initial project schedule; provided, however, that:

(a) DBE commitment agreements for design work and other professional services must be submitted at least 30 days prior to commencement of design work or other professional services for the applicable segment or phase of work under the Design-Build Agreement; and

(b) DBE commitment agreements for construction subcontracts must be submitted at least 30 days prior to commencement of construction for the applicable segment or phase of the project under the Design-Build Agreement;

**(5)** Detailed description of:

**(a)** Good faith efforts the Bidder has exercised to identify DBEs and obtain commitment agreements prior to the date of submission of the DBE Performance Plan; and

**(b)** Good faith efforts that will be exercised by the Contractor following execution of the Design-Build Agreement to achieve the DBE participation goal for the project; and

**(6)** The name, experience, qualifications and responsibilities of the Bidder's Civil Rights/DBE Compliance Manager.

**3. Contractor's Responsibilities.** These requirements must be satisfied by the Contractor.

**a.** After conditional award of the contract, the Contractor shall, in consultation with the Department's Business Opportunity Programs (BOP) Office, develop and submit a DBE Performance Plan meeting the requirements set forth in A.2.m, above, and shall also submit a completed Form No.SMS.4901, "DBE Commitment Agreement" for each DBE he/she intends to use to satisfy the DBE goal, to the extent known at the date of submission of the DBE Performance Plan. The DBE Performance Plan must be submitted to the Department's Business Opportunity Programs (BOP) Office in Austin, Texas not later than 5:00 p.m. on the 30<sup>th</sup> business day, excluding national holidays, after the conditional award of the contract. The DBE Performance Plan is subject to review, comment and approval by TxDOT prior to and as a condition of execution of the Design-Build Agreement.

**b.** DBE prime Contractors may receive credit toward the DBE goal for work performed by his/her own forces and work subcontracted to DBEs. A DBE prime must make a good faith effort to meet the goals. In the event a DBE prime subcontracts to a non-DBE, that information must be reported on Form No. SMS.4902.

**c.** A Contractor who cannot meet the contract goal, in whole or in part, shall make adequate good faith efforts to obtain DBE participation as so stated and defined in 49 CFR Part 26, Appendix A. The following is a list of the types of action that may be considered as good faith efforts. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

**(1)** Soliciting through all reasonable and available means (e.g. attendance at prebid meetings, advertising, and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The solicitation must be done within sufficient time to allow the DBEs to respond to it. Appropriate steps must be taken to follow up initial solicitations to determine, with certainty, if the DBEs are interested.

**(2)** Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the Contractor might otherwise prefer to perform the work items with its own forces.

**(3)** Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

**(4)** Negotiating in good faith with interested DBEs to make a portion of the work available to DBE subcontractors and suppliers and select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiations includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

**(5)** A Bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional cost involved in finding and using DBEs is not in itself sufficient reason for a bidders failure to meet the Contract DBE goal as long as such cost are reasonable. Also, the ability or desire of the Contractor to perform the work of the Contract with its own organization does not relieve the Bidder of the responsibility to make good faith effort. Contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

**(6)** Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The Contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate cause for the rejection or non-solicitation of bids and the Contractors efforts to meet the project goal.

**(7)** Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or Contractor.

**(8)** Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

**(9)** Effectively using the services of available minority/women community organizations; minority/women Contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

**(10)** If the Program Manager of the BOP Office determines that the Contractor has failed to meet the good faith effort requirements, the Contractor will be given an opportunity for reconsideration by the Director of the BOP Office.

**d.** Should the Bidder to whom the contract is conditionally awarded refuse, neglect or fail to submit an acceptable DBE Performance Plan, the proposal guaranty filed with the bid shall become the property of the state, not as a penalty, but as liquidated damages to the Department.

**e.** The preceding information shall be submitted directly to the Business Opportunity Programs Office, Texas Department of Transportation, 125 E. 11th Street, Austin, Texas 78701-2483.

**f.** The Contractor shall not terminate for convenience a DBE subcontractor named in the commitment submitted under Section A.3.a. of this Special Provision. Prior to terminating or removing a DBE subcontractor named in the commitment, the Contractor must have a written consent of the Department.

**g.** The Contractor shall also make a good faith effort to replace a DBE subcontractor that is unable to perform successfully with another DBE, to the extent needed to meet the contract goal. The Contractor shall submit a completed Form No.4901, "DBE Commitment Agreement," for the substitute DBE firm(s). Any substitution of DBEs shall be subject to approval by the Department. Prior to approving the substitution, the Department will request a statement from the DBE concerning it being replaced.

**h.** The Contractor shall designate a DBE liaison officer who will administer the Contractor's DBE program and who will be responsible for maintenance of records of efforts and contacts made to subcontract with DBEs.

**i.** Contractors are encouraged to investigate the services offered by banks owned and controlled by disadvantaged individuals and to make use of these banks where feasible.

#### **4. Eligibility of DBEs.**

**a.** The member entities of the TUCP certify the eligibility of DBEs and DBE joint ventures to perform DBE subcontract work on DOT financially assisted contracts.

**b.** The Department maintains the Texas Unified Certification Program DBE Directory containing the names of firms that have been certified to be eligible to participate as DBE's on DOT financially assisted contracts. This Directory is available from the Department's BOP Office. An update of the Directory can be found on the Internet at <http://www.dot.state.tx.us/business/tucpinfo.htm>.

**c.** Only DBE firms certified at the time commitments are submitted are eligible to be used in the information furnished by the Contractor as required under Sections A.3.a. and A.3.g. above. For purposes of the DBE goal on this



project, DBEs will only be allowed to perform work in the categories of work for which they are certified.

d. Only DBE firms certified at the time of execution of a contract/subcontract/purchase order, are eligible for DBE goal participation.

**5. Determination of DBE Participation.** When a DBE participates in a contract, only the values of the work actually performed by the DBE, as referenced below, shall be counted by the prime contractor toward DBE goals:

a. The total amount paid to the DBE for work performed with his/her own forces is counted toward the DBE goal. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

b. A Contractor may count toward its DBE goal a portion of the total value of the contract amount paid to a DBE joint venture equal to the distinct, clearly defined portion of the work of the contract performed by the DBE.

(1) A Contractor may count toward its DBE goal only expenditures to DBEs that perform a commercially useful function (CUF) in the work of a contract or purchase order. A DBE is considered to perform a CUF when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.

(a) In accordance with 49 CFR Part 26, Appendix A, guidance concerning Good Faith Efforts, contractors may make efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services. Contractors may not however, negotiate the price of materials or supplies used on the contract by the DBE, nor may they determine quality and quantity, order the materials themselves, nor install the materials (where applicable), or pay for the material themselves. Contractors however, may share the quotations they receive from the material supplier with the DBE firm, so that the DBE firm may negotiate a reasonable price with the material supplier.

(b) In all cases, prime or other subcontractor assistance will not be credited toward the DBE goal.

(2) A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.

Consistent with industry practices and the DOT/Department's DBE program, a DBE subcontractor may enter into second-tier

subcontracts, amounting up to 70% of their contract. Work subcontracted to a non-DBE does not count towards DBE goals. If a DBE does not perform or exercise responsibility for at least 30% of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that the DBE is not performing a CUF.

**(3)** A DBE trucking firm (including an owner operator who is certified as a DBE is considered to be performing a CUF when the DBE is responsible for the management and supervision of the entire trucking operation on a particular contract and the DBE itself owns and operates at least 1 fully licensed, insured, and operational truck used on the contract.

**(a)** The Contractor receives credit for the total value of the transportation services the DBE provides on a contract using trucks it owns, insures, and operates using drivers it employs.

**(b)** The DBE may lease trucks from another DBE firm, including an owner operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Contract.

**(c)** The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by the DBE-owned trucks on the contract. Additional participation by non-DBE lessees receive credit only for the fee or commission it receives as result of the lease arrangement

**(d)** A lease must indicate that the DBE has exclusive use of and control over the trucks giving the DBE absolute priority for use of the leased trucks. Leased trucks must display the name and identification number of the DBE.

**(4)** When a DBE is presumed not to be performing a CUF the DBE may present evidence to rebut this presumption.

**c.** A Contractor may count toward its DBE goals expenditures for materials and supplies obtained from a DBE manufacturer, provided that the DBE assumes the actual and contractual responsibility for the materials and supplies. Count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:

**(1)** If the materials or supplies are obtained from a DBE manufacturer, count 100% of the cost of the materials or supplies toward DBE goals.

For purposes of this Section A.5.c.(1), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

**(2)** If the materials or supplies are purchased from a DBE regular dealer, count 60% of the cost of the materials or supplies toward DBE goals.

For purposes of this Section A.5.c.(2), a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business:

**(A)** To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

**(B)** A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating, or maintaining a place of business as provided in the first paragraph under Section A.5.c.(2), if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

**(C)** Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of Section A.5.c.(2).

**(3)** With respect to materials or supplies purchased from DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals.

**(4)** Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

d. If the Contractor chooses to assist a DBE firm, other than a manufacturing material supplier or regular dealer, and the DBE firm accepts the assistance, the Contractor may act solely as a guarantor by use of a two-party check for payment of materials to be used on the project by the DBE. The material supplier must invoice the DBE who will present the invoice to the Contractor. The Contractor may issue a joint check to the DBE and the material supplier and the DBE firm must issue the remittance to the material supplier. No funds shall go directly from the Contractor to the material supplier. The DBE firm may accept or reject this joint checking arrangement.

The Contractor must obtain approval from the Department prior to implementing the use of joint check arrangements with the DBE. Submit to the Department, Joint Check Approval Form 2178 for requesting approval. Provide copies of cancelled joint checks upon request. No DBE goal credit will be allowed for the cost of DBE materials that are paid by the Contractor directly to the material supplier.

e. No DBE goal credit will be allowed for supplies and equipment the DBE subcontractor leases from the contractor or its affiliates.

f. No DBE goal credit will be allowed for the period of time determined by the Department that the DBE was not performing a CUF. The denial period of time may occur before or after a determination has been made by the department. In case of the denial of credit for non-performance of a CUF of a DBE, the Contractor will be required to provide a substitute DBE to meet the contract goal or provide an adequate good faith effort when applicable.

## **6. Records and Reports.**

a. The Contractor shall submit monthly reports, after work begins, on DBE payments to meet the DBE goal and for DBE or HUB race-neutral participation. Report payments made to non-DBE HUBs. The monthly report is to be sent to the Area Engineer. These reports will be due within 15 days after the end of a calendar month. These reports will be required until all DBE subcontracting or material supply activity is completed. Form No. SMS.4903, "DBE or HUB Progress Report," is to be used for monthly reporting. Form No. SMS.4904, "DBE or HUB Final Report," is to be used as a final summary of DBE payments submitted upon completion of the project. The original final report must be submitted to the Business Opportunity Programs Office and a copy must be submitted to the Area Engineer. These forms may be obtained from the Department or may be reproduced by the Contractor. The Department may verify the amounts being reported as paid to DBEs by requesting copies of cancelled checks paid to DBEs on a random basis. Cancelled checks and invoices should reference the Department's project number.

b. DBE subcontractors and/or material suppliers should be identified on the monthly report by Vendor Number, name, and the amount of actual payment made to each during the monthly period. Negative reports are required when no activity has occurred in a monthly period.

c. All such records must be retained for a period of 3 years following completion of the contract work, and shall be available at reasonable times and places for inspection by authorized representatives of the Department or the DOT. Provide copies of subcontracts or agreements and other documentation upon request.

d. Prior to receiving final payment, the Contractor shall submit Form SMS.4904, "DBE or HUB Final Report". If the DBE goal requirement is not met, documentation supporting Good Faith Efforts, as outlined in Section A.3.c. of this Special Provision, must be submitted with the "DBE or HUB Final Report."

e. Provide a certification of prompt payment, the Prompt Payment Certification Form 2177, to certify that all subcontractors and suppliers were paid from the previous months payments and retainage was released for those whose work is complete. Submit the completed form each month and the month following the month when final acceptance occurred at the end of the project.

## **7. Compliance of Contractor.**

a. To ensure that DBE requirements of this DOT assisted contract are complied with, the Department will monitor the Contractor's efforts to involve DBEs during the performance of this contract. This will be accomplished by a review of monthly reports submitted to the Area Engineer by the Contractor indicating his progress in achieving the DBE contract goal, and by compliance reviews conducted on the project site by the Department.

b. The Contractor shall receive credit toward the DBE goal based on actual payments to the DBE subcontractor. The Contractor shall notify the Area Engineer if he/she withholds or reduces payment to any DBE subcontractor. The Contractor shall submit an affidavit detailing the DBE subcontract payments prior to receiving final payment for the contract.

c. Contractors' requests for substitutions of DBE subcontractors shall be accompanied by a detailed explanation which should substantiate the need for a substitution. The Contractor may not be allowed to count work on those items being substituted toward the DBE goal prior to approval of the substitution from the Department.

d. The prime Contractor is prohibited from providing work crews and equipment to DBEs. DBE Goal credit for the DBE subcontractors leasing of equipment or purchasing of supplies from the prime contractor or its affiliates is not allowed.

e. When a DBE subcontractor, named in the commitment under Section A.3.a. of this Special Provision, is terminated or fails to complete its work on the contract for any reason, the prime contractor is required to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal.

f. A Contractor's failure to comply with the requirements of this Special Provision shall constitute a material breach of this contract. In such a case, the Department reserves the right to terminate the contract; to deduct the amount of DBE goal not accomplished by DBEs from the money due or to become due the Contractor, or to secure a refund, not as a penalty but as liquidated damages to the Department or such other remedy or remedies as the Department deems appropriate.

**B. Article B. Race-Neutral Disadvantaged Business Enterprise Participation.** It is the policy of the DOT that Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 26 Subpart A, be given the opportunity to compete fairly for contracts and subcontracts financed in whole or in part with Federal funds and that a maximum feasible portion of the Department's overall DBE goal be met using race-neutral means. Consequently, if there is no DBE goal, the DBE requirements of 49 CFR Part 26, apply to this contract as follows:

1. The Contractor will offer DBEs as defined in 49 CFR Part 26, Subpart A, the opportunity to compete fairly for contracts and subcontractors financed in whole or in part with Federal funds. Race-Neutral DBE and non-DBE HUB participation on projects with no DBE goal shall be reported on Form No. SMS.4903, "DBE or HUB Progress Report" and submitted to the Area Engineer each month and at project completion. Payments to DBEs reported on Form SMS.4903 are subject to the requirements of Section 1.A.5, "Determination of DBE Participation."

2. The Contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

**EXHIBIT 7**

**DB CONTRACTOR'S DBE PERFORMANCE PLAN**

(Attached)

WILLIAMS BROTHERS CONSTRUCTION CO., INC.

# DBE Performance Plan & Subcontracting Plan

Project: Loop 1604 Western Extension Project

A handwritten signature in blue ink, appearing to read 'Bob Lanham', is positioned above the signature block text.

Prepared by: Bob Lanham, President & DBE Compliance Manager

Initial Draft: 10/22/2013

Revision 1:

Revision 2:

Revision 3:



# LOOP 1604 WESTERN EXTENSION

FM 471 (Culebra Road) to SH-16 (Bandera Road)

## Table of Contents



# LOOP 1604 WESTERN EXTENSION

FM 471 (Culebra Road) to SH-16 (Bandera Road)

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

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# **LOOP 1604** **WESTERN EXTENSION** FM 471 (Culebra Road) to SH-16 (Bandera Road)

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# LOOP 1604 WESTERN EXTENSION

FM 471 (Culebra Road) to SH-16 (Bandera Road)

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# Appendix 1 – Forms

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## Prompt Payment Certification (Federal-Aid Projects)

Form 2177  
(Rev. 7/2007)  
(GSD-EPC)  
Page 1 of 1

In accordance with the requirements of Article 6.e of the DBE special provision and the prompt payment clause under Article 9.6.B and related special provisions, submit this certification form to the Engineer prior to the end of the month following the month payments were received from the department and the month following the month when final acceptance occurred, at the end of the project. (Final submission may be made prior to final acceptance if all subcontractor work and supplier material furnished for the project is complete and the subcontractors and suppliers final payments have been made in full.) The Engineer may withhold payments or suspend work for failure to submit this form or provide prompt payment in accordance with the contract. This certification is applicable to materials the Contractor purchases to remain as part of the final project and to first tier subcontractors on the project and associated project specific locations. (Subcontractors and suppliers are to comply with the prompt payment requirements.)

### Certification

*"I certify that to the best of my knowledge and with the exception of those subcontractors or suppliers listed below, all subcontractors and suppliers have been paid in accordance with the contract (10 days after receiving payment for the work performed by the subcontractor) and that any retainage held on a subcontractor or supplier's work has been released within 10 days after satisfactory completion of all of the subcontractors' or suppliers' work."*

Project Number: \_\_\_\_\_ CCSJ: \_\_\_\_\_

Estimate Period: \_\_\_\_\_ or \_\_\_\_\_  
Month Year Final Subcontractor and Supplier Payment Date

\_\_\_\_\_  
Signature Title Date

Printed Name: \_\_\_\_\_

The following firms have not been paid for reasons listed:

Firm	* Reason for Non-Payment

\*Only reasons based on dispute on subcontractor or supplier noncompliance may be accepted.

This certification is for the department's information only and does not place any obligations on the part of the department with regard to any part, including but not limited to, any subcontractor and Contractor's surety.



## DBE JOINT CHECK APPROVAL

Form 2178  
(Rev. 05/08)  
(GSD-EPC)  
Page 1 of 1

CSJ: \_\_\_\_\_  
Project Number: \_\_\_\_\_  
Highway: \_\_\_\_\_  
County: \_\_\_\_\_  
To: \_\_\_\_\_

District DBE Coordinator

We have received the attached request for the use of a joint check arrangement from

\_\_\_\_\_, a DBE Subcontractor on the subject contract and  
\_\_\_\_\_, Material Supplier for the subject contract. The DBE

subcontractor has applied for credit with the subject material supplier. The vendor's response is attached. The DBE subcontractor will place all orders to the subject material supplier. We further agree that the DBE Subcontractor retains all final decision-making responsibilities as stated in the Federal DBE Regulation 26.55 (c)(1).

We, as the Contractor for the project, agree to issue joint checks for payment of sums due, on the above referenced project, to pertinent Suppliers of the DBE Subcontractor. We further agree to notify you when the joint checks will be used and will provide the joint check agreement upon your request.

Contractor: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Reserved for TxDOT Use Only	
<b>TxDOT District Approval:</b> <input type="checkbox"/> Check for Approval	<input type="checkbox"/> Check for Denial
Signature: _____	<b>Reason for Denial:</b>
Print Name: _____	
Title: _____	
Date: _____	

### District Procedures:

1. Provide a copy of the approval or denial for the contractor.
2. Maintain a copy for the files.
3. Conduct reviews of the Contractor and DBE procedures on the use of joint checks.





## Prime Contractor DBE Good Faith Effort

Form 2184  
(Rev. 05/08)  
Page 1 of 2

County: \_\_\_\_\_ CSJ #: \_\_\_\_\_

Company Name: \_\_\_\_\_

Company Contact: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ E-mail: \_\_\_\_\_

The following is a list of the types of actions that may be considered as good faith efforts. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases, however please check all that apply in this instance. Please provide documentation for ALL instances selected.

- ☐ Selected portions of work to be performed by DBEs and where appropriate, broke down contracts into economically feasible units to facilitate DBE participation.
- ☐ Provided interested DBE with adequate information about plans, specifications, and requirements of the contract.
- ☐ Negotiated in good faith with interested DBE, not rejecting DBEs as unqualified without sound reasons based on a thorough investigation of their capabilities.
- ☐ Made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance required by TxDOT or Contractor.
- ☐ Made efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- ☐ Advertised subcontracting opportunities in appropriate media.
- ☐ Used the services of minority organizations, minority contractors' groups, local state and federal minority business assistance offices and other organizations that provide assistance identifying subcontractors.
- ☐ Provided written notice to DBEs in sufficient time to allow the DBE to respond. **(provide documentation on Pg.2)**
- ☐ Followed up initial solicitation of interest by contacting DBE to determine interest. **(provide documentation Pg. 2)**

Describe any other efforts not covered above that may indicate affirmative action to obtain DBE participation on this project and provide documentation.

If the dollar value of the goal for DBE participation in this project has not been met, the Contractor is required to complete the following questions to describe efforts to obtain DBE participation. Copies of correspondence, return receipts, telephone logs, or other documentation will be required to support good faith efforts. Please provide information for each DBE.

County: \_\_\_\_\_ CSJ #: \_\_\_\_\_

Company Name: \_\_\_\_\_

Indicate Specific Work or Materials (by pay item): \_\_\_\_\_

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

Fax: \_\_\_\_\_

Contact Method (check all that apply): ☐ Phone ☐ Fax ☐ Mail ☐ E-mail

**DBE Response**

- ☐ No Response
- ☐ Submitted an acceptable sub-bid
- ☐ Not interested: Indicate Reason(s) \_\_\_\_\_
- ☐ Needs more information: Date Prime provided requested information \_\_\_\_\_
- ☐ Will provide quote by: Date \_\_\_\_\_
- ☐ Received unacceptable sub-bid      Bid Amount \$ \_\_\_\_\_      Type of Work \_\_\_\_\_

Date: \_\_\_\_\_ Method: ☐ Phone ☐ Fax ☐ Mail ☐ E-mail

**Please attach bid solicitations and all bid responses**



# DBE Trucking Credit Worksheet

For Month of (Month/Year): \_\_\_\_\_

Form 2371  
(04/10)  
Page 1 of 1

Project: \_\_\_\_\_ County: \_\_\_\_\_ Prime Contractor: \_\_\_\_\_

Contract CSJ: \_\_\_\_\_ District: \_\_\_\_\_ DBE Hauling Firm: \_\_\_\_\_

License Plate #	Unit #	Name of DBE Hauling Firm or DBE Truck Owner/Operator	Amt Paid to DBEs for Work Performed this Month	Total Amt Paid to DBEs to Date	Amt Paid to Non-DBE Haulers	For TxDOT use Only

I hereby certify that the above is a true and correct statement of the amounts paid to the DBE trucking firms listed above.

Signature: \_\_\_\_\_  
DBE Company Official

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

The DBE firm must send the report to the prime contractor in a timely manner. The prime contractor must then submit this form with the DBE Monthly Progress Report (MPR).

The Texas Department of Transportation maintains the information collected through this form. With few exceptions, you are entitled on request to be informed about the information that we collect about you. Under Sections 552.021 and 552.023 of the Government Code, you also are entitled to receive and review this information. Under Section 559.004 of the Government Code, you are also entitled to have us correct information about you that is incorrect.



# Disadvantaged Business Enterprise (DBE) Program Material & Supplier Commitment Agreement Form

Form SMS.4901-M/S  
(Rev. 10/08)  
Page 1 of 1

This commitment is subject to the award and receipt of a signed contract from the Texas Department of Transportation for the subject project.

<b>Project #:</b>		<b>County:</b>		<b>Contract-CSJ:</b>	
<b>Items of material to be supplied (attach a list if more room is required):</b>					
<b>Bid Item #</b>	<b>Item Description</b>	<b>Unit of Measure</b>	<b>Unit Price</b>	<b>Quantity</b>	<b>Total Per Item</b>
			\$		\$
			\$		\$
			\$		\$
<b>Total Commitment Amount (including attachments): \$</b>					
<b>(Manufacturer Goal Credit = 100%)</b>					
<b>1. Is the material to be supplied, modified, blended, quarried or fabricated by the DBE? If Yes, please explain in detail.</b>			<b>1.</b>		
<b>If you answered Yes to Question 1 above, you do not need to answer questions 2-4</b>					
<b>(Regular Dealer Goal credit = 60%)</b>					
<b>2. Where is the DBE material supplier getting the materials?</b>			<b>2.</b>		
<b>3. Where does the DBE material supplier store or warehouse the material before it is delivered to the project site?</b>			<b>3.</b>		
<b>4. Whose equipment will be used to deliver the DBE's material to the project site? Explain in detail any arrangements the DBE has with other distributors, hauling firms and freight companies.</b>			<b>4.</b>		
<b>IMPORTANT! The signatures of the prime contractor DBE, and the total commitment amount must always be on the same page.</b>					
<b>Prime Contractor:</b>			Name/Title (please print):		
Address:			Signature:		
Phone:	Fax:				
E-mail:			Date:		
<b>DBE:</b>			Name/Title (please print):		
Vendor No.:					
Address:			Signature:		
Phone:	Fax:				
E-mail:			Date:		
<b>Subcontractor (if the DBE will be a second tier sub)</b>			Name/Title (please print):		
Address:			Signature:		
Phone:	Fax:				
E-mail:			Date:		

The Texas Department of Transportation maintains the information collected through this form. With few exceptions, you are entitled on request, to be informed about the information that is collected about you. Under §552.021 and 552.023 of the Texas Government code, you also are entitled to receive and review the information. Under §559.004 of the Government Code, you are also entitled to have us correct information about you that is incorrect.

To ensure prompt and efficient handling of your project file we are requesting that all commitments be presented to the Office of Civil Rights using this basic format.



# Disadvantaged Business Enterprise (DBE) Program Trucking Commitment Agreement Form

Form SMS.4901-T  
(Rev. 8/2007)  
(GSD-EPC)  
Page 1 of 2

This commitment is subject to the award and receipt of a signed contract from the Texas Department of Transportation for the subject project. DBE's must be certified at time of submittal.

<b>Project #:</b>		<b>County:</b>		<b>Contract-CSJ:</b>	
<b>*All Trucking quantities and units of measure should match the bid tab item whenever possible. If listing items by hours, or by lump sum amounts, please provide calculations to substantiate the quantities listed.</b>					
<b>Bid Item</b>	<b>Item Description</b>	<b>Unit of Measure</b>	<b>Unit Price</b>	<b>Quantity</b>	<b>Total Per Item</b>
			\$		\$
<b>Total Commitment Amount (including attachments): \$</b>					

## TO BE COMPLETED BY THE DBE TRUCKING FIRM

1. Number of hours contracted or quantities to be hauled? \_\_\_\_\_
2. Number of fully operational trucks to be used? \_\_\_\_\_ Tractor/trailers: \_\_\_\_\_ Dump trucks: \_\_\_\_\_  
2a. Specify vehicle identification information on page 2.
3. Number of fully operational trucks owned by DBE? \_\_\_\_\_ Dump trucks: \_\_\_\_\_ Tractors/trailers: \_\_\_\_\_
4. If Owner Operators or additional trucking companies are to be used, answer the following and provide a copy of lease agreement(s) including specific information asked on page 2.

<b>Name of Trucking Company</b>	<b>Dollar Amount of Contract/Agreement</b>	<b>Number of Dump Trucks, Tractors/Trailers (specify)</b>
	\$	
	\$	
<b>The Contractor shall inform the District the dates when the subcontractor starts and completes all work under the subcontract.</b>		
<b>Estimated Beginning Date</b> (Mo & Yr) /	<b>Estimated Completion Date</b> (Mo & Yr) /	
<b>IMPORTANT! The signatures of the prime contractor and the DBE, and the total commitment amount must always be on the same page.</b>		
<b>Prime Contractor:</b>		Name/Title (please print):
Address:		Signature:
Phone:	Fax:	
E-mail:		Date:
<b>DBE:</b>		Name/Title (please print):
Vendor No.:		
Address:		Signature:
Phone:	Fax:	
E-mail:		Date:
<b>Subcontractor (if the DBE will be a second tier sub)</b>		Name/Title (please print):
Address:		Signature:
Phone:	Fax:	
E-mail:		Date:

The Texas Department of Transportation maintains the information collected through this form. With few exceptions, you are entitled on request to be informed about the information that we collect about you. Under §§552.021 and 552.023 of the Texas Government Code, you also are entitled to receive and review the information. Under §559.004 of the Government Code, you are also entitled to have us correct information about you that is incorrect.

To ensure prompt and efficient handling of your project file we are requesting that all commitments to be presented to the Business Opportunity Programs Office, using this basic format.

## DBE Truck Unit Listing

Form SMS.4901-T  
(Rev. 8/2007)  
Page 2 of 2

Company Name:			
CCSJ #			
Unit #	Year/Make	VIN #	Plate #

I hereby certify that the information presented above is correct. I agree to inform the District Area Engineer in writing of any changes within 10 days of the change(s).

DBE Company:

DBE Principal:



## Disadvantaged Business Enterprise (DBE) Program Commitment Agreement Form

Form SMS.4901  
(Rev. 06/08)  
Page 1 of 1

**This commitment is subject to the award and receipt of a signed contract from the Texas Department of Transportation for the subject project.**

<b>Project #:</b>		<b>County:</b>		<b>Contract-CSJ:</b>	
<b>Items of work to be performed (attach a list of work items if more room is required):</b>					
Bid Item #	Item Description	Unit of Measure	Unit Price	Quantity	Total Per Item
<b>Total</b>					
<p>The contractor certifies by signature on this agreement that subcontracts will be executed between the prime contractor and the DBE subcontractors as listed on the agreement form. If a DBE Subcontractor is unable to perform the work as listed on this agreement form, the prime contractor will follow the substitution/replacement approval process as outlined in the Contract DBE Special Provision.</p>					
<b>IMPORTANT: The signatures of the prime contractor and the DBE, and the total commitment amount must always be on the same page.</b>					
<b>Prime Contractor:</b>			Name/Title (please print):		
Address:			Signature:		
Phone:	Fax:				
E-mail:			Date:		
<b>DBE:</b>			Name/Title (please print):		
Vendor No.:			Signature:		
Address:					
Phone:	Fax:		Date:		
E-mail:					
<b>Subcontractor (if the DBE will be a second tier sub):</b>			Name/Title (please print):		
Address:			Signature:		
Phone:	Fax:				
E-mail:			Date:		

The Texas Department of Transportation maintains the information collected through this form. With few exceptions, you are entitled on request to be informed about the information that we collect about you. Under §§552.021 and 552.023 of the Texas Government Code, you also are entitled to receive and review the information. Under §559.004 of the Government Code, you are also entitled to have us correct information about you that is incorrect.

To ensure prompt and efficient handling of your project file we are requesting that all commitments to be presented to the Office of Civil Rights, using this basic format.



# Texas Department of Transportation DBE Monthly Progress Report

Form SMS.4903  
(Rev. 07/08)  
Page 1 of 1

Project: \_\_\_\_\_ Contract CSJ: \_\_\_\_\_  
County: \_\_\_\_\_ District: \_\_\_\_\_  
Letting Date: \_\_\_\_\_ For Month of (Mo./Yr.): \_\_\_\_\_  
Contractor: \_\_\_\_\_ Contract Amount: \_\_\_\_\_  
DBE Goal: \_\_\_\_\_ % DBE Goal Dollars: \_\_\_\_\_

Vendor Number	Name of DBE Sub/Supplier	* RC or RN	** DBE \$ Amt Paid for Work Performed this Period (X)	*** \$ Amt Paid to Non-DBE 2nd Tier Subs and Haulers (Y)	Amt Paid to DBEs to Date (X-Y)	For TxDOT use Only

\* Race Conscious or Race Neutral.

\*\* Goal/commitment progress report amount and/or race-neutral amount. **Do not subtract** non-DBE second-tier subcontractors and haulers from this column.

\*\*\* Report amount of payment DBE subcontractors paid to non-DBE subcontractors/haulers.

If using a non-DBE hauling firm that leases from DBE truck owner-operators, payments made to each owner-operator must be reported separately.

Any changes to the DBE commitments approved by the department must be reported to the area engineer.

Submission of this report for periods of negative DBE activity is required. This report is required until all DBE subcontracting or material supply activity is completed.

I hereby certify that the above is a true and correct statement of the amounts paid to the DBE firms listed above.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Company Official

This report must be sent to the area engineer's office within 15 days following the end of the calendar month.

The Texas Department of Transportation maintains the information collected through this form. With few exceptions, you are entitled on request to be informed about the information that is collected about you. Under §§552.021 and 552.023 of the Texas Government Code, you also are entitled to receive and review the information. Under §559.004 of the Government Code, you are also entitled to have us correct information about you that is incorrect.





# DBE Final Report

Form SMS.4904  
(Rev. 07/08)  
Page 1 of 1

The DBE final report form should be filled out by the contractor and submitted to the appropriate district office upon completion of the project. One copy of the report must be submitted to the area engineer's office. The report should reflect all DBE activity on the project. The report will aid in expediting the final estimate for payment. If the DBE goal requirements were not met, documentation supporting good faith efforts must be submitted.

Project: \_\_\_\_\_ Contract CSJ: \_\_\_\_\_  
County: \_\_\_\_\_ Control Project: \_\_\_\_\_  
Letting Date: \_\_\_\_\_ DBE Goal: \_\_\_\_\_ %  
Contractor: \_\_\_\_\_ Contract Amount: \_\_\_\_\_

Vendor number	Name of DBE Sub/Supplier	*RC or RN	** DBE goal – total \$ amt pd to date	*** \$ amt pd to non-DBE 2nd tier subs & haulers	For TxDOT Use Only

\* Race Conscious or Race Neutral.

\*\* Goal/commitment progress report amount and/or race-neutral amount. Do not subtract non-DBE second-tier subcontractors and haulers from this column.

\*\*\* DBE subcontractors paid to non-DBE subcontractors/haulers.

This is to certify that \_\_\_\_\_ % of the work was completed by Disadvantaged Business Enterprises as stated above.

By \_\_\_\_\_ Per: \_\_\_\_\_  
Name of General Contractor Contractor's Signature

Subscribed and sworn to before me, this \_\_\_\_\_ day of \_\_\_\_\_, A.D. \_\_\_\_\_

\_\_\_\_\_  
Notary Public County

My commission expires: \_\_\_\_\_

The Texas Department of Transportation maintains the information collected through this form. With few exceptions, you are entitled on request, to be informed about the information that is collected about you. Under §§552.021 and 552.023 of the Texas Government Code, you also are entitled to receive and review the information. Under §559.004 of the Government Code, you are also entitled to have us correct information about you that is incorrect.

## DBE EMERGENCY ASSISTANCE - CALL IN LOG

<b>DATE:</b>	
<b>TIME:</b>	
<b>CALLER:</b>	
<b>JOB:</b>	
<b>DBE FIRM:</b>	

<b>REASON:</b>	
----------------	--

### QUANTITY OF ASSISTANCE RENDERED

**LABOR:**

# EMPLOYEES	# HRS/EA

BL Entry	
Rate	Ttl

**EQUIP:**

DESC	# PCS	# HRS

Rate	Ttl

**MATLS:**

DESC	AMT

Rate	Ttl

**RECORDED  
BY:**

---

<b>TTL =</b>	
--------------	--

**REVIEW:**

---

**SUBCONTRACTOR QUESTIONNAIRE**

updated Sep 2008

Company Name:							
Address:							
Street:							
City:		State:		Zip:			
Contact Person:							
Phone:		Cell/Mobile:					
Fax:		Email:					
Are you currently certified as a DBE?				YES		NO	
Are you eligible for recertification?				YES		NO	
What was the DBE certifying entity?							
What is your certification number?							
Are you interested in performing work for TxDOT?				YES		NO	
Are you familiar with bidding work for TxDOT?				YES		NO	
Are you familiar with building work for TxDOT?				YES		NO	
What types of work are you qualified to perform?							
1.							
2.							
3.							
4.							
What was your approximate annual sales volume last year?							
Three largest projects completed by your firm during the past 5 years.							
<b>PROJECT DESCRIPTION</b>		<b>OWNER</b>		<b>GENERAL CONTRACTOR</b>		<b>DOLLAR AMT</b>	
1.							
2.							
3.							
How many active projects do you have?							
Average number of crews?							
Average number of employees typically on your payroll?							
Do you own or lease your equipment?							
Do you have a geographical preference?				YES		NO	
<i>An answer of "no" to the next 4 questions will require an explanation on an additional sheet.</i>							
Will you perform the work with your own forces?				YES		NO	
Will you supervise your own employees?				YES		NO	
Will you order your own materials?				YES		NO	
Will you pay for your own materials?				YES		NO	
Will you require joint checks for material payments?				YES		NO	
Do you plan to 2d tier subcontract any of your work?				YES		NO	

**WILLIAMS BROTHERS ENCOURAGES MINORITY CONTRACTOR PARTICIPATION**

## JOINT CHECK AGREEMENT

ARMA PROJECT NO: [\[Click here & type Proj No.\]](#)

SUBCONTRACTOR: [\[Click here & type Subcontractor Name\]](#)

**AND**

2D TIER SUB/SUPPLIER: [\[Click here & type Supplier Name\]](#)

Wish to enter into a JOINT CHECK AGREEMENT with WILLIAMS BROTHERS CONSTRUCTION CO., INC. (GENERAL CONTRACTOR) for materials and/or services purchased by the SUBCONTRACTOR for use on ARMA PROJECT NO: [\[Click here & type Proj No.\]](#)

Now, therefore, in consideration of mutual benefits to be derived from this ARRANGEMENT,  
The parties hereby agree to as follows:

- 1) Each month SUBCONTRACTOR will submit to WILLIAMS BROTHERS a payment request, to issue JOINT CHECKS, by the 10<sup>th</sup> of each month, for JOINT CHECK INVOICES for the prior calendar month.
- 2) Each pay request will have attached all related invoices for materials and/or services provided by the 2d TIER SUB/SUPPLIER for said project.
- 3) Payment by the CONTRACTOR shall be made JOINTLY to the SUBCONTRACTOR and 2d TIER SUB/SUPPLIER. Payment will be mailed to the SUBCONTRACTOR. Upon receipt of the JOINT CHECK, the SUBCONTRACTOR will endorse the JOINT CHECK and forward to the 2d TIER SUB/SUPPLIER in a time frame compliant with the PROMPT PAY REQUIREMENTS of this CONTRACT.
- 4) If the SUBCONTRACTOR withholds the JOINT CHECK from the 2d TIER SUB/SUPPLIER, the SUBCONTRACTOR must report to WILLIAMS BROTHERS within 30 days of the date of the check, the reason for withholding payment. If the reason provided is insufficient, WILLIAMS BROTHERS may report the matter to ARMA for their action as an apparent prompt pay violation.
- 5) This AGREEMENT neither expresses nor implies a guarantee of payment by the CONTRACTOR to the 2d TIER SUB/SUPPLIER. This AGREEMENT stipulates only the method of payment from the GENERAL CONTRACTOR to the SUBCONTRACTOR (and 2d TIER SUB/SUPPLIER jointly).
- 6) GENERAL CONTRACTOR'S obligation for payment extends only to materials delivered to and incorporated in said project.
- 7) At the time of FINAL PAYMENT, the 2d TIER SUB/SUPPLIER for materials and/or services on said project shall provide the CONTRACTOR with full and complete waiver of claims and/or liens against the project and the CONTRACTOR.
- 8) Upon waiver of claims and/or liens, all obligations pursuant to this agreement will be satisfied in full and this AGREEMENT shall no longer be in force.

IN WITNESS WHEREOF, THE PARTIES HERTO CAUSE THIS AGREEMENT TO BE EXECUTED BY THEIR AUTHORIZED REPRESENTATIVE ON THIS [\[Click & Enter Day\]](#) DAY OF [\[Click & Enter Month\]](#) 20[\[Click & Enter Year\]](#) .

_____ Signature	_____ Signature	_____ Signature
_____ [print name]	_____ [print name]	Robert C Lanham, Jr.
_____ [2d tier sub/supplier]	_____ [subcontractor]	Williams Brothers Construction
_____ [title]	_____ [title]	Vice President
_____ Date:	_____ Date:	_____ Date:

**LOOP 1604 WESTERN EXTENSION DESIGN BUILD**  
**DBE Participation Tracking and Projection**

as of: 1/11/1111

Total Price - Base Scope \$ -  
 Required DBE Participation (8% DBE) \$ -

<u>Current DBE Commitments</u>	<u>Commitment</u>	
	<u>Form</u>	<u>Projected Amt</u>
DBE #1	\$ -	\$ - Design Support
DBE #2	\$ -	\$ - Electrical & Signing Design
DBE #3	\$ -	\$ - Structural Design Support
DBE #4	\$ -	\$ - SWP3 & Grass
DBE #5	\$ -	\$ - Environmental Services
DBE #6	\$ -	\$ - Storm Sewer
DBE #7	\$ -	\$ - Retaining Walls
DBE #8	\$ -	\$ - SWP3 & Grass
DBE #9	\$ -	\$ - Driveways
DBE #10	\$ -	\$ - Misc Concrete (Sidewalks, etc)
<b>Subtotal DBE Commitments</b>	\$ -	\$ -
<b>Current %</b>	<b>#DIV/0!</b>	<b>#DIV/0!</b>
<b>Balance to Achieve Goal</b>	\$ -	\$ -

<b>Current Projection of DBE Participation</b>	<b>\$ -</b>
--	-------------

**DBE Opportunities - Based on Proposal Qtys**

Storm Sewer	\$ -
Electrical	\$ -
Retaining Walls	\$ -
Signing	\$ -
Riprap Concrete	\$ -
Concrete Driveways	\$ -
Misc Conc - Curbs & Sidewalks	\$ -
Guardrail & Crash Attenuators	\$ -
Landscaping	\$ -
SWP3-Erosion Protection	\$ -
<b>Subtotal DBE Opportunities</b>	<b>\$ -</b>
<b>Opportunity %</b>	<b>#REF!</b>

## Appendix 2 – Report Schedule

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# REPORT SCHEDULE

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REPORT	DUE DATE
DBE PROGRESS REPORT	15 <sup>th</sup> of the Month for Payments made the Preceding Month
PROMPT PAY CERTIFICATION	20 <sup>th</sup> of the Month for Payments made the Preceding Month
DBE PROGRAM GOAL TRACKING	Quarterly

# Appendix 3 – DBE Specification

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## Exhibit 6 of Design Build Agreement



## **EXHIBIT 6**

### **SPECIAL PROVISION FOR THE DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**

#### **Disadvantaged Business Enterprise in Federal-Aid Construction for Design-Build Contracts**

**I. Description.** The purpose of this Special Provision is to carry out the U. S. Department of Transportation's (DOT) policy of ensuring nondiscrimination in the award and administration of DOT assisted contracts and creating a level playing field on which firms owned and controlled by individuals who are determined to be socially and economically disadvantaged can compete fairly for DOT assisted contracts. If the Disadvantaged Business Enterprise (DBE) goal is greater than zero, Article A, "Disadvantaged Business Enterprise in Federal-Aid Construction", of this Special Provision shall apply to this contract. If there is no DBE goal, Article B, "Race-Neutral DBE Participation", of this Special Provision shall apply to this contract. The percentage goal for DBE participation in the work to be performed under this contract will be shown on the proposal. For purposes of this Special Provision, the term "Contract" means the Design-Build Agreement (referred to sometimes as the "DBA"), the term "Bidder" means the selected Proposer for the Project, and the term "Contractor" means Design-Build Contractor under the DBA (referred to sometimes as the "DB Contractor").

#### **A. Article A. Disadvantaged Business Enterprise in Federal-Aid Construction.**

**1. Policy.** It is the policy of the DOT and the Texas Department of Transportation (henceforth the "Department") that DBEs, as defined in 49 CFR Part 26, Subpart A and the Department's DBE Program, shall have the opportunity to participate in the performance of contracts financed in whole or in part with Federal funds. The DBE requirements of 49 CFR Part 26, the Department's DBE Program, and the Contractor's approved DBE Performance Plan apply to this contract as follows:

**a.** The Contractor will solicit DBEs through reasonable and available means, as defined in 49 CFR Part 26, Appendix A and the Department's DBE Program, or show a good faith effort to meet the DBE goal for this contract.

**b.** The Contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

**c.** The requirements of this Special Provision shall be physically included in any subcontract.

**d.** By signing the contract proposal, the Bidder is certifying that the DBE goal as stated in the proposal will be met by obtaining commitments from eligible DBEs or that the Bidder will provide acceptable evidence of good faith effort to

meet the commitment, and that, if selected for the Design-Build Agreement, the Bidder will submit a DBE Performance Plan meeting the requirements set forth in Section A.2.m, below.

## **2. Definitions.**

- a.** “Department” means the Texas Department of Transportation.
- b.** “DOT” means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).
- c.** “Federal-Aid Contract” is any contract between the Texas Department of Transportation and a Contractor which is paid for in whole or in part with DOT financial assistance.
- d.** “DBE Joint Venture” means an association of a DBE firm and 1 or more other firm(s) to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.
- e.** “Disadvantaged Business Enterprise” or “DBE” means a firm certified through the Texas Unified Certification Program in accordance with 49 CFR Part 26.
- f.** “Good Faith Effort” means efforts to achieve a DBE goal or other requirement of this Special Provision which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.
- g.** “Manufacturer” is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.”
- h.** “Regular Dealer” is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages in, as its principal business and under its own name, the purchase and sale or lease of the products in question.

A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns and operates distribution equipment for the products. Any supplementing of regular dealers own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. Brokers,

packagers, manufacturers' representatives, or other persons who arrange or expedite transactions shall not be regarded as a regular dealer.

i. "Broker" is an intermediary or middleman that does not take possession of a commodity or act as a regular dealer selling to the public.

j. "Race-neutral DBE Participation" means any participation by a DBE through customary competitive procurement procedures.

k. "Race-conscious" means a measure or program that is focused specifically on assisting only DBEs, including women-owned businesses.

l. "Texas Unified Certification Program" or "TUCP" provides one-stop shopping to applicants for certification, such that applicants are required to apply only once for a DBE certification that will be honored by all recipients of federal funds in the state. The TUCP by Memorandum of Agreement established six member entities to serve as certifying agents for Texas in specified regions.

m. "DBE Performance Plan" means the plan submitted by the selected Bidder for a Design-Build project describing the methods to be employed for achieving TxDOT's DBE participation goals for the Project, including Bidder's exercise of good faith efforts. The selected Bidder's DBE Performance Plan is subject to TxDOT review, comment and approval prior to execution of the Design-Build Agreement. Each DBE Performance Plan must at a minimum include the following:

(1) Specific categories of services and work anticipated for DBE participation on the project;

(2) Identification of DBEs for performance of design work and other professional services, to the extent known at the date of submission of the DBE Performance Plan;

(3) Identification of DBEs for construction subcontracts, to the extent known at the date of submission of the DBE Performance Plan;

(4) Schedule for submission of DBE commitment agreements (using Form No. SMS. 4901), based on Bidder's initial project schedule; provided, however, that:

(a) DBE commitment agreements for design work and other professional services must be submitted at least 30 days prior to commencement of design work or other professional services for the applicable segment or phase of work under the Design-Build Agreement; and

(b) DBE commitment agreements for construction subcontracts must be submitted at least 30 days prior to commencement of construction for the applicable segment or phase of the project under the Design-Build Agreement;

(5) Detailed description of:

(a) Good faith efforts the Bidder has exercised to identify DBEs and obtain commitment agreements prior to the date of submission of the DBE Performance Plan; and

(b) Good faith efforts that will be exercised by the Contractor following execution of the Design-Build Agreement to achieve the DBE participation goal for the project; and

(6) The name, experience, qualifications and responsibilities of the Bidder's Civil Rights/DBE Compliance Manager.

**3. Contractor's Responsibilities.** These requirements must be satisfied by the Contractor.

a. After conditional award of the contract, the Contractor shall, in consultation with the Department's Business Opportunity Programs (BOP) Office, develop and submit a DBE Performance Plan meeting the requirements set forth in A.2.m, above, and shall also submit a completed Form No.SMS.4901, "DBE Commitment Agreement" for each DBE he/she intends to use to satisfy the DBE goal, to the extent known at the date of submission of the DBE Performance Plan. The DBE Performance Plan must be submitted to the Department's Business Opportunity Programs (BOP) Office in Austin, Texas not later than 5:00 p.m. on the 30<sup>th</sup> business day, excluding national holidays, after the conditional award of the contract. The DBE Performance Plan is subject to review, comment and approval by TxDOT prior to and as a condition of execution of the Design-Build Agreement.

b. DBE prime Contractors may receive credit toward the DBE goal for work performed by his/her own forces and work subcontracted to DBEs. A DBE prime must make a good faith effort to meet the goals. In the event a DBE prime subcontracts to a non-DBE, that information must be reported on Form No. SMS.4902.

c. A Contractor who cannot meet the contract goal, in whole or in part, shall make adequate good faith efforts to obtain DBE participation as so stated and defined in 49 CFR Part 26, Appendix A. The following is a list of the types of action that may be considered as good faith efforts. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

(1) Soliciting through all reasonable and available means (e.g. attendance at prebid meetings, advertising, and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The solicitation must be done within sufficient time to allow the DBEs to respond to it. Appropriate steps must be taken to follow up initial solicitations to determine, with certainty, if the DBEs are interested.

- (2) Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the Contractor might otherwise prefer to perform the work items with its own forces.
- (3) Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- (4) Negotiating in good faith with interested DBEs to make a portion of the work available to DBE subcontractors and suppliers and select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiations includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
- (5) A Bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional cost involved in finding and using DBEs is not in itself sufficient reason for a bidders failure to meet the Contract DBE goal as long as such cost are reasonable. Also, the ability or desire of the Contractor to perform the work of the Contract with its own organization does not relieve the Bidder of the responsibility to make good faith effort. Contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
- (6) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The Contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate cause for the rejection or non-solicitation of bids and the Contractors efforts to meet the project goal.
- (7) Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or Contractor.
- (8) Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- (9) Effectively using the services of available minority/women community organizations; minority/women Contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

**(10)** If the Program Manager of the BOP Office determines that the Contractor has failed to meet the good faith effort requirements, the Contractor will be given an opportunity for reconsideration by the Director of the BOP Office.

**d.** Should the Bidder to whom the contract is conditionally awarded refuse, neglect or fail to submit an acceptable DBE Performance Plan, the proposal guaranty filed with the bid shall become the property of the state, not as a penalty, but as liquidated damages to the Department.

**e.** The preceding information shall be submitted directly to the Business Opportunity Programs Office, Texas Department of Transportation, 125 E. 11th Street, Austin, Texas 78701-2483.

**f.** The Contractor shall not terminate for convenience a DBE subcontractor named in the commitment submitted under Section A.3.a. of this Special Provision. Prior to terminating or removing a DBE subcontractor named in the commitment, the Contractor must have a written consent of the Department.

**g.** The Contractor shall also make a good faith effort to replace a DBE subcontractor that is unable to perform successfully with another DBE, to the extent needed to meet the contract goal. The Contractor shall submit a completed Form No.4901, "DBE Commitment Agreement," for the substitute DBE firm(s). Any substitution of DBEs shall be subject to approval by the Department. Prior to approving the substitution, the Department will request a statement from the DBE concerning it being replaced.

**h.** The Contractor shall designate a DBE liaison officer who will administer the Contractor's DBE program and who will be responsible for maintenance of records of efforts and contacts made to subcontract with DBEs.

**i.** Contractors are encouraged to investigate the services offered by banks owned and controlled by disadvantaged individuals and to make use of these banks where feasible.

#### **4. Eligibility of DBEs.**

**a.** The member entities of the TUCP certify the eligibility of DBEs and DBE joint ventures to perform DBE subcontract work on DOT financially assisted contracts.

**b.** The Department maintains the Texas Unified Certification Program DBE Directory containing the names of firms that have been certified to be eligible to participate as DBE's on DOT financially assisted contracts. This Directory is available from the Department's BOP Office. An update of the Directory can be found on the Internet at <http://www.dot.state.tx.us/business/tucpinfo.htm>.

**c.** Only DBE firms certified at the time commitments are submitted are eligible to be used in the information furnished by the Contractor as required under Sections A.3.a. and A.3.g. above. For purposes of the DBE goal on this

project, DBEs will only be allowed to perform work in the categories of work for which they are certified.

**d.** Only DBE firms certified at the time of execution of a contract/subcontract/purchase order, are eligible for DBE goal participation.

**5. Determination of DBE Participation.** When a DBE participates in a contract, only the values of the work actually performed by the DBE, as referenced below, shall be counted by the prime contractor toward DBE goals:

**a.** The total amount paid to the DBE for work performed with his/her own forces is counted toward the DBE goal. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

**b.** A Contractor may count toward its DBE goal a portion of the total value of the contract amount paid to a DBE joint venture equal to the distinct, clearly defined portion of the work of the contract performed by the DBE.

**(1)** A Contractor may count toward its DBE goal only expenditures to DBEs that perform a commercially useful function (CUF) in the work of a contract or purchase order. A DBE is considered to perform a CUF when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.

**(a)** In accordance with 49 CFR Part 26, Appendix A, guidance concerning Good Faith Efforts, contractors may make efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services. Contractors may not however, negotiate the price of materials or supplies used on the contract by the DBE, nor may they determine quality and quantity, order the materials themselves, nor install the materials (where applicable), or pay for the material themselves. Contractors however, may share the quotations they receive from the material supplier with the DBE firm, so that the DBE firm may negotiate a reasonable price with the material supplier.

**(b)** In all cases, prime or other subcontractor assistance will not be credited toward the DBE goal.

**(2)** A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.

Consistent with industry practices and the DOT/Department's DBE program, a DBE subcontractor may enter into second-tier

subcontracts, amounting up to 70% of their contract. Work subcontracted to a non-DBE does not count towards DBE goals. If a DBE does not perform or exercise responsibility for at least 30% of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that the DBE is not performing a CUF.

**(3)** A DBE trucking firm (including an owner operator who is certified as a DBE is considered to be performing a CUF when the DBE is responsible for the management and supervision of the entire trucking operation on a particular contract and the DBE itself owns and operates at least 1 fully licensed, insured, and operational truck used on the contract.

**(a)** The Contractor receives credit for the total value of the transportation services the DBE provides on a contract using trucks it owns, insures, and operates using drivers it employs.

**(b)** The DBE may lease trucks from another DBE firm, including an owner operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Contract.

**(c)** The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by the DBE-owned trucks on the contract. Additional participation by non-DBE lessees receive credit only for the fee or commission it receives as result of the lease arrangement

**(d)** A lease must indicate that the DBE has exclusive use of and control over the trucks giving the DBE absolute priority for use of the leased trucks. Leased trucks must display the name and identification number of the DBE.

**(4)** When a DBE is presumed not to be performing a CUF the DBE may present evidence to rebut this presumption.

**c.** A Contractor may count toward its DBE goals expenditures for materials and supplies obtained from a DBE manufacturer, provided that the DBE assumes the actual and contractual responsibility for the materials and supplies. Count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:

**(1)** If the materials or supplies are obtained from a DBE manufacturer, count 100% of the cost of the materials or supplies toward DBE goals.



For purposes of this Section A.5.c.(1), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

**(2)** If the materials or supplies are purchased from a DBE regular dealer, count 60% of the cost of the materials or supplies toward DBE goals.

For purposes of this Section A.5.c.(2), a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business:

**(A)** To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

**(B)** A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating, or maintaining a place of business as provided in the first paragraph under Section A.5.c.(2), if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

**(C)** Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of Section A.5.c.(2).

**(3)** With respect to materials or supplies purchased from DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals.

**(4)** Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

**d.** If the Contractor chooses to assist a DBE firm, other than a manufacturing material supplier or regular dealer, and the DBE firm accepts the assistance, the Contractor may act solely as a guarantor by use of a two-party check for payment of materials to be used on the project by the DBE. The material supplier must invoice the DBE who will present the invoice to the Contractor. The Contractor may issue a joint check to the DBE and the material supplier and the DBE firm must issue the remittance to the material supplier. No funds shall go directly from the Contractor to the material supplier. The DBE firm may accept or reject this joint checking arrangement.

The Contractor must obtain approval from the Department prior to implementing the use of joint check arrangements with the DBE. Submit to the Department, Joint Check Approval Form 2178 for requesting approval. Provide copies of cancelled joint checks upon request. No DBE goal credit will be allowed for the cost of DBE materials that are paid by the Contractor directly to the material supplier.

**e.** No DBE goal credit will be allowed for supplies and equipment the DBE subcontractor leases from the contractor or its affiliates.

**f.** No DBE goal credit will be allowed for the period of time determined by the Department that the DBE was not performing a CUF. The denial period of time may occur before or after a determination has been made by the department. In case of the denial of credit for non-performance of a CUF of a DBE, the Contractor will be required to provide a substitute DBE to meet the contract goal or provide an adequate good faith effort when applicable.

## **6. Records and Reports.**

**a.** The Contractor shall submit monthly reports, after work begins, on DBE payments to meet the DBE goal and for DBE or HUB race-neutral participation. Report payments made to non-DBE HUBs. The monthly report is to be sent to the Area Engineer. These reports will be due within 15 days after the end of a calendar month. These reports will be required until all DBE subcontracting or material supply activity is completed. Form No. SMS.4903, "DBE or HUB Progress Report," is to be used for monthly reporting. Form No. SMS.4904, "DBE or HUB Final Report," is to be used as a final summary of DBE payments submitted upon completion of the project. The original final report must be submitted to the Business Opportunity Programs Office and a copy must be submitted to the Area Engineer. These forms may be obtained from the Department or may be reproduced by the Contractor. The Department may verify the amounts being reported as paid to DBEs by requesting copies of cancelled checks paid to DBEs on a random basis. Cancelled checks and invoices should reference the Department's project number.

**b.** DBE subcontractors and/or material suppliers should be identified on the monthly report by Vendor Number, name, and the amount of actual payment made to each during the monthly period. Negative reports are required when no activity has occurred in a monthly period.

c. All such records must be retained for a period of 3 years following completion of the contract work, and shall be available at reasonable times and places for inspection by authorized representatives of the Department or the DOT. Provide copies of subcontracts or agreements and other documentation upon request.

d. Prior to receiving final payment, the Contractor shall submit Form SMS.4904, "DBE or HUB Final Report". If the DBE goal requirement is not met, documentation supporting Good Faith Efforts, as outlined in Section A.3.c. of this Special Provision, must be submitted with the "DBE or HUB Final Report."

e. Provide a certification of prompt payment, the Prompt Payment Certification Form 2177, to certify that all subcontractors and suppliers were paid from the previous months payments and retainage was released for those whose work is complete. Submit the completed form each month and the month following the month when final acceptance occurred at the end of the project.

## **7. Compliance of Contractor.**

a. To ensure that DBE requirements of this DOT assisted contract are complied with, the Department will monitor the Contractor's efforts to involve DBEs during the performance of this contract. This will be accomplished by a review of monthly reports submitted to the Area Engineer by the Contractor indicating his progress in achieving the DBE contract goal, and by compliance reviews conducted on the project site by the Department.

b. The Contractor shall receive credit toward the DBE goal based on actual payments to the DBE subcontractor. The Contractor shall notify the Area Engineer if he/she withholds or reduces payment to any DBE subcontractor. The Contractor shall submit an affidavit detailing the DBE subcontract payments prior to receiving final payment for the contract.

c. Contractors' requests for substitutions of DBE subcontractors shall be accompanied by a detailed explanation which should substantiate the need for a substitution. The Contractor may not be allowed to count work on those items being substituted toward the DBE goal prior to approval of the substitution from the Department.

d. The prime Contractor is prohibited from providing work crews and equipment to DBEs. DBE Goal credit for the DBE subcontractors leasing of equipment or purchasing of supplies from the prime contractor or its affiliates is not allowed.

e. When a DBE subcontractor, named in the commitment under Section A.3.a. of this Special Provision, is terminated or fails to complete its work on the contract for any reason, the prime contractor is required to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal.

f. A Contractor's failure to comply with the requirements of this Special Provision shall constitute a material breach of this contract. In such a case, the Department reserves the right to terminate the contract; to deduct the amount of DBE goal not accomplished by DBEs from the money due or to become due the Contractor, or to secure a refund, not as a penalty but as liquidated damages to the Department or such other remedy or remedies as the Department deems appropriate.

**B. Article B. Race-Neutral Disadvantaged Business Enterprise Participation.** It is the policy of the DOT that Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 26 Subpart A, be given the opportunity to compete fairly for contracts and subcontracts financed in whole or in part with Federal funds and that a maximum feasible portion of the Department's overall DBE goal be met using race-neutral means. Consequently, if there is no DBE goal, the DBE requirements of 49 CFR Part 26, apply to this contract as follows:

1. The Contractor will offer DBEs as defined in 49 CFR Part 26, Subpart A, the opportunity to compete fairly for contracts and subcontractors financed in whole or in part with Federal funds. Race-Neutral DBE and non-DBE HUB participation on projects with no DBE goal shall be reported on Form No. SMS.4903, "DBE or HUB Progress Report" and submitted to the Area Engineer each month and at project completion. Payments to DBEs reported on Form SMS.4903 are subject to the requirements of Section 1.A.5, "Determination of DBE Participation."

2. The Contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

# Appendix 4 – Standard Professional Services Agreement

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**CONTRACT FOR DESIGN-BUILD ASSISTANCE BETWEEN  
WILLIAMS BROTHERS CONSTRUCTION COMPANY, INC.  
AND**

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## ARTICLE 1

### AGREEMENT

This Agreement is made this \_\_\_\_ Day of \_\_\_\_\_ in the year 2013 by and between

**WILLIAMS BROTHERS CONSTRUCTION COMPANY, INC.** ("Williams Brothers" or "Design-Builder")  
PO Box 66428  
Houston, Texas 77266

and

\_\_\_\_ ("Engineer")  
\_\_\_\_\_  
\_\_\_\_\_

for services in connection with the Project:

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

whose OWNER is:

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

Notice to the Parties shall be given at the above addresses.

## ARTICLE 2

### GENERAL PROVISIONS

Williams Brothers and the Owner have signed a Design Build Agreement (DBA), which is attached as Exhibit "A". In accordance with the DBA, Williams Brothers shall procure the services of licensed design professionals to provide the engineering services required to design the Project in accordance with Owner's requirements. Through this Agreement, Williams Brothers intends to contract with Engineer to provide the design and engineering services as set forth herein (the "Services").

#### 2.1 STANDARDS OF PERFORMANCE/TEAM RELATIONSHIP.

2.1.1. Engineer represents that it possesses the requisite skill, expertise, and licensing to perform the required Services in accordance with Engineer's Standard of Care, as defined in Section 3.2.1. Williams Brothers and Engineer agree to work together and shall take actions reasonably necessary to enable each other to perform this Agreement in a timely, efficient and economical manner.

2.2 CONTRACT DOCUMENTS. The contract documents for this Agreement shall be comprised of the following:

2.2.1. The Design Build Agreement Between Williams Brothers and Owner (Exhibit "A");

2.2.2. The Technical Provisions for the Project (Exhibit "F");

2.2.3. The Required DBA Provisions (Exhibit "G"), which are comprised of the following:

- 2.2.3.1. Federal Requirements in all Contracts,
- 2.2.3.2. TxDot's Disadvantaged Business Enterprise (DBE) Special Provisions,
- 2.2.3.3. Job Training/Small Business Opportunity Plan, and

2.2.4. This Agreement and its Exhibits.

Engineer shall make sure all of the provisions set forth in Section 2.5.3 are incorporated into any subcontract or consultant agreements.

2.3 WILLIAMS BROTHERS AND ENGINEER SHALL PERFORM THEIR OBLIGATIONS WITH INTEGRITY, INCLUDING BUT NOT LIMITED TO:

2.3.1. Conflicts of interest shall be avoided or disclosed promptly to the other Party; and

2.3.2. Engineer and Williams Brothers warrant that they have not and shall not pay nor receive any contingent fees or gratuities to or from the other Party, including their agents, officers and employees, subconsultants or others for whom they may be liable, to secure preferential treatment.

## 2.4 DEFINITIONS

2.4.1. **Engineer** is the person or entity identified as such in Article 1 and includes the Engineer's Representative as identified in this Agreement.

2.4.2. **Agreement** means this Agreement, including the Contract Documents set forth in 2.2, and exhibits set forth in Article 11, any written amendments to this Agreement as agreed to by the Parties, and the documents identified in Section 2.2. This Agreement governs the relationship between Williams Brothers and Engineer for the Project. In the event of a conflict between the terms of the DBA and this Agreement, the terms of this Design-Build Assistance Contract shall control.

2.4.3. **Basic Configuration** shall mean the following elements defining the Project as set forth in the Schematic Plan and as included in Exhibit "B":

2.4.3.1. the mainline horizontal and mainline vertical alignments,

2.4.3.2. number of lanes, excluding auxiliary lanes,

2.4.3.3. the general location of ramps,

2.4.3.4. the general location of interchanges and the type of interchanges, if any, and

2.4.3.5. the approved and conditionally approved Alternative Technical Concepts (ATCs).

2.4.4. **Construction Quality Assurance Plan or "CQAP"** shall mean the Owner's plan indicating times, locations and other conditions under which monitoring of construction activities are to be performed to maintain and ensure compliance with the DBA.

2.4.5. **Construction Quality Management Plan or "CQMP"** shall mean the Contractor's plan of policies, procedures, detailed responsibilities and systematic actions necessary to provide confidence in the quality management program and ensure the results meet the requirements of the DBA related to the final Project construction. The plan includes Contractor's internal quality control, an independent quality assurance and material testing and the Owner's CQAP and DQAP.



2.4.6. **Day** shall mean calendar day unless otherwise specifically designated.

2.4.7. **Design-Build Agreement ("DBA")** means the Design-Build Agreement between Williams Brothers and Owner together with its associated exhibits that define the Owner's Program for the Project.

2.4.8. **Design Quality Assurance Plan or "DQAP"** shall mean the Owner's plan indicating times, locations and other conditions under which monitoring of design activities are to be performed to maintain and ensure compliance with the DBA.

2.4.9. **Existing Design Plans** shall mean the plan set and files included in Technical Provisions of the DBA, as set forth in Exhibit "F".

2.4.10. **Governmental Approval** shall mean any permit, license, consent, authorization, waiver, variance or other approval, guidance, mitigation agreement, or memoranda of agreement/understanding, and any amendment or modification of any of them provided by Governmental Entities including State or federal regulatory agencies, agents, or employees, which authorize the Work, but excluding any such approvals given by or required from any Governmental Entity in its capacity as a utility owner or railroad owner.

2.4.11. **Governmental Entity** shall mean any federal, State or local government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity.

2.4.12. **Law or Laws** shall mean any statute, law, regulation, ordinance, rule, judgment, order, decree, permit, concession, grant, franchise, license, agreement, directive, guideline, policy requirement or other governmental restriction or any similar form of decision of or determination by, or any interpretation or administration of any of the foregoing by, any Governmental Entity, which is applicable to the Project, the Final Right of Way ("ROW"), and/or the Work, whether now or hereafter in effect, including Environmental Laws.

2.4.13. **Project** shall mean that certain improvement as identified in Article 1 and described in further detail in Technical Provisions of the DBA, as set forth in Exhibit "F".

2.4.14. **Schematic Plan** shall mean the roadway schematic plan for the design of the Project set forth in the Technical Provisions of the DBA.

2.4.15. **Services** shall mean the Scope of Services to be provided by Engineer to Williams Brothers as more particularly described in Paragraph 3.3.

2.4.16. **Williams Brothers' Work** or the **Work** shall mean the design and construction services required of Williams Brothers pursuant to the DBA with Owner. Engineer's Services are a portion of the Work.

2.4.17. **Worksite** or the **Site** means the geographical area of the Project at the location mentioned in Article 1.

2.5 EXTENT OF AGREEMENT. This Agreement represents the entire agreement between Williams Brothers and Engineer and supersedes all prior negotiations, representations and agreements, either written or oral.

## ARTICLE 3

### ENGINEER RESPONSIBILITIES

3.1 **OBLIGATIONS DERIVATIVE.** Williams Brothers and Engineer are mutually bound by the terms of this Agreement. To the extent that the terms of the DBA apply to the performance of Engineer's Services, then Williams Brothers assumes toward Engineer all the obligations, rights, duties, and remedies that the Owner assumes toward Williams Brothers. In an identical way, Engineer assumes toward Williams Brothers all the same obligations, rights, duties, and remedies that Williams Brothers assumes toward the Owner. In the event of an inconsistency among the documents, the specific terms of this Agreement shall govern.

#### 3.2 STANDARDS OF PERFORMANCE.

3.2.1. **Standard of Care.** Engineer covenants with Williams Brothers that the Engineer shall perform its Services consistent with the professional skill and care ordinarily provided by engineers practicing in the same or similar locality under the same or similar circumstances. The Engineer shall perform its Services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. Engineer shall and represents that (i) it will perform its Services in a good and workmanlike manner and in the most expeditious and economical manner consistent with the interests of Williams Brothers and the Owner, shall utilize its best skill, efforts and judgment in furthering the interests of the Owner, and shall furnish efficient business administration and supervision, and (ii) all such Services shall be in accordance with the prevailing standards of professional care for engineers regularly engaged in the design of similar structures, practicing under similar circumstances at the same time and in the same locality (collectively, the "Standard of Care").

3.2.2. **Technical Accuracy.** Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's Services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.

3.2.3. **Consultants.** Subject to Article 10, Engineer may employ such consultants as Engineer deems necessary to assist in the performance or furnishing of the Services, subject to reasonable, timely, and substantive objections by Williams Brothers. No agreement with any Engineer Consultant shall be effective unless and until Williams Brothers has approved it in writing. The Williams Brothers shall be deemed to be a third-party beneficiary of all agreements between the Engineer and any consultant that is engaged for the Project, and Williams Brothers may exercise the Engineer's rights against any such consultant to recover directly any damages resulting from the consultant's errors, omissions, negligent acts, or breaches of contract. Engineer shall bind its consultants in the same manner as Engineer is bound to Williams Brothers under this Agreement.

#### 3.2.4. **Compliance with Laws and Regulations, and Policies and Procedures.**

3.2.4.1. Engineer shall comply with applicable Laws and Regulations.

3.2.4.2. This Agreement is based on Laws and regulations as of the Effective Date. Changes after the Effective Date to these Laws and regulations may be the basis for modifications to Williams Brothers' responsibilities or to Engineer's Scope of Services, times of performance, or compensation provided that Engineer provides Williams Brothers with written notice within fourteen (14) days of the occurrence of the event giving rise to the potential claim and the Parties execute a written amendment to this Agreement granting the extension or increase in services or scope.

3.2.5. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Williams Brothers' and Owner's safety programs.

3.3 SCOPE OF SERVICES. Engineer shall perform the necessary design and engineering Services required by Williams Brothers for the Project, including coordination of design services of subcontractors who may be procured by Williams Brothers to provide services for certain Project elements. The Services to be provided by Engineer are more particularly described in the Scope of Services attached as Exhibit "C" to this Agreement. Exhibit "C" addresses design/engineering services for the Project as described in the Technical Provisions of the DBA, including modifications of those segments described in Williams Brothers' Technical Proposal to the Owner.

**3.3.1. Drawings and Approvals.**

3.3.1.1. Engineer shall design the Project in conformity with the Schematic Plan and the Basic Configuration (except for such changes approved by Owner), as set forth in the Technical Provisions of the DBA, in accordance with Engineer's Standard of Care and in accordance with the terms and conditions set forth herein, as required by applicable Laws, and pursuant to all Governmental Approvals. All of Engineer's Services shall be performed in accordance with the budgetary guidelines provided by Williams Brothers. Engineer shall not make any material change in the Basic Configuration except as approved by Williams Brothers, the Owner, with concurrence by Federal Highway Administration ("FHWA"), and authorized by a Change Order.

3.3.1.2. Owner will supply information related to Engineer and its Scope of Services under this Agreement, in support of requests from the Engineer through Williams Brothers.

**3.3.2. Shop Drawings.**

3.3.2.1. Engineer shall timely review and approve or otherwise respond to Williams Brothers' submittals, including shop drawings, product data and samples. Submittals shall be checked for conformance with the design and scope of the Project and for compliance with the Construction Documents.

3.3.2.2. Engineer shall deliver design submittals in accordance with the Scope of Services and the DBA Technical Provisions. [Engineer shall deliver to Williams Brothers a written certification by the Design Quality Assurance Manager of the Final Design Plans for the Project in accordance with DBA.]

3.3.2.3. Engineer has independently determined that the Schematic Plan represents a feasible concept for the design of the Project which can and shall be used as the basis for the Project Design to be furnished by Engineer, and agrees that it shall have no right to seek additional compensation or a time extension as a result of errors, omissions, inadequacies or inaccuracies in the Schematic Plan or the Existing Design Plans. Engineer acknowledges and agrees that it is capable of conducting and is obligated to conduct any and all studies, analyses and investigations as it deems advisable to verify or supplement the Schematic Plan and/or Existing Design Plans and that any use of said information is entirely at Engineer's own risk and at its own discretion.

3.3.2.4. The Schematic Plan is hereby incorporated by reference herein to the extent, and only to the extent, that it sets forth the Basic Configuration of the design of the Project. Accordingly, in general, Engineer may deviate from the Schematic Plan as it deems advisable, provided that it must obtain prior written approval by the Owner (with the concurrence of FHWA) and/or a Change Order hereunder with respect to any material deviation by Engineer from the Basic Configuration. Furthermore, Engineer's right to deviate from the Schematic Plan and the Basic Configuration is subject to Engineer's compliance with all applicable requirements of the DBA.

3.3.2.5. Engineer shall assist Williams Brothers to obtain all Governmental and Owner Approvals. Engineer shall undertake and assist Williams Brothers to properly perform all actions required by, and all actions necessary to maintain in full force and effect, all Governmental and

Owner Approvals, including providing performance criteria of all environmental mitigation and compliance measures required by the Contract Documents, Governmental Approvals and applicable Laws.

3.3.2.6. Approval by Williams Brothers or Owner shall not be deemed to be an assumption of responsibility by Williams Brothers or Owner for any error, inconsistency or omission in the drawings and specifications or other documents prepared by Engineer, its employees, subcontractors, agents or consultants, who shall be responsible for any such error, inconsistency or omission.

**3.3.3. Construction Phase.**

3.3.3.1. Owner and Williams Brothers shall have reasonable access to the Worksite at all times.

3.3.3.2. Engineer shall communicate with the Owner and Williams Brothers' subcontractors and suppliers only through Williams Brothers.

3.3.3.3. Engineer shall visit the Worksite at appropriate intervals pursuant to such schedule as the Parties may establish by attachment to this Agreement, to become generally familiar with the quality of the construction and to determine in general if the construction is proceeding in accordance with the Construction Documents. On the basis of these on-site observations, Engineer shall endeavor to guard Williams Brothers against defects or deficiencies in the construction; provided however that Engineer shall have no liability for such defects or for the failure to detect any such defects. After each Worksite visit, Engineer shall promptly provide Williams Brothers with copies of all notes and field reports. If Engineer becomes aware of any such defects, deficiencies or violations, it shall give prompt written notice to Williams Brothers. Engineer shall not be responsible for construction means, methods, techniques, sequences and procedures, unless they are specified by Engineer, or for ensuring that the Work is in accordance with the Construction Documents.

3.3.3.4. Engineer is not responsible for safety precautions and programs. However, if Engineer becomes aware of safety violations, Engineer shall give prompt written notice to Williams Brothers. Provided however, that Engineer shall have no liability for any such safety violations.

3.3.3.5. Engineer shall assist Williams Brothers and Owner with obtaining permits or other authorizations by preparing documents resulting from Engineer's Scope of Services.

3.3.3.6. Engineer shall not be responsible for the acts or omissions of Williams Brothers or any of its subcontractors, or their agents or employees, or any other persons performing Work on the Project who are not under the direct control or authority of Engineer.

3.3.3.7. Engineer shall attend meetings in the San Antonio, Austin, and Houston metropolitan areas with the Owner and Williams Brothers upon request of Williams Brothers or Owner.

3.3.3.8. All direction with respect to the Project shall be provided by Williams Brothers, provided that nothing in this provision shall limit the authority of Engineer to give direction or to take such action which, in the opinion of Engineer, is necessary to remove an immediate and present threat to the safety of life or property.

3.3.3.9. All of the Services to be provided by Engineer shall be rendered in accordance with the Schedule in Exhibit "D" so as not to delay Williams Brothers.

3.4 ADDITIONAL SERVICES. Services not explicitly included within the Scope of Services set forth in Paragraph 3.3 or in Exhibit "C" are considered Additional Services. Compensation for Additional Services will be negotiated between Williams Brothers and Engineer before Williams Brothers issues authorization to proceed with the Additional Services. Under no circumstances shall Engineer proceed with Additional Services unless or until an authorization to do so is issued by Williams Brothers. Additional Services include but are not limited to:

3.4.1. Development of the Owner's Program, Project budgeting, investigating sources of financing, general business planning and other information and documentation as may be required to establish the feasibility of the Project.

3.4.2. Consultations, negotiations, and documentation supporting the procurement of Project financing.

3.4.3. Appraisals of existing equipment, existing properties, new equipment and developed properties.

3.4.4. Consultations and representations before Governmental Entities or others having jurisdiction over the Project other than normal assistance in securing permits.

3.4.5. Artistic renderings, models and mockups of the Project or any part of the Project.

3.4.6. Making revisions to plans and reports after they have been approved by the Williams Brothers and Owner, and which are due to causes beyond the control of Engineer.

3.4.7. Design, coordination, management, expediting and other services supporting the procurement of materials to be obtained, or Work to be performed, by the \_\_\_\_\_ including but not limited to telephone systems, computer wiring networks, sound systems, alarms, security systems and other specialty systems which are not a part of this Agreement.

3.4.8. Estimates, proposals, appraisals, consultations, negotiations and services in connection with the repair or replacement of an insured loss.

3.4.9. Document reproduction exceeding the Scope of Services (Exhibit "C") of this Agreement.

3.4.10. Out-of-town travel by Engineer in connection with Services except between Engineer's offices, Williams Brothers offices, Owner's offices and the Worksite.

3.4.11. Obtaining service contractors and training maintenance personnel; assisting and consulting in the use of systems and equipment after the initial start up except to the extent required by the warranty provided by Engineer in Subparagraph 3.7.

3.4.12. Services requested by Williams Brothers which are not specified in this Agreement and which are not normally part of generally accepted design and construction practice.

3.4.13. Providing Services relating to Hazardous Material discovered at the Worksite.

3.5 OWNER MEETINGS. Engineer shall be required, without additional charge and not as an Additional Service, to attend and participate in any meetings between Williams Brothers and Owner, upon Owner's request, concerning matters pertaining to Engineer's Services and scope of work, provided that all direction to Engineer shall be provided by Williams Brothers, and provided further that nothing in this Section 3.5 shall limit the authority of Owner to give such direction or take such action which, in its sole opinion, is necessary to remove an immediate and present threat to the safety of life or property.

3.6 QUALIFICATIONS. Engineer warrants and represents that Engineer and its consultants and subcontractors are duly qualified, licensed, registered and authorized by law to perform the Services. Throughout the term of this Agreement, Engineer shall, and shall require its consultants to, maintain all required authority, license status, professional ability, skills and capacity to perform the design and engineering Services hereunder and shall perform them in accordance with the requirements of this Agreement and the DBA.

3.7 ENGINEER'S REPRESENTATIVE. Engineer's representative is

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

3.8 WARRANTIES.

3.8.1. As used herein, "Pre-Tender Services" refers to the preliminary engineering performed to a level of approximately thirty percent (30%) complete, from which Williams Brothers prepared its estimates and its bid to the Owner for the Project. Williams Brothers acknowledges that the Pre-Tender Services reflect a very preliminary design effort which was purposefully limited. Therefore, it is understood that Engineer shall not be liable for any costs or expenses incurred by Williams Brothers as a result of its reliance upon the Pre-Tender Services. Engineer shall not bear any responsibility or liability for design documents issued prior to the Issued For Construction (IFC) version of such documents except as set forth in Subparagraph 3.7.2. Engineer liability arising from the IFC documents is addressed in Subparagraph 3.7.2.

3.8.2. Engineer shall perform its Services in accordance with its Standard of Care. If the Services provided hereunder do not conform to the Engineer's Standard of Care and the same is reported to Engineer by Williams Brothers in writing promptly after recognition thereof and no later than two (2) years after the Owner's acceptance of the Project, Engineer shall, at no cost to Williams Brothers, re-perform the Services as necessary to eliminate the nonconformity as soon as reasonably possible after receipt of such report from Williams Brothers. Any liability for costs related to the repair, replacement, addition or deletion of materials, equipment or facilities as a result of such failure to conform to the above-referenced Standard of Care (which costs shall be deemed costs of the Project whether incurred during performance of the Services or after completion of the Services), shall be borne by the Engineer.

3.8.3. Engineer shall not be responsible for any deficiency which arises due to ordinary wear and tear, corrosion or erosion, operating conditions more severe than those contemplated in the original design, or a defect in a process, design or equipment furnished or specified by Williams Brothers or others.

3.8.4. All representations, warranties and guarantees made by Engineer in connection with its Services are limited to those set forth in this Article. Implied warranties of merchantability and fitness for a particular purpose are specifically excluded.

3.8.5. Engineer shall obtain from all sub-subcontractors and consultants and cause to be extended to Williams Brothers and Owner for periods at least coterminous with the warranties given by Engineer, appropriate representations, warranties, guarantees and obligations with respect to design, materials, workmanship, equipment, tools, supplies and other aspects of the Services and work furnished by such sub-subcontractors and consultants. All representations, warranties, guarantees and obligations (a) shall be written so as to survive all inspections, tests and approvals hereunder, and (b) shall run directly to and be enforceable by Engineer, Williams Brothers and/or their respective successors and assigns. Engineer assigns to Williams Brothers and Owner all of Engineer's rights and interest in all extended warranties for periods exceeding the applicable warranty period which are received by Engineer from any of its sub-subcontractors or subconsultants. To the extent that any Engineer warranty or guaranty would be voided by reason of Engineer's negligence in incorporating material or equipment into the Project, Engineer shall be responsible for correcting such defect.

3.8.6. Engineer has, in accordance with its Standard of Care, reviewed the exploratory geotechnical information, inspected and, to the extent access was made available by Williams Brothers, examined the Site and surrounding locations and undertaken other activities sufficient to familiarize itself with surface conditions and subsurface conditions discernible from the surface affecting the Project to the extent Engineer deems necessary or advisable for performing its obligations under this Agreement. Engineer acknowledges and agrees that it has been afforded the opportunity to review information and documents and, to the extent access was made available by Williams Brothers, to conduct inspections and tests of the Site and surrounding locations as described above. Before commencing any work on a particular portion or aspect of the Project, Engineer shall verify all governing dimensions of the Site and shall examine all adjoining work (including adjacent work) which may have an impact on such work. Engineer shall ensure that the Design Documents and Construction Documents accurately depict all governing and adjoining dimensions.

3.8.7. Engineer acknowledges and agrees that it has familiarized itself with the requirements of any and all applicable Laws and the conditions and schedules contained in all Governmental Approvals prior to entering into this Agreement. Engineer shall comply with the foregoing at its sole cost and expense and without any increase in Compensation for Services or extension of any deadline in the Schedule attached as Exhibit "D".

3.8.8. Engineer shall comply with all requirements of the approved Design QMP and the Construction QMP and all requirements of the CQAP.

3.8.9. All design and engineering work performed by Engineer shall be performed by or under the supervision of persons licensed to practice architecture, engineering or surveying, as applicable, in the State, by personnel who are skilled, experienced and competent in their respective trades or professions, who are professionally qualified to perform the Services in accordance with the Standard of Care, this Agreement, Governmental Approvals and applicable Law and who shall assume professional responsibility for the accuracy and completeness of the documents prepared or reviewed by them.

3.8.10. At all times, including during the course of performance hereunder Engineer shall perform as directed by Williams Brothers, in a diligent manner and without delay, shall abide by Williams Brothers decision or order, and shall comply with all applicable provisions of this Agreement and the DBA.

### 3.9 REPRESENTATIONS

3.9.1. Engineer is duly qualified to do business and is in good standing under the Laws of the State of Texas and will remain in good standing throughout the term of this Agreement and for as long thereafter as any obligations remain outstanding under this Agreement.

3.9.2. Engineer has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to execute and deliver this Agreement and to perform each and all of the obligations of Engineer provided for herein.

3.9.3. Engineer has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under, this Agreement. Each individual executing this Agreement or any other Contract Documents on behalf of Engineer or any of its members has been or will at such time be duly authorized to execute each such document on behalf of such Person.

3.9.4. Neither the execution and delivery of this Agreement by Engineer, nor the compliance by Engineer with any provision herein, nor the consummation of the transactions contemplated herein by Engineer shall violate or conflict with, or result in a breach of, any provisions of the organizational documents of Engineer, any other agreements and instruments to which Engineer is a party or by which any such person is bound, or any Law applicable to Engineer.

3.9.5. No consent or approval of, filing with or notice to any person is required to be obtained or made by in connection with Engineer's execution, delivery and performance of this Agreement, or the consummation of the transactions contemplated herein, which, if not obtained or made, would prevent Engineer from performing its obligations hereunder or thereunder.

3.9.6. In entering into this Agreement, Engineer has not relied on any representation, warranty, promise or statement, express or implied, of Williams Brothers, or anyone acting for or on behalf of Williams Brothers other than as expressly set forth in this Agreement.

### 3.10 PROJECT PERSONNEL.

3.10.1. KEY PERSONNEL. The key project personnel whom Engineer will assign are as set forth in Exhibit "E" of this Agreement. Such personnel shall not be changed without notifying Williams Brothers and ultimately obtaining the approval of the Owner using the replacement process required by the DBA, such approval not to be unreasonably withheld.

3.10.2. PROJECT STAFF. Engineer agrees that during the performance of the Services hereunder, adequate provision shall be made to staff and retain the services of such competent personnel as may be appropriate or necessary for the performance of such Services. Williams Brothers shall have the right to review the personnel assigned by Engineer, and Engineer shall remove any personnel not acceptable to Williams Brothers. Subject to Section 3.10.1, Engineer may remove personnel assigned to the Project without Williams Brothers' prior approval, provided the progress of the Project shall not be impaired.

**3.11 ROYALTIES, PATENTS AND COPYRIGHTS.** Engineer shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods or systems selected by Engineer and incorporated in the Work. **ENGINEER SHALL DEFEND, INDEMNIFY AND HOLD THE OWNER AND WILLIAMS BROTHERS HARMLESS FROM ALL SUITS OR CLAIMS FOR INFRINGEMENT OF ANY PATENT RIGHTS OR COPYRIGHTS ARISING OUT OF SUCH SELECTION. THE OWNER AND WILLIAMS BROTHERS AGREE TO DEFEND, INDEMNIFY AND HOLD ENGINEER HARMLESS FROM ANY SUITS OR CLAIMS OF INFRINGEMENT OF ANY PATENT RIGHTS OR COPYRIGHTS ARISING OUT OF ANY PATENTED OR COPYRIGHTED MATERIALS, METHODS OR SYSTEMS SPECIFIED BY THE OWNER OR WILLIAMS BROTHERS.**

### 3.12 CONFIDENTIALITY.

3.12.1. Except to the extent such information is required to be produced pursuant to Section 21 of the DBA, Williams Brothers and Engineer shall not disclose to any person or persons outside their respective companies or to any person or persons within their companies not having a need to know for the purposes of this Agreement and the pursuit and performance of the Project, any information or data:

3.12.1.1. which is submitted in writing and designated by an appropriate stamp, marking or legend thereon to be of proprietary nature; or

3.12.1.2. which is orally designated to the receiving Party as proprietary, provided that the oral designation is confirmed in writing within five (5) working days of the oral designation; or

3.12.1.3. which is of a financial (i.e., labor rates, indirect rates, etc.), personal, or business nature; or

3.12.1.4. developments, confidential information, know-how, discoveries, production methods, estimating systems and historical and parameter cost data that may be disclosed in connection with the performance of this Agreement.



3.12.2. Both Williams Brothers and Engineer shall take appropriate action to provide for the safekeeping of proprietary information in accordance with Paragraph 3.12 above.

3.12.3. Neither Williams Brothers nor Engineer shall be liable for disclosure of any such proprietary information if the same is disclosed by the receiving party with the prior written approval of the originating party.

3.12.4. Received proprietary information may be used in the performance of any awarded subcontract for this Project only if the disclosing Party is awarded a contract or subcontract for this Project and authorizes in writing the use of such information.

3.12.5. Williams Brothers' and Engineer's obligation to protect previously exchanged proprietary information in accordance with this Agreement shall survive any termination of this Agreement for a period of seven (7) years from the date of this Agreement.

3.12.5.1. The obligations of Paragraph 3.10 do not apply to information which:

3.12.5.1.1. is known to the receiving Party prior to disclosure by the disclosing Party, as demonstrated by competent proof;

3.12.5.1.2. is in the public domain at the time of disclosure or later enters the public domain through no fault of the disclosing Party;

3.12.5.1.3. is disclosed to the receiving Party by a third party under no obligation of confidentiality to the disclosing Party; or

3.12.5.1.4. is independently developed by either Party.

## **ARTICLE 4**

### **WILLIAMS BROTHERS' RESPONSIBILITIES**

#### **4.1 INFORMATION AND SERVICES PROVIDED BY WILLIAMS BROTHERS.**

4.1.1. To the extent Williams Brothers has obtained the information and services identified below from the Owner, Williams Brothers shall provide them to Engineer in a timely manner. Engineer shall be entitled to rely on such information and services to the same extent as Williams Brothers. However, Williams Brothers does not warrant the accuracy or completeness of such information or services. All available information describing the physical characteristics of the Worksite, including surveys, Worksite evaluations, legal descriptions, existing conditions, subsurface and environmental studies, reports and investigations all as set forth in the DBA.

4.1.2. Inspection and testing services during construction as required by Law or as mutually agreed.

4.1.3. Unless otherwise provided in the Contract Documents, necessary approvals, site plan review, rezoning, easements and assessments, fees and charges required for the construction, use, occupancy or renovation of permanent structures, including legal and other required services.

4.1.4. Engineer shall have the right, upon request, to receive from Williams Brothers such information as Williams Brothers has obtained relative to the Owner's financial ability to pay for the Project.

4.2 Williams Brothers shall be responsible for the preparation of budgets, cost estimates and construction schedules.

4.3 Williams Brothers shall be primarily responsible for providing required Project documentation to the Owner pursuant to the DBA.

4.4 Williams Brothers shall have the lead role in permits and approvals.

4.5 Williams Brothers shall promptly report to Engineer errors, inconsistencies and omissions it discovers in the Construction Documents; however, nothing in this Paragraph shall relieve Engineer of responsibility for its own errors, inconsistencies and omissions.

4.6 Williams Brothers shall provide Engineer with a list of all consultants and subcontractors retained by Williams Brothers to perform services for the Project.

4.7 DESIGN-BUILDER'S REPRESENTATIVE. Williams Brothers' representative is:

Leon Wright  
Williams Brothers Construction Co., Inc.  
PO Box 66428  
Houston, Texas 77266-6428  
832-435-3848  
[lwright@wbctx.com](mailto:lwright@wbctx.com)

## ARTICLE 5

### SCHEDULE/DELAYS/DAMAGES

5.1 Engineer shall provide the Services required by this Agreement at such reasonable times as will enable Williams Brothers to complete its Work in accordance with the schedules established by Williams Brothers. The Services shall be undertaken and completed in accordance with the Project Schedule approved by the Owner and Williams Brothers in writing, as revised and updated from time to time.

5.2 DELAYS. If Engineer fails to complete any of the Services within the times required by the Schedule in Exhibit "D" and the Owner assesses liquidated damages against Williams Brothers pursuant to the DBA, Engineer shall be liable for such liquidated damages to the extent that the delay on the part of Engineer directly impacts the critical path of the CPM schedule that Williams Brothers and Owner have mutually agreed upon and that the Owner uses to judge Williams Brothers' progress and assess damages. However, Engineer's liability for such liquidated damages will not exceed \$ \_\_\_\_\_ in the aggregate and Engineer shall have no other liability for any delay damages claimed by Williams Brothers or the Owner. In addition, Engineer shall provide Services at its own cost, including overtime costs required to make up schedule delays plus expenses as are necessary to make up for time lost by Williams Brothers because of such delay. Williams Brothers shall provide prompt written notice to Engineer of such delay after Williams Brothers first recognizes the delay. Nothing contained herein shall restrict or otherwise prohibit the ability of Williams Brothers to pursue all actual and direct damages relating to or arising out of any negligence or professional errors or omissions by Engineer, or its consultants, in the performance of the Services ("Professional Errors").

5.2.1. DELAYS CAUSED SOLELY BY WILLIAMS BROTHERS. If Engineer is delayed in the performance of Services by actions or inactions of Williams Brothers, or by changes ordered by Williams Brothers, which are due to causes beyond Engineer's control and which are **not** related to Force Majeure or the actions or inactions, whether in whole or in part, by Engineer, then the time allotted in Exhibit "D" shall be extended for the period of such delay and/or Williams Brothers may authorize Engineer to work overtime to make up such lost time. If authorized by Williams Brothers, such overtime will be treated as an Additional Service and Engineer shall be entitled to additional compensation. Engineer shall provide prompt written notice of such delay after Engineer first recognizes such delay.

5.2.2. DELAYS BY OWNER. If Owner is delayed in the performance of Services by Williams Brothers due to or as a result of any actions or inactions of Owner in whole or in part, or by changes

ordered by Owner, extensions of time and/or compensation for Additional Services or overtime shall be approved by Williams Brothers for that portion of time and costs of delay incurred by Owner, **but only** to the extent (i) extensions of time and/or additional compensation is awarded to Williams Brothers by Owner as allowed under Sections 14 of the DBA and (ii) the time extensions and costs awarded to Williams Brothers directly relates to the delays incurred by Owner.

5.2.3. DELAYS CAUSED BY FORCE MAJEURE. Any delays in or failure of performance by Engineer shall not constitute a breach or default hereunder if and to the extent such delays or failures of performance are caused by a Force Majeure Event, as that term is defined in the DBA and provided such event(s) are beyond the control of Engineer and/or its consultants and are not due to an act, omission, negligence, recklessness, willful misconduct, breach of contract or Law by Engineer or its consultants and could not have been avoided by the exercise of caution, due diligence or reasonable efforts on the part of Engineer and/or its consultants. In the event a Force Majeure Event occurs, Engineer shall be entitled to a reasonable extension of time for performance of the Services, **but only** if and to the extent said extension of time is afforded Williams Brothers by Owner. Under no circumstances shall Engineer be entitled to an increase in compensation as a result of a Force Majeure Event.

### 5.3 MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES

5.3.1. Williams Brothers and Engineer waive claims against each other for contingent consequential or special damages, whether arising in contract, warranty, tort (including negligence), strict liability or otherwise, including but not limited to losses of use, revenue, profits, business, reputation or financing, operating costs and facility downtime; or other similar business interruption losses, however the same may be caused. Such waiver of damages also includes, but is not limited to claims related to or arising out of Owner's loss of use of the Project, any rental expenses incurred, loss of income, profit or financing related to the Project, as well as to the extent provided in the DBA, damages for loss of business, loss of financing, principal office overhead and expenses, loss of profits not related to this Project, or loss of reputation. Williams Brothers and Engineer further agree to waive damages including but not limited to loss of business, loss of financing, principal office overhead and expenses, loss of profits not related to this Project or loss of reputation. Similarly, Williams Brothers and Engineer shall obtain from its subconsultants mutual waivers of consequential damages that correspond to the waiver of consequential damages in this Agreement. To the extent applicable, this mutual waiver applies to consequential damages due to termination by Williams Brothers or the Owner in accordance with this Agreement or the DBA. Nothing contained in this Subparagraph 5.3.1 shall be deemed to preclude an award of actual, direct, or liquidated damages, when applicable, in accordance with the other provisions of this Agreement.

5.4 LIMITATION OF LIABILITY. Excluding its liability to third parties for bodily injury and property damage, the total aggregate liability of Engineer arising out of the performance or breach of this Agreement shall not exceed the aggregate amount of \_\_\_\_\_.

5.4.1. The limitations and exclusions of liability set forth in this Article shall apply regardless of the fault, breach of contract, tort (including negligence), strict liability or otherwise of Engineer or Williams Brothers or their respective subcontractors. All limitations and exclusions of liability in this Agreement that apply for the benefit of Engineer shall also apply for the benefit of Engineer's parent and affiliated companies, and the employees, officers and directors of each of them, without any increase of the stated limits.

5.4.2. The provisions of this Article shall also apply to the termination of this Agreement and shall survive such termination.

## ARTICLE 6

### ENGINEER'S COMPENSATION AND PAYMENTS

6.1 COMPENSATION FOR SCOPE OF SERVICES.

6.1.1. For Scope of Services as described in Paragraph 3.3, Williams Brothers shall compensate Engineer on the following basis, including applicable sales taxes:

6.1.1.1. Monthly, based on Exhibit "H" – Payment Schedule (not to exceed) in accordance with Paragraph 6.2.

6.1.1.2. Insurance will be compensated with the monthly draw based on presentation of a paid invoice. The total aggregate amount of insurance that is reimbursable will not exceed \$480,000.00 per Exhibit "H".

6.1.2. Engineer shall be compensated for Additional Services as described in Paragraph 3.4 on the following basis:

6.1.2.1. A negotiated lump sum basis for the defined added scope or

6.1.2.2. By the hour per the rate schedule included in Exhibit "H".

6.1.2.3. Engineer's billings for Additional Services for the benefit of Williams Brothers shall include a maximum multiplier of 2.4 (2.4 times direct costs). All other costs such but not limited to indirects, subcontractors, etc. shall not include any multiplier.

## 6.2 PAYMENTS.

### 6.2.1. PROGRESS PAYMENTS.

6.2.1.1. Engineer shall submit to Williams Brothers for its approval monthly applications for payment. Along with each application for payment, Engineer shall provide a Conditional Waiver and Release on Progress Payment from Engineer and each of its consultants covering the period applicable to the submitted pay application. Engineer and its consultants will also provide an Unconditional Waiver and Release on Progress Payment covering previously funded applications for payment.

6.2.1.2. Williams Brothers shall submit approved applications for payment together with its own to the Owner.

6.2.1.3. Payment of all undisputed amounts funded by the Owner shall be made within ten (10) Days of Williams Brothers' receipt of payment from the Owner for the amount approved on Engineer's application.

6.2.2. PAYMENTS TO CONSULTANTS/SUBCONTRACTORS. Engineer shall promptly pay each subcontractor or consultant for Services performed on the Project no later than seven (7) Days after receipt of payment for such Services from Williams Brothers, the amount to which such subcontractor or sub-consultant is entitled, less any retainage provided for in the subcontract, as well as any other offsets and deductions provided in the subcontract or by Law. Engineer further agrees to pay retainage to each subcontractor or sub-consultant within seven (7) Days after the subcontractor's/consultant's work is satisfactorily completed.

### 6.2.3. RIGHT OF OFFSET.

6.2.3.1. Should there be any claim, obligation or lien asserted before or after final payment is made that arises from the performance of the Services, Engineer shall reimburse Williams Brothers for any costs and expenses including deductions to payment due made by Engineer, including attorneys' fees, costs and expenses, incurred by Williams Brothers in satisfying, discharging or defending against any such claim, obligation or lien, including any

action brought or judgment recovered, provided Williams Brothers is making payments or has made payments to Engineer in accordance with the terms of this Agreement.

6.2.3.2. Should Engineer or its consultants or subcontractors cause damage to the Project, or fail to perform or otherwise be in default under the terms of this Agreement, Williams Brothers shall have the right to withhold from any payment due or to become due, or otherwise be reimbursed for, an amount sufficient to protect the Owner and Williams Brothers from any loss that may result. Payment of the amount withheld shall be made when the grounds for the withholding have been removed.

6.2.4. FINAL PAYMENT.

6.2.4.1. Prior to final payment, Engineer shall furnish evidence satisfactory to Williams Brothers that there are no claims, obligations or liens outstanding in connection with the Services provided by Engineer, including, but not limited to, a Conditional Waiver and Release on Final Payment from Engineer and each of its consultants and subcontractors.

6.2.4.2. Acceptance of final payment shall constitute a waiver of all claims by Engineer for compensation for the Services performed.

6.2.5. EXPENSE RECORDS. Expense records of Engineer's personnel, consultants, subcontractors and services shall be maintained in accordance with generally accepted accounting principles and shall be available to Williams Brothers at mutually convenient times.

6.2.6. All invoices shall be submitted to:

Williams Brothers Construction Company  
PO Box 66428  
Houston, Texas 77266  
Attention: Ms. Elizabeth Vincent, CFO

## ARTICLE 7

### INDEMNITY, INSURANCE, AND WAIVER OF SUBROGATION

#### 7.1 INDEMNITY.

7.1.1. **GENERAL.** TO THE FULLEST EXTENT PERMITTED BY LAW, ENGINEER HEREBY INDEMNIFIES AND HOLDS HARMLESS WILLIAMS BROTHERS, ITS SUBCONTRACTORS, OWNER, AND THEIR PARTNERS, AFFILIATED COMPANIES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, REPRESENTATIVES AND PROJECT CONSULTANTS (THE "INDEMNITEES") FROM AND AGAINST ANY AND ALL DAMAGES, LOSSES, COSTS AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES AND COSTS, INCURRED BY INDEMNITEES TO THE EXTENT THEY ARE:

7.1.1.1. DUE TO THE INTENTIONAL OR NEGLIGENT VIOLATION OF ANY ORDINANCE, REGULATION, STATUTE, OR OTHER LEGAL REQUIREMENT BY ENGINEER OR ANY OF ITS CONSULTANTS, SUBCONSULTANTS, OR ANY OF THEIR AGENTS AND EMPLOYEES, AS TO THE PERFORMANCE OF THE AGREEMENT;

7.1.1.2. THE RESULT OF ANY NEGLIGENT ACT OR OMISSION OR ANY INTENTIONAL ACT OR OMISSION IN VIOLATION OF ENGINEER'S STANDARD OF CARE, BY THE ENGINEER, A CONSULTANT, A SUBCONSULTANT OR ANYONE

**DIRECTLY OR INDIRECTLY EMPLOYED BY THE ENGINEER OR ANYONE FOR WHOSE ACTS THE ENGINEER MAY BE LIABLE; OR**

**7.1.1.3. OTHERWISE ARISING OUT OF OR RESULTING FROM NEGLIGENT PERFORMANCE OF THE SERVICES UNDER THIS AGREEMENT, INCLUDING SUCH CLAIMS, DAMAGES, LOSSES OR EXPENSES THAT ARE ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF PROPERTY, INCLUDING LOSS OF USE RESULTING THEREFROM.**

**7.1.1.4. ENGINEER SHALL NOT BE LIABLE TO THE INDEMNITEES FOR ANY LOSSES, EXPENSES, OR COSTS INCURRED BY THE INDEMNITEES TO THE EXTENT OF THE INDEMNITEES' NEGLIGENCE.**

**7.1.2. INDEMNIFICATION FOR EMPLOYEE INJURY CLAIMS. WITHOUT LIMITING THE FOREGOING, AND TO THE FULLEST EXTENT PERMITTED BY LAW, ENGINEER HEREBY AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE INDEMNITEES FROM AND AGAINST ALL DAMAGES, LOSSES, COSTS, AND EXPENSES, INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES, INCURRED BY THE INDEMNITEES IN CONNECTION WITH ANY ACTION AGAINST THE INDEMNITEES FOR BODILY INJURY OR DEATH AT THE PROJECT SITE OF ANY EMPLOYEE OF THE ENGINEER OR ANY OF ENGINEER'S CONSULTANTS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, BROUGHT BY SUCH INJURED EMPLOYEE OR THE EMPLOYEE'S WORKERS COMPENSATION INSURANCE CARRIER (HEREINAFTER REFERRED TO AS AN "EMPLOYEE INJURY CLAIM") TO THE EXTENT SUCH CLAIM ARISES OUT OF THE SERVICES PROVIDED BY, OR IS CAUSED BY, IN WHOLE OR IN PART, ENGINEER OR SOMEONE ACTING ON ENGINEER'S BEHALF. TO THE EXTENT ENGINEER UNDERTAKES A DEFENSE OF AN EMPLOYEE INJURY CLAIM AND AN INDEMNITEE IS LATER FOUND TO HAVE BEEN NEGLIGENT OR AT FAULT, THE INDEMNITEE SHALL BEAR RESPONSIBILITY FOR THE ATTORNEYS' FEES AND RELATED EXPENSES INCURRED BY ENGINEER ON BEHALF OF THE INDEMNITEE EQUAL TO THE PRODUCT OF THE FOLLOWING EQUATION: TOTAL FEES MULTIPLIED BY THE INDEMNITEE'S PERCENTAGE OF NEGLIGENCE OR FAULT.**

**7.1.3. INDEMNIFICATION FOR COPYRIGHT INFRINGEMENT CLAIMS. IN ADDITION TO THE INDEMNIFICATION PROVIDED IN 7.1.1 AND 7.1.2 ABOVE, ENGINEER HEREBY INDEMNIFIES, AND HOLDS HARMLESS the INDEMNITEES FROM AND AGAINST ANY CLAIM, DAMAGE, LOSS, OR EXPENSE (INCLUDING BUT NOT LIMITED TO INDEMNIFIED PARTIES'/PARTY'S ATTORNEYS' FEES) ARISING OUT OF OR RELATING TO ANY INFRINGEMENT OF A PATENT, TRADEMARK, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHT IN CONNECTION WITH THE INSTRUMENTS OF SERVICE FURNISHED BY OR THROUGH ENGINEER OR ITS CONSULTANTS ESTABLISHED AT LAW AS VALID, EXCEPT TO THE EXTENT THE INFRINGEMENT IS CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OF THE INDEMNITEE.**

**7.1.4. Notwithstanding the foregoing, Engineer shall not be liable to Williams Brothers or any Indemnatee for any losses, expenses, or costs incurred by the parties indemnified hereunder to the extent of their negligence or that of their contractors or their subcontractors. Further, in the event that the Williams Brothers or any other Indemnatee is found, by final judgment or arbitration award, to be negligent or at fault in whole or in part, the indemnity and hold harmless obligation of the Engineer with regard to attorney's fees and litigation or arbitration costs and expenses incurred by such Indemnatee in defense of such claim shall be reduced by the percentage of negligence or fault of the Indemnatee and/or their agents or employees.**

**7.1.5. With regard to claims against any party seeking indemnity under this Section which are made by an employee of the Engineer, a consultant, a sub-consultant or anyone directly or indirectly**

employed by the Engineer or anyone for whose acts the Engineer may be liable, the indemnification obligation assumed under this Section shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Engineer or any other employer under worker's compensation acts, disability benefit acts or other similar employee benefit acts.

7.1.6. It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligations under this Section 7.1 or the Additional Insured requirements in this Article 7, such legal limitations are made a part of the contractual obligations and shall operate to amend the obligations to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the obligations shall continue in full force and effect. Should any provision or any part of any provision of this Agreement be held invalid, unenforceable or contrary to public policy, law, statute or ordinance, then the remainder of the provision, paragraph, Section and/or Agreement shall not be affected thereby and shall remain valid and fully enforceable.

7.1.7. **The obligations contained in this Article 7 shall survive the expiration, completion, abandonment and/or termination of the Agreement and final completion of the Work and any other services to be provided pursuant to this Agreement to the extent and for the time periods provided allowed under Texas law.**

## 7.2 INSURANCE.

7.2.1. Before commencing its Services and as a condition of payment, Engineer shall purchase and maintain such insurance as will protect it from the claims arising out of its operations under this Agreement, whether such operations are by Engineer or any of its consultants or subcontractors or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

7.2.2. Engineer shall maintain in effect all insurance coverage required under Subparagraph 7.2.2 with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located and which is reasonably satisfactory to Williams Brothers.

7.2.2.1. **Workers' Compensation and Employers' Liability Insurance.** Engineer shall maintain workers' compensation insurance within the statutory limits required under the applicable Laws; and employer's liability insurance in the amount of \$1,000,000 each employee for bodily injury by accident, \$1,000,000 each employee for bodily injury by disease, and \$1,000,000 per disease aggregate policy limit, or within the statutory limits required under the applicable Laws, whichever is greater. The alternate employer endorsement coverage to all states operation on an "if any" basis shall be attached showing Williams Brothers in the schedule as the alternate employer, and shall insure against liability for the death, bodily injury, illness or disease of all employees of Subcontractor working on or about the Site or otherwise engaged in the Work. Engineer waives all rights against Williams Brothers and the Indemnites (as defined in Section 7.1) for recovery of damages to the extent such damages are covered by the workers' compensation/employer's liability insurance obtained by Engineer hereunder.

7.2.2.2. **Commercial General Liability.** Engineer shall maintain commercial general liability ("CGL") insurance with a limit of not less than \$1,000,000 each occurrence with a \$2,000,000 general aggregate. Coverage shall be provided on ISO occurrence form CG 00 01 or a substitute form providing equivalent coverage. The CGL insurance general aggregate limit shall apply separately to this Project. CGL insurance shall cover liability including, but not limited to, liability arising from premises, operations, independent contractors, products-completed operations, property damage, personal injury, and Contractual Liability specifically in support of, but not limited to, the indemnity section of the Agreement and all other insurable provisions of the Agreement. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs maintained by Williams Brothers. Engineer waives all rights against Williams Brothers and Indemnites for recovery of damages to the extent these damages are covered by the CGL insurance maintained hereunder. Coverage shall be maintained as specified



herein for **at least two (2) years following substantial completion of the Services**. There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from explosion, collapse, underground property damage, or site-related employment practices.

**7.2.2.3. Professional Liability Insurance.** In addition to other insurance required by statute or under the terms of this Agreement, Engineer shall provide professional liability insurance consistent with Section 6 of Exhibit 14 of the DBA, with policy a limit of no less than \$2,000,000 per claim and in the aggregate issued by an insurance carrier approved in advance by the Owner and authorized to do business in the State where the Project is located, for negligent acts, errors, and omissions by Engineer and other consultants and employees, that arise out of this Agreement, including coverage for contingent bodily injury or property damage, with a deductible not to exceed \$ \_\_\_\_\_. Upon execution of this Agreement and at every date of renewal of that policy, the Engineer shall cause a Certificate of Insurance to be issued. Provision of a valid Certificate of Insurance that meets the requirements of this Agreement is a condition precedent to the payment of any amounts due the Engineer by the Owner. The policy shall have a retroactive date no later than the date on which the **RFDP Documents** were issued and shall have a five-year extended reporting period from the date of Final Acceptance with respect to claims or suits which were not made or brought during the term of the policy. **[The policy shall include a Notice of Circumstance provision. The policy shall not contain any exclusion for cost estimates or delay in project completion. Notwithstanding any other provisions of the Contract Documents, the policy shall not be cancellable, except for non-payment of premium, fraud or material misrepresentation.]**

**7.2.2.4. Business Automobile Liability.** Engineer shall maintain business auto liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto, including owned, hired, and non-owned autos. Business auto coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01. Engineer waives all rights against Williams Brothers and the Indemnitees for recovery of damages to the extent these damages are covered by the business auto liability insurance obtained by Engineer hereunder.

**7.2.2.5. Pollution Liability Insurance.** Engineer shall provide Pollution Liability coverage for the Project for claims during the Project period and completed operations period with a minimum limit of \$1,000,000. Engineer's Pollution Liability shall cover a pollution event or release resulting from the Engineer or any consultant's activities under and during the term of this Agreement including the activities of Engineer, any consultants, suppliers and vendors. Engineer's Pollution Liability coverage shall include mold, mold remediation and diminution in value resulting from mold as it pertains to work performed by the Engineer or its consultants. Owner and Contractor shall be included as Additional Insureds on the policy.

**7.2.2.6. Umbrella Insurance.** Engineer shall maintain excess liability insurance with a limit of not less than \$2,000,000. Such insurance shall be excess of the CGL insurance, business auto liability insurance, and employer's liability insurance. Williams Brothers, Owner and the Indemnitees shall be included as additional insureds under this policy. Coverage to be following form excess of the underlying, and is to drop down and apply as primary coverage if the underlying coverage is depleted and shall not contain an exclusion relating to work from heights. Defense costs are to be in addition to policy limits. Engineer waives all rights against Williams Brothers and the Indemnitees for recovery of damages to the extent these damages are covered by the excess liability insurance obtained by Williams Brothers hereunder. Continuing excess coverage, if any, shall include liability coverage for damage to the insured's completed work equivalent to that provided under ISO form CG 00 01. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs maintained by Williams Brothers. Coverage shall be maintained as specified herein for **at least two (2) years following substantial completion of the Services**.



7.2.2.7. **Additional Insured Status.** Williams Brothers and Owner, including their respective members, directors, officials, officers, employees and Project consultants, shall be named as additional insureds utilizing the ISO Additional Insured Endorsements CG 20 10 10 01 "Additional Insured - Owners, Lessees or Contractors - Scheduled Person or Organization" and Form CG 20 37 10 01 "Additional Insured - Owners, Lessees or Contractors - Completed Operations" (or endorsements providing equivalent coverage). For purposes of this additional insured requirement, "equivalent coverage" means coverage for liability arising out of Engineer's services except to the extent of liability attributable to the negligence or fault of an Indemnitee. This additional insured requirement does not apply to coverages required pursuant to Sections 7.2.2.1 (Worker's Compensation/Employer Liability) and 7.2.2.3 (Professional Liability).

7.2.3. **Waiver of Subrogation.** Williams Brothers and Engineer waive all rights against each other and the Owner for loss or damage to the extent covered by property or equipment insurance, except such rights as they may have to the proceeds of such insurance; and provided further that Engineer shall not be entitled to additional compensation or time extension under this Agreement to the extent compensated by any insurance specified herein. Engineer shall cause all subcontractors and consultants to provide similar waivers in writing each in favor of all other parties enumerated above. Each policy, including workers' compensation, shall include a waiver of any right of subrogation against the Indemnites and additional insureds (and their respective members, directors, officers, employees, agents and consultants).

7.2.4. **Evidence of Insurance Requirements.** Upon execution of this Agreement, Engineer shall provide to Williams Brothers a certificate or certificates of insurance that indicate(s) that Engineer has obtained the required insurance under this Agreement. All certificates of insurance required under this Section shall include the following provisions to the extent allowed under applicable Laws:

7.2.4.1. Williams Brothers and Owner (in the case of the certificate required for any Statement of Work only), including their respective directors, officials, officers and employees must be named as additional insureds as provided in Section 7.2.2.7; provided, however, that Williams Brothers and the Indemnites shall not be named as additional insureds for the coverage required pursuant to Sections 7.2.2.1 (Worker's Compensation/Employer Liability) and 7.2.2.3 (Professional Liability).

7.2.4.2. The certificate must indicate that the liability assumed by Engineer has been specifically insured under the contractual liability section of the liability insurance policies.

7.2.4.3. As permitted by applicable Law, the certificate must include an endorsement to give Williams Brothers and Owner (in the case of the certificate required for any Statement of Work only), not less than thirty (30) days prior written notice in the event of cancellation or non-renewal of Engineer's coverage.

7.2.4.4. The liability policy shall be primary without right of contribution from any insurance which is carried by Williams Brothers.

7.2.4.5. In addition to providing certificates of insurance as set forth above, or where applicable Law prohibits the inclusion of certain information in the certificate, Engineer shall, at Williams Brothers' request, provide copies of the policies of insurance and/or copies of riders that provide or exhibit compliance with the requirements set forth herein.

7.2.5. **Insurance Required of Subcontractors.** Insurance similar to that required Engineer pursuant to this Section 7.2.2 above shall be provided by all persons with whom Engineer contracts to provide design/engineering services to the Project with policy limits as approved by Williams Brothers. Commercial General Liability insurance provided by Subcontractors may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by Excess or Umbrella liability policy. Williams Brothers, Owner and Indemnites must be listed as additional insureds on all coverages except Professional Liability and Worker's Compensation. Engineer shall maintain Certificates of Insurance from all Subcontractors it retains enumerating, among other things the

insured status of Williams Brothers as required herein. Engineer shall provide to Williams Brothers a copy of each Certificate of Insurance from each Subcontractor before the Subcontractor is permitted to begin providing professional services in relation to each Project and as coverage renews. The insurance policies shall incorporate a provision or endorsement requiring written notice to the Southwest at least thirty (30) days prior to any cancellation, nonrenewal, or material modification of the policies.

**7.2.6. Failure to Provide Policies.** None of the requirements contained herein as to types, limits or Williams Brothers' approval of insurance coverage to be maintained by Engineer is intended to and shall not in any manner limit, qualify or quantify the liabilities and obligations assumed by Engineer under the Agreement or otherwise provided by law. In the event of any failure by Engineer to comply Williams Brothers may, without in any way compromising or waiving any right or remedy at law or in equity, on written notice to Engineer, purchase such insurance, and deduct the cost of such insurance from Engineer's compensation, provided that Williams Brothers shall have no obligation to do so and if Williams Brothers shall do so, Williams Brothers shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.

**7.2.7. Deductibles.** Insurance deductibles shall be paid by Engineer without reimbursement by Williams Brothers.

## **ARTICLE 8**

### **TERMINATION**

**8.1 TERMINATION BY EITHER PARTY.** Either Party may terminate this Agreement upon seven (7) Days' written notice if the other Party materially breaches its terms through no fault of the initiating Party.

**8.2 TERMINATION BY DESIGN-BUILDER.** This Agreement may be terminated by Williams Brothers for Williams Brothers' convenience at any time. In the case of a termination for convenience, Engineer shall be entitled, as its sole compensation, to all fees earned for Services performed up to the date of termination. Engineer shall not be entitled to any anticipatory or unearned profit on Services or work terminated or partly terminated, or to any payment which constitutes consequential damages on account of the termination or partial termination.

**8.3 TERMINATION FOR CONVENIENCE BY OWNER.** In the event of a termination for convenience by Owner, this Agreement shall be terminated. Engineer shall not be entitled to any anticipatory or unearned profit on Services or work terminated or partly terminated, or to any payment which constitutes consequential damages on account of the termination or partial termination.

**8.4 COMPENSATION IN THE EVENT OF TERMINATION, ENGINEER SHALL BE COMPENSATED TO THE EXTENT THAT THE OWNER PAYS WILLIAMS BROTHERS FOR ENGINEER'S SERVICES.** Provided however, that if Williams Brothers is terminated for cause by the Owner without any fault of Engineer, Williams Brothers shall pay Engineer for all Services completed up to the date of such termination and all expenses reasonably necessary to bring such Services to an orderly cessation.

## **ARTICLE 9**

### **DISPUTE RESOLUTION**

**9.1 CONTINUANCE OF SERVICES AND PAYMENT.** Unless otherwise agreed in writing, Engineer shall continue to perform its Services during any dispute mitigation or resolution proceeding. If Engineer continues to perform, Williams Brothers shall continue to make payments in accordance with this Agreement for amounts not in dispute.

**9.2 DIRECT DISCUSSIONS.** If the Parties cannot reach resolution on a matter relating to or arising out of the Agreement, the Parties shall endeavor to reach resolution through good faith direct discussions between

the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions. If the Parties' representatives are not able to resolve such matter within five (5) Business Days of the date of first discussion, the Parties' representatives shall immediately inform senior executives of the Parties in writing that resolution was not affected. Upon receipt of such notice, the senior executives of the Parties shall meet within five (5) Business Days to endeavor to reach resolution. If the dispute remains unresolved after fifteen (15) Days from the date of first discussion, the Parties shall submit such matter to the dispute mitigation and dispute resolution procedures selected herein.

9.3      **MEDIATION.** If direct discussions pursuant to Paragraph 9.2 do not result in resolution of the matter, Parties shall submit the matter by mediation through the current Construction Industry Mediation Rules of the American Arbitration Association, or the Parties may mutually agree to select another set of mediation rules. The administration of the mediation shall be as mutually agreed by the Parties. The mediation shall be convened within thirty (30) Days of the matter first being discussed and shall conclude within forty-five (45) Days of the matter first being discussed. Either Party may terminate the mediation at any time after the first session, but the decision to terminate shall be delivered in person by the terminating Party to the non-terminating Party and to the mediator. The costs of the mediation shall be shared equally by the Parties. Mediation shall be non-binding. All mediation proceedings and communications shall be governed by TEX. CIV. PRAC. & REM. Code Section 154.073.

9.4      **LITIGATION OF DISPUTES.** If the matter remains unresolved after submission of the matter to direct discussions and/or mediation, the Parties shall submit the matter to litigation in either the state or federal court having competent jurisdiction. Venue of any such litigation matter shall be in Harris County, Texas except to the extent any applicable Law requires it be brought in the county or district in which the Project is located.

9.5      **DISPUTE BETWEEN WILLIAMS BROTHERS AND OWNER/PASS THROUGH CLAIMS.**

9.5.1.    In case of any disputes between Engineer and Williams Brothers, Engineer agrees to be bound by the claims and disputes procedure set forth in Section 19 of the DBA between Owner and Williams Brothers, and by any and all decisions or determinations made as authorized in the DBA.

9.5.2.    Engineer agrees to (i) submit its dispute to Williams Brothers in a proper form in sufficient time to allow processing by Williams Brothers in accordance with Section 19 of the DBA; (ii) be bound by the terms of Section 19 of the DBA to the extent applicable to the dispute; (iii) that completion of all steps required under Section 19 of the DBA shall be a condition precedent to pursuit by Engineer of any other remedies permitted by Law, including institution of a Lawsuit against Williams Brothers; (iv) that any dispute brought against Williams Brothers' surety, that is also actionable against Owner through Williams Brothers, shall be stayed until completion of all steps required under Section 19.4(c) of the DBA; and (v) that the existence of a dispute resolution process for disputes involving Engineer shall not be deemed to create any claim, right or cause of action by Engineer against Owner. Engineer shall at all times have rights and remedies only against Williams Brothers.

9.5.3.    Engineer shall include in all contracts with sub-subcontractors a provision similar to this 9.5, particularly requiring all lower tier subcontractors to fully participate in the dispute resolution procedure set forth in the DBA if requested by either Contractor or Owner.

9.5.4.    In the event the provisions for resolution of disputes between Williams Brothers and the Owner contained in the DBA do not permit consolidation or joinder with disputes of third parties, such as Engineer, resolution of disputes between Owner and Williams Brothers involving in whole or in part disputes between Williams Brothers and the Engineer shall be stayed pending conclusion of any dispute resolution proceeding between Williams Brothers and the Owner. At the conclusion of those proceedings, disputes between Engineer and Williams Brothers shall be governed by the disputes resolution process set forth in Paragraphs 9.2, 9.3, and 9.4.

9.6      **LIEN RIGHTS.** Nothing in this Article 9 shall limit any rights or remedies not expressly waived by Engineer that Engineer may have under lien laws. Engineer acknowledges that under no circumstances shall any liens, claims and/or charges levied by it or any of its consultants attach to any interest of the Owner in the Project or the Final Right of Way.

9.7 Should Williams Brothers employ an attorney to enforce any of the provisions hereof, or to protect its interest in any manner arising under this Agreement, or to collect damages for the breach of this Agreement, Engineer agrees to pay Williams Brothers all reasonable costs, charges, expenses and attorney's fees expended or incurred in connection therewith.

9.8 Pursuant to Section 7.3.6(j) of the DBA, in the event of a dispute resolution proceeding between Williams Brothers and Owner, if participation is requested by Owner or Williams Brothers, Engineer shall give evidence in the dispute resolution proceeding.

## ARTICLE 10

### ASSIGNMENT AND SUBLETTING

10.1 Engineer shall not sublet, assign, pledge, transfer or otherwise alienate or encumber this Subcontract or any part thereof without Williams Brothers' written consent.

10.2 It is specifically understood that the prohibitions contained in this Article shall extend to, but not be limited to, any pledge or assignment of any monies which may be due or may become due to Engineer in accordance with the provisions of this Agreement. Unless the Engineer shall have obtained the Williams Brothers' prior written consent, any subletting, assignment, pledge, transfer or other alienation or encumbrance of this Agreement or any part hereof or of any monies which may be due or may become due to Engineer shall be null and void and of no effect whatsoever against Williams Brothers, its surety or the Owner.

10.3 Engineer shall be required to submit to Williams Brothers copies of any and all agreements or other documents which will be executed in connection with any sublease, assignment, pledge, transfer or other alienation or encumbrance of this Agreement or any part hereof or of any monies which may be due or which will become due to Engineer under the provisions of this Agreement prior to requesting Williams Brothers' written consent in accordance with Section 10.1 above. If Williams Brothers gives its written consent, Engineer shall furnish Williams Brothers fully executed and completed copies of any agreements or other documents evidencing any such sublease, assignment, pledge, transfer or other alienation or encumbrance of this Agreement or any part hereof or of any monies which may be due or which may become due to Engineer under the provisions of this Agreement within seven (7) calendar days of the date of execution of such agreements or other documents.

10.4 Pursuant to Section 7.3.6(c) of the DBA, all rights of Williams Brothers under this Agreement as freely assignable to Owner (and Owner's permitted assigns) contingent upon written request by Owner or its successors or assigns following default of Williams Brothers or termination or expiration of the DBA. Under this assignment the Owner or its successor, assign or designee shall assume the benefit of Williams Brothers' rights with liability only for those remaining obligations of Williams Brothers accruing after the date of the assumption. The assignment shall include the benefit all Engineer warranties, indemnities, guarantees, and personal responsibility. Owner may accept said assignment at any time during the course of the Project prior to Final Completion. The acceptance of such an assignment by the Owner or its successor, assign or designee shall not operate to make the assignee responsible for any breach of this Agreement by Williams Brothers or for any amounts due and owing under this Agreement for work or Services rendered prior to the assumption. Engineer covenants and attorns to Owner upon receipt of written notice from Owner that it has exercised its right of assignment under the DBA, without necessity for consent or approval from Williams Brothers or to determine whether Owner validly exercised its rights, and Williams Brothers' covenant to waive and release any claim or cause of action against Engineer arising out of or relating to its recognition and attornment in reliance on any such written notice.

10.5 **[Use only for Major Subcontracts, as defined in the DBA].** Engineer covenants that it will promptly executed and deliver to Owner a new contract between Engineer and Owner on the same terms and conditions as this Agreement in the event (i) this Agreement is rejected by Williams Brothers in bankruptcy or otherwise wrongfully terminated by Williams Brothers and (ii) Owner delivers a written request for the new contract following the termination or expiration of the DBA. Engineer's covenants contained in this Section shall survive termination of this Agreement.

## ARTICLE 11

### MISCELLANEOUS PROVISIONS

11.1 OWNERSHIP OF TANGIBLE DOCUMENTS. Subject to payment of amounts due for Services performed, all Instruments of Service prepared by Engineer, its consultants or independent contractors in furtherance of the Services, together with all copyrights therein, are and shall remain Williams Brothers' property upon creation. To this end, Engineer agrees that it has been hired to create all such Instruments of Service (and to the extent applicable under copyright as "works made for hire") and Engineer will and hereby does sell, assign, convey, and transfer to Williams Brothers, and Williams Brothers accepts, all right, title and interest in and to any copyrights to the Instruments of Service, including all derivative works, whether works for hire or otherwise, which includes, without limitation, the exclusive rights to make, sell, publish, distribute, modify, prepare derivative works, display, reproduce, transmit, perform, adapt or otherwise make use of the copyrighted works; the right to file in Williams Brothers' name copyright registration, and to sue and recover for damages or past, present and future infringements; all causes of action for infringement and the right to enforce copyright, the right to income, royalties, damages and payments due or payable; and all present and future rights in all media (whether now known or subsequently developed). This conveyance is made for the benefit of the Williams Brothers and its successors and assigns and may be transferred without the consent of Engineer. Engineer represents and warrants that it has the authority to convey ownership of the Instruments of Service as provided in this paragraph.

11.1.1. OWNER'S RIGHTS. It is understood that the Owner shall receive from Williams Brothers the same ownership of rights of the Design-Build Documents, as Williams Brothers receives from Engineer, in accordance with Section 21.6 of the DBA. If required pursuant to the DBA, Owner shall receive ownership of the property rights of such Design-Build Documents.

11.1.2. USE OF DOCUMENTS IN EVENT OF TERMINATION. In the event of a termination for cause of this Agreement pursuant to Article 8, Williams Brothers shall have the right to use, to reproduce, and to make derivative works of the Design-Build Documents to complete the Project, regardless of whether there has been a transfer of copyright under Subparagraph 11.1.1 provided payment has been made pursuant to Paragraph 11.1.

11.1.3. DESIGN-BUILDER'S AND OWNER'S USE OF DOCUMENTS AFTER COMPLETION OF PROJECT. After completion of the Project, Williams Brothers or Owner may reuse, reproduce or make derivative works from the Design-Build Documents solely for the purposes of maintaining, renovating, remodeling or expanding the Project at the Worksite. Williams Brothers' or Owner's use of the Design-Build Documents without Engineer involvement on other projects is at Williams Brothers' or Owner's sole risk, except for Engineer's indemnification obligations pursuant to Paragraph 3.11 and Subparagraph 7.1.1 herein, and Williams Brothers shall defend, indemnify and hold harmless Engineer and its consultants, and the agents, officers, directors and employees of each of them, from and against any and all claims, damages, losses, costs and expenses, including reasonable attorneys' fees and costs, arising out of or resulting from such any prohibited use.

11.1.4. ENGINEER USE OF DOCUMENTS. Where Engineer has transferred its copyright interest in the Design-Build Documents under Subparagraph 11.1.1, Engineer may reuse Documents prepared by it pursuant to this Agreement in its practice, but only in their separate constituent parts and not as a whole.

11.1.5. Engineer shall obtain from its consultants rights and rights of use that correspond to the rights given by Engineer to Williams Brothers in this Agreement and Engineer shall provide evidence that such rights have been secured.

11.2 ELECTRONIC DOCUMENTS. If the Owner requires that the Engineer, Owner and Williams Brothers exchange documents and data in electronic or digital form, prior to any such exchange, the Engineer, Owner and Williams Brothers shall agree on a written protocol governing all exchanges, which, at a minimum, shall specify: (1) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally; (2) management and coordination responsibilities; (3) necessary equipment, software and

services; (4) acceptable formats, transmission methods and verification procedures; (5) methods for maintaining version control; (6) privacy and security requirements; and (7) storage and retrieval requirements. Except as otherwise agreed to by the Parties in writing, the Parties shall each bear their own costs as identified in the protocol. In the absence of a written protocol, use of documents and data in electronic or digital form shall be at the sole risk of the recipient.

### 11.3 AUDITS.

11.3.1. Engineer shall, throughout the term of this Agreement maintain usual and customary books and records for the type and scope of operations of business in which it is engaged and will permit audit thereof by Williams Brothers or Owner upon reasonable notice. Engineer shall maintain at its Project administration office a complete set of all books and records prepared or employed by Engineer in its management, scheduling, cost accounting and other activities related to the Services and the Project. Engineer shall grant to Williams Brothers and Owner such audit rights and shall allow Williams Brothers and Owner such access to and the right to copy such books and records as Williams Brothers and Owner may request in connection with the issuance of Change Orders, the resolution of Disputes, and such other matters as Williams Brothers and Owner may reasonably deem necessary for purposes of verifying compliance with this Agreement and applicable Law.

11.3.1.1. At a minimum, the auditors shall have the following documents available to them: daily time sheets and supervisors daily reports; union agreements; insurance, welfare and benefits records; payroll registers; earnings records; payroll tax forms; material invoices and requisitions; material cost distribution worksheet; equipment records (list of company equipment, rates, etc.); sub-subcontractors' and consultants' (including suppliers) invoices; sub-subcontractors', consultants' and agents' payment certificates; cancelled checks (payroll and suppliers); job cost report; job payroll ledger; general ledger; cash disbursement ledger; project schedules; all documents that relate to each and every claim or dispute together with all documents that support the amount of damages as to each claim or dispute; worksheets used to prepare the claim or dispute establishing the cost components for items of the claim or dispute, including labor, benefits, insurance, materials, equipment, subcontractors, all documents that establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals.

11.3.1.2. Engineer shall warrant to TxDot and Williams Brothers the completeness and accuracy of all information provided with respect to an audit under this Agreement.

11.3.2. The provisions of Section 21.4 of the DBA shall apply to all audits.

11.3.3. Nothing in the DBA or this Agreement shall in any way limit the constitutional and statutory powers, duties and rights of elected State officials, including the independent rights of the State auditor, in carrying out his or her legal authority. Engineer understands and acknowledges that (a) the State auditor may conduct an audit of any person receiving funds from the State directly under the DBA or indirectly through a Engineer; (b) acceptance of fund paid under the DBA, including funds paid indirectly through a subcontract acts as acceptance of the authority of the State auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds; and (c) a person that is the subject of an audit or investigation must provide the State auditor with access to any information the State auditor considers relevant to the investigation or the audit.

11.4 Engineer shall ensure that any uniforms, badges, logos and other identification worn by personnel of Engineer shall bear colors, lettering, design or other features to assure clear differentiation from those of the Owner and its employees.

11.5 GOVERNING LAW AND VENUE. The rights and obligations of the Parties under this Agreement shall be interpreted and governed in all respects by the laws of the State of Texas. The venue for any dispute resolution proceeding shall be Harris County, Texas except to the extent any applicable Law requires it be brought in the county or district in which the Project is located.

11.6 SEVERABILITY. The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

11.7 NO WAIVER OF PERFORMANCE. The failure of either Party to insist, in any one or more instances, on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right with respect to further performance.

11.8 TITLES. The title given to the Articles of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose.

11.9 JOINT DRAFTING. The Parties to this Agreement expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

11.10 TERM. Except as provided herein, this Agreement will expire upon (1) completion and acceptance of the Project and (2) the expiration of any warranty and maintenance periods.

## ARTICLE 12

### SCHEDULE OF EXHIBITS

The Exhibits below are attached and are part of this Agreement:

EXHIBIT A	Design Build Agreement between the Texas Department of Transportation ("TxDot") and Williams Brothers Construction Company, including associated Exhibits 1 through 20
EXHIBIT B	Preliminary engineering plans prepared by _____ dated _____ as part of the response to the Request for Detailed Proposal
EXHIBIT C	Engineer Scope of Services
EXHIBIT D	Project Milestone Schedule
EXHIBIT E	Key Project Personnel
EXHIBIT F	Technical Provisions for the Contract
EXHIBIT G	Required DBA Provisions
EXHIBIT H	Payment Schedule

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officer as of the date first written:

**WILLIAMS BROTHERS CONSTRUCTION CO., INC.**

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

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

DRAFT



# Appendix 5 – Standard Subcontract

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FOR INTERNAL USE ONLY

- ☐ DBE SUBCONTRACT  
☐ DBE Requirements N/A

Payment & Performance Bond Required  
☐ Yes ☐ No

SUBCONTRACT NO. \_\_\_\_\_

## SUBCONTRACT

THIS AGREEMENT IS EFFECTIVE AS OF THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_, BY AND BETWEEN:

**WILLIAMS BROTHERS CONSTRUCTION COMPANY, INC. (the "Contractor")**

Mailing Address:

P.O. BOX 66428

Houston, Texas 77266-6428

Telephone: 713.522.9821

Facsimile: 713.520.5247

Email:

Physical Address:

3800 Milam

HOUSTON, TEXAS 77006

**AND**

**(the "Subcontractor")**

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Email Address: \_\_\_\_\_

Federal ID #: \_\_\_\_\_

**FOR**

Project #: \_\_\_\_\_

**("the Project")**

Control #: \_\_\_\_\_

Highway: \_\_\_\_\_

County: \_\_\_\_\_

WB Job #: \_\_\_\_\_

Owner: \_\_\_\_\_

**("the Owner")**

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In consideration of their mutual promises, Contractor and Subcontractor agree as follows:

## ARTICLE I

### CONTRACT DOCUMENTS

1.1 The Contract Documents for the Subcontract consist of this Subcontract Agreement (the "Subcontract" or "Agreement"), any Appendices and Schedules attached hereto, any subsequent Change Orders and Schedule Changes, and the Prime Contract between Owner and the Contractor attached hereto, including the Prime Contract Documents. Appendices made a part of this Agreement are:

**Appendix A:** Prime Contract Required Subcontract Provisions

**Appendix B:** Scope of Work

**Appendix C:** The Prime Contract

**Appendix D:** Applicable Technical Specifications

1.2 Subcontractor acknowledges that the Work under this Subcontract will be financed in whole or in part with Federal funds. All Laws promulgated by the Federal Government and applicable to work financed in whole or in part with Federal funds will apply to the Work. The Required Contract Provisions Federal-Aid Construction Contracts, Form FHWA 1273 are therefore included in Subcontract Provisions at Appendix "A" and made a part hereof. Where the Required Contract Provisions refer to "Contractor" "Subcontractor" shall be substituted. Subcontractor shall be required to perform the Subcontract Work in strict accordance with the requirements set forth in Appendix "A."

1.3 By executing this Agreement, the Subcontractor acknowledges that it has independently assured itself that the Contract Documents are or have been made available for inspection by Subcontractor and the Subcontractor confirms that it has examined all such documents. The Subcontractor agrees that all such documents which are subsequently modified or changed by Owner or the Contractor in accordance with this Subcontract and duly made available to the Subcontractor shall likewise be considered a part of this Agreement.

1.4 Where a discrepancy exists between the Prime Contract Documents and this Agreement, this Agreement shall govern.

1.5 Definitions: The Definitions for many common phrases, definitions, and acronyms that are used in conjunction with this Agreement are defined below. Additional definitions are located in the Prime Contract Documents:

A. **Agreement or Subcontract** shall mean this agreement between Subcontractor and Contractor for the performance of the Work as herein provided and included all Exhibits attached hereto or referenced herein.

B. **Calendar Day** shall mean every day shown on the calendar.

C. **Construction Quality Assurance Plan or "CQAP"** shall mean the Owner's plan indicating times, locations and other conditions under which monitoring of construction activities are to be performed to maintain and ensure compliance with the Prime Contract Documents.

D. **Construction Quality Management Plan or "CQMP"** shall mean the Contractor's plan of policies, procedures, detailed responsibilities and systematic actions necessary to provide confidence in the quality management program and ensure the results meet the requirements of the Prime Contract Documents related to the final Project construction. The plan includes Contractor's internal quality control, an independent quality assurance and material testing and the Owner's CQAP.

E. **Contract Documents** shall mean and include those documents set forth in Section 1.1 above.

F. **Contractor** shall mean the **Williams Brothers Construction Company, Inc.**, its agents, employees and designated representatives.

G. **Final Acceptance** shall have the meaning as set forth in Section 9.2

H. **Final ROW** shall mean Final Right of Way for the Project.

I. **FHWA** shall mean the Federal Highway Administration.

J. **Force Majeure Event** shall mean any of the events listed in subsections (1) through (8) which materially and adversely affect Subcontractor's obligations, provided such events are beyond control of the Subcontractor and are not due to an act, omission, negligence, recklessness, willful misconduct, or breach of contract by Subcontractor, its agents, employees, representatives, sub-subcontractors or anyone over whom Subcontractor exercises control, and further provided that such events (or the effects of such events) could not have been avoided by the exercise of caution, due diligence, or reasonable efforts by Subcontractor:

(1) Any earthquake, tornado, hurricane or other natural disaster in the vicinity of and directly affecting the Project;

(2) Any epidemic, blockade, rebellion, war, riot, act of sabotage or civil commotion in the vicinity of and directly affecting the Project;

(3) The discovery at, near or on the Final ROW of any archaeological, paleontological or cultural resources provided that the existence of such resources or substances was not disclosed in, or ascertainable from, the Prime Contract Documents, was not otherwise known to Subcontractor before contracting and would not have become known to Subcontractor by undertaking reasonable investigation prior to the Contract Date;

(4) The discovery at, near or on the Final Right of Way ("ROW") of any species listed as threatened or endangered under the federal or State endangered species act (regardless of whether the species is listed as threatened or endangered as of the Contract Date);

(5) Any change in Law, which results in an increase in Subcontractor's costs of at least \$150,000 as a result of (1) a material modification of the Project design, (2) State or federal environmental approval not previously required for the Project which has a material impact on Subcontractor's Work, or (3) a law that specifically targets the Project or Subcontractor;

(6) Issuance of a temporary restraining order or other form of injunction by a court that prohibits the performance of a material portion of the Work, except to the extent arising out of, related to or caused by, the delay, act, omission, negligence, willful misconduct, recklessness or breach of contract by Subcontractor, its agents, employees, representatives, sub-subcontractors or anyone over whom Subcontractor exercises control;

(7) The suspension, termination, interruption, denial or failure to obtain or non-renewal of any Owner approval, except to the extent that such suspension, termination, interruption, denial or failure to obtain or non-renewal arises from the delay, act, omission, negligence, willful misconduct, recklessness or breach of contract by Subcontractor, its agents, employees, representatives, sub-subcontractors or anyone over whom Subcontractor exercises control;

(8) Imposition of temporary no-work restrictions resulting from the discovery within the Project site of any karst features requiring investigation under the Technical Provisions, excluding any risks of delays arising from such discovery allocated to Subcontractor as set forth in this Agreement.

K. **Governmental Approval** shall mean any permit, license, consent, authorization, waiver, variance or other approval, guidance, mitigation agreement, or memoranda of agreement/understanding,

and any amendment or modification of any of them provided by Governmental Entities including State or federal regulatory agencies, agents, or employees, which authorize Development Work, but excluding any such approvals given by or required from any Governmental Entity in its capacity as a Utility Owner or railroad owner.

L. **Governmental Entity** shall mean any federal, State or local government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity.

M. **Law or Laws** shall mean any statute, law, regulation, ordinance, rule, judgment, order, decree, permit, concession, grant, franchise, license, agreement, directive, guideline, policy requirement or other governmental restriction or any similar form of decision of or determination by, or any interpretation or administration of any of the foregoing by, any Governmental Entity, which is applicable to the Project, the Final ROW, and/or the Work, whether now or hereafter in effect, including any Environmental Law as such is defined in the Prime Contract Documents.

N. **Owner** shall mean the Texas Department of Transportation or TxDOT, and any entity succeeding to its powers, authorities and responsibilities invoked by or under the Prime Contract Documents.

O. **Prime Contract or DBA** shall mean the Design-Build Agreement between Owner and Contractor dated \_\_\_\_\_.

P. **Prime Contract Documents** shall mean the Prime Contract and all Plans, Standard Specifications and Technical Provision incorporated by reference, Exhibits, Special Provisions, Special Specifications and Supplemental Agreements, and all Addenda and clarifications issued prior to execution of the Prime Contract, all modifications issued subsequent thereto, and all other documents forming or by reference made a part of the Prime Contract.

Q. **Project** shall mean that certain work defined on the initial page of the Agreement under the reference "Project".

R. **Project Schedule** shall mean the Contractor's schedule for the completion of the entire Project in compliance with the terms of the Prime Contract.

S. **Subcontractor** shall mean the entity described above as "Subcontractor", its employees, agents and designated representatives.

T. **Subcontract Amount** shall mean the total amount paid to Subcontractor by Contractor for the quantities of Work performed on a unit price basis as defined in Article 2 of this Agreement.

U. **Subcontract Time** shall mean that certain time amount of time specified in Section 3.2 herein by which Subcontractor shall complete the Work.

V. **Subcontractor's Schedule** shall mean the resource loaded schedule submitted to the Contractor that demonstrates how the Subcontractor will complete the Work in the time allotted in Section 3.2. The Subcontractor's Schedule must be developed and submitted in scheduling software compatible with Primavera P6 and contain logic ties using the Critical Path Method of scheduling.

W. **Substantial Completion** shall mean the date certified by the Owner when (i) Subcontractor has completed the Work, except for Punch List items, final cleanup and other items included in the requirements for final acceptance of the Project; (ii) Subcontractor has ensured that all Work relating to the Project has been performed in accordance with the requirements of the Contract Documents, the Governmental Approvals and applicable Law; (iii) the Work may be fully utilized without damage to the Project, the Final ROW or any other property adjacent or nearby the Final ROW, and without injury to any Person and all safety devices, if part of the Work, are fully installed and operational; and (v) all remaining Punch List work for the Project can be completed with no impact to traffic. In general, the only remaining Work shall be minor in nature so that the Owner could occupy the Work, it can

be accepted as final by Owner within thirty (30) days following the date of Substantial Completion, and the completion of the remaining Work by Contractor would not materially interfere with or hamper the Owner's normal use of the Work.

X. **Technical Provisions** shall mean those provisions of the Prime Contract that describe particular aspects of the Work and their performance, as prescribed in Appendix "D" hereto.

Y. **Time Impact Schedule** shall mean a revision of the Subcontractor's Schedule that incorporates a delay event with associated logic ties that clearly illustrates the impact to the Subcontractor's completion date as the result of the delay.

Z. **Work** shall mean all actions which the Subcontractor is contractually required to do as specified, indicated, shown, contemplated, or implied in this Agreement in Section 2.1 and Appendix B, including all alterations, amendments, or extensions made by Change Order or other written orders or directives of the Contractor. Unless specified otherwise in this Agreement, the Work includes furnishing all materials, supplies, equipment, tools, labor, transportation, supervision, and all incidentals necessary to complete the Work.

AA. **Working Day** shall mean a calendar day unless defined otherwise in the Prime Contract.

## ARTICLE II

### THE WORK, SUBCONTRACT AMOUNT

2.1 **The Work.** Subcontractor shall pay for all labor, equipment, supervision, materials, supplies, insurance and any other incidental items necessary to complete the items of work listed in Appendix B on a turnkey basis unless indicated otherwise in this Section and in complete accordance with the Contract Documents.

2.2 **Subcontract Amount.** Subcontractor will receive from Contractor as compensation for said Work payment for the field verified quantities actually installed and approved by Contractor based upon the unit prices listed in Appendix B. All of the quantities shown in Appendix B are approximate. Subcontractor agrees to accept and be bound to the unit prices as stated in Appendix B.

A. Subcontractor shall prepare a schedule of the Work to be performed under this Agreement. After performance of an item of Work, Subcontractor shall notify Contractor and request an inspection of same. Contractor shall field verify the Work in place and the quantities billed by Subcontractor. It is understood that Contractor shall only be obligated to pay Subcontractor for the quantities that are approved by Contractor, regardless of the quantities billed by Subcontractor.

B. Prices are firm for the duration of the Project unless noted otherwise.

C. Price is for turnkey performance of all item(s) listed in Appendix B and incorporated into this Article II unless noted otherwise.

## ARTICLE III

### SUBCONTRACT TIME

3.1 The Subcontractor agrees to commence Work in five (5) calendar days from receipt of Contractor's notice to proceed. Time will be assessed by the Working Day as defined in the Prime Contract.

3.2 **Subcontract Time.** The Subcontractor has \_\_\_\_\_ Working Days to obtain Substantial Completion of the Work. The Subcontractor agrees to commence Work as stated in Section 3.1 above, and to thereafter diligently and continuously prosecute said Work in a good workmanlike manner in full compliance with this Subcontract and the Contract Documents. All Work shall be undertaken and completed in accordance with the Project Schedule approved by the Contractor, as revised and updated from time to time. From Substantial Completion the Subcontractor has \_\_\_\_\_ Working Days to accomplish Final Acceptance of its Work.

A. Working Days allowed for this Subcontract may or may not be consecutively charged based on the number of construction phases.

B. Multiple move-ins may be required. Move-ins are included in the Subcontract Amount and no additional compensation will be paid unless authorized in writing by the Contractor.

### 3.3 Time is of the essence in performing the Work required under this Subcontract.

A. Subcontractor shall be liable for any and all damages for delay sustained by Contractor and caused directly or indirectly by Subcontractor; including, but not limited to, liquidated or actual damages for which Contractor is responsible to Owner. Any such damages shall be deducted from payments due Subcontractor, and, if such damages exceed the amount of payments due, Subcontractor shall pay Contractor upon demand such excess damages due.

B. The Subcontractor acknowledges and agrees that if the Subcontractor fails to reach Substantial Completion of the Work within the Subcontract Time (subject to adjustments as provided in the Contract Documents), the Contractor will sustain damages and loss as a result of such failure. The exact amount of such damages will be difficult to ascertain. The Contractor and the Subcontractor, therefore, agree that if the Subcontractor fails to achieve Substantial Completion of the Work by the deadlines established in Section 3.2, the Contractor shall be entitled to retain or recover from the Subcontractor, as liquidated damages and not as a penalty, the sum of \_\_\_\_\_ (\$\_\_\_\_\_.00) per Working Day, commencing the next Calendar Day after the expiration of the Subcontract Time, as set forth in Section 3.2 and continuing until the date of actual Substantial Completion of the Work. Such liquidated damages are hereby agreed to be a reasonable pre-estimate of damages the Contractor will incur as a result of delayed completion of the Work. The Contractor may deduct liquidated damages described in this Section from any unpaid amounts then or thereafter due to the Subcontractor under this Agreement.

### 3.4 Schedules.

A. **Proposed Schedule.** The Subcontractor shall furnish to the Contractor a proposed progress schedule (the "Proposed Schedule") setting forth the Subcontractor's Work, including planned labor, equipment and material requirements. The Contractor will provide guidance on format and level of detail required for the Proposed Schedule. The Proposed Schedule shall be submitted to the Contractor for review and comment within fifteen (15) working days after award of this Subcontract.

B. **Subcontractor's Schedule.** Within (ten) 10 Working Days from commencing Work, based on the Proposed Schedule, the Subcontractor shall provide to the Contractor a construction schedule that provides the number of crews and production rates planned to complete the Work within the Subcontract Time (the "Subcontractor's Schedule"). Once approved, the Subcontractor's Schedule will be incorporated into the Contractor's overall Project Schedule. If the Subcontractor's Schedule is deemed insufficient, in the sole judgment of the Contractor, to allow for the timely completion of the overall Project, it will be rejected and returned to the Subcontractor for revision. The overall Project Schedule will be available for Subcontractor's review upon request.

C. The Contractor shall have the right to modify the Subcontractor's Schedule, to suspend, delay or accelerate, in whole or in part, the commencement or execution of the Subcontractor's Work or varies the sequence thereof, without additional compensation to the Subcontractor. In the event such delay or suspension extends the overall time of performance of the Prime Contract, the time for the Subcontractor to complete its Work shall likewise be extended, but only insofar as extensions of time are approved by Owner through a Change Order.

D. **Recovery Schedule.** If the Subcontractor falls behind schedule, in the sole discretion of the Contractor, the Contractor may order the Subcontractor to submit within three (3) Working Days, a recovery schedule that will demonstrate how the Subcontractor will make up time and get back on schedule. Any costs associated with the preparation and implementation of a recovery schedule is non-reimbursable. If a recovery schedule is required, Subcontractor shall have no right to receive progress payments until such time as Subcontractor has prepared and provided the Contractor such recovery schedule in writing. If Subcontractor fails to implement the Recovery Schedule within three (3) Working



Days' notice from Contractor, then Contractor may supplement Subcontractor's work force, as provided in Section 12.2 or declare the Subcontractor in default, as provided in Section 12.1 herein.

## **ARTICLE IV**

### **PERFORMANCE AND COMPLETION OF THE WORK**

4.1 This Subcontract is contingent upon and shall be null and void without:

- A. The receipt of an executed Prime Contract from the Owner by the Contractor;
- B. The receipt of a Work Order and/or Notice to Proceed from the Owner by the Contractor;  
and
- C. The approval of the Subcontractor by the Owner.

4.2 Subcontractor shall perform the Work in strict accordance with the Contract Documents, all professional construction practices generally accepted in the State of Texas as the standard in the industry, in a good and workmanlike manner, and free from defects. Subcontractor shall comply with the requirements of the Contract Documents, the Project Schedule, all Governmental Approvals, the approved CQMP, the CQAP, the approved Safety and Health Plan, and applicable Laws, and shall take into account the boundaries and other physical constraints affecting the Project.

4.3 Subcontractor shall be responsible for coordinating its construction and other activities with Contractor and any railroad and Utility Owners and other contractors involved with the Project, and/or projects or properties adjacent to the Project as designated by Contractor.

4.4 All materials, equipment, labor, and efforts necessary to achieve completion of Subcontractor's Work on or before the expiration of the Subcontract Time shall be Subcontractor's sole responsibility. The Subcontractor will furnish all barricades, warning signs, lights, flagmen, policemen and any other traffic control items necessary to adequately protect the traveling public in the performance of this Subcontract unless noted otherwise in Section 2.1 or Appendix B.

4.5 Subcontractor acknowledges that it shall maintain and repair the Work until Final Acceptance of the Project, including repair of damage caused by accidents or vandalism. Cost of maintenance services for the Project prior to Final Acceptance are incorporated into the Subcontract Amount.

4.6 If Subcontractor deems that work to which the Subcontract Work is to be applied or affixed is unsatisfactory or unsuitable, written notification of said condition shall be given to Contractor before proceeding or taking remedial action; otherwise Subcontractor shall be fully and solely responsible and liable for any and all expense, loss, or damages resulting from said condition and Contractor shall be relieved of all liability in connection therewith.

4.7 The Subcontractor expressly agrees to fully comply with and be bound by all decisions of Owner and, as applicable, of Governmental Entity(ies), concerning the interpretation of the Prime Contract Documents. Subcontractor acknowledges that the Work is subject to inspection and approval by Owner and all other Governmental Entities. Subcontractor shall cooperate with the Contractor and Owner in connection with conducting inspections during the construction of the Project. All construction inspection, material sampling and testing shall be performed in accordance with the Contract Documents and the approved CQMP and CQAP.

4.8 The Subcontractor will take whatever measures are necessary to maintain a good relationship with the local property owners along the Project and with the Owner and their representatives on this Project. To this end, the Subcontractor will:

- A. Repair any damages to any private or public property, equipment, or materials caused or contributed to by Subcontractor or its sub-subcontractors during the performance of this Subcontract.

B. Maintain all rights-of-way, city streets, county or parish roads, private travelways, and state highways occasioned by their operation in a condition free from mud and clods.

C. Repair damage caused by the performance of this Subcontract to rights-of-way, city streets, county or parish roads, private travelways and state highways to the satisfaction of those respective owner entities.

D. Clean and repair, if necessary, any drainage systems on the Project if silt, dirt or foreign materials are deposited in them by Subcontractor's operations.

E. Clean all fixtures and equipment under Subcontractor's control.

F. Clean-up shall be performed in accordance with the Prime Contract Documents. The Subcontractor shall be responsible for removal and clean-up of all debris directly or indirectly attributable to the performance of this Subcontract. Should the Subcontractor not commence and diligently complete clean-up as directed, the Subcontractor will be charged for the costs of said clean-up.

4.9 The Subcontractor shall not represent itself as an agent of the Owner or any other Governmental Entity while communicating with any of the local property owners along the path of the Project or at any other time in connection with performing the Work described herein.

4.10 Contractor assumes no responsibility for underground or overhead conditions or obstructions. Topography mapping, utility characteristics (including ownership, types, sizes and locations) and the exploratory geotechnical investigations presented in the Contract Documents may or may not represent the actual subsurface conditions along the present alignment of the Project. Subcontractor acknowledges and agrees that the existing surface conditions, including utility characteristics as specified above, may have changed or may be different from the surface conditions depicted in the Contract Documents. Contractor accepts no responsibility for the accuracy of any depiction of surface conditions, the topographical mapping, utility information or geotechnical information provided, or for information concerning the location or extent of Hazardous Materials, archaeological features, karst features, endangered species or vegetation, or Subcontractor's interpretation of any information provided.

4.11 The Subcontractor's attention is directed to the fact that other contractors and subcontractors will be working on this Project simultaneously with the performance of this Subcontract and the Subcontractor will be required to plan and prosecute its Work in a cooperative manner so as not to interfere or hinder the completion of work of others or delay the completion of the Project.

4.12 All of the Work shall be performed in accordance with all Contract Documents according to their true intent and meaning and as usually performed or furnished in connection with such work regardless whether the Work hereby subcontracted is referred to under one or more headings in the Specifications or in various Plans. It is the intent of the parties that the Subcontractor shall perform all the work usually performed by the trades covered by the Subcontract. In the event that any of the Work is not sufficiently detailed or explained in the Contract Documents, the Subcontractor shall submit a written request to the Contractor for such other and additional plans or explanations as may be necessary, and the Subcontractor shall conform to the same as part of this Subcontract Agreement without additional compensation. Subcontractor shall provide the request for written clarification in such a manner as to not delay the Project Schedule.

4.13 The Subcontractor shall be responsible for furnishing, securing and maintaining its temporary yard facilities. Should the Contractor, at its sole option, make a site available for the Subcontractor's use, the Subcontractor shall indemnify and hold harmless the Contractor for any loss or damages incurred by the Subcontractor while occupying the provided site. The Subcontractor shall be responsible for the cost of providing temporary utilities, including, but not limited to, electric power, water, sewer, etc. in excess of that available pursuant to the Contract Documents.

4.14 The Contractor is a participant in government sponsored opportunity programs such as minority, women, disadvantaged, or small business programs. Participants in these programs are referred to as minority, women, disadvantaged, or small business enterprises (generally and collectively, these enterprises shall be referred to as "DBEs").

A. This Subcontract \_\_\_\_\_ IS \_\_\_\_\_ IS NOT (check one) a DBE Subcontract.

B. To the extent this Subcontract is a DBE Subcontract, Subcontractor acknowledges that it shall be subject to TxDOT's Disadvantaged Business Enterprise (DBE) Special Provision 000-461 and TxDOT's Disadvantaged Business Enterprise Program adopted pursuant to 49 CFR 26, which are included in Exhibit 6 to the Prime Contract and incorporated into this Agreement. Subcontractor shall comply with all requirements set forth in (i) TxDOT's DBE Special Provision, (ii) TxDOT's Disadvantaged Business Enterprise Program, and (iii) Contractor's FHWA-approved DBE Performance Plan, incorporated into and made a part of this Subcontract in Appendix A and by reference and all of the appropriate rules, regulations and special provisions that apply thereto.

C. To the extent this Subcontract is a DBE Subcontract, Subcontractor shall incorporate this Section 4.13 into all contracts with its subcontractors and suppliers, binding the same to the requirements set forth in 4.13(B).

4.15 In the performance of the Work hereunder, the Subcontractor is and shall be, an independent Contractor with the full right to supervise, manage and control the performance of the details of said Work. The Subcontractor shall continuously and diligently supply sufficient quantities of materials, equipment and qualified workmen to prosecute said Work efficiently and promptly. The Subcontractor shall furnish to the Contractor, all documentation to fully perform the Subcontract work, including but not limited to: payroll reports, affidavits, FHWA 1931's, DBE documentation/reports, compliance reports, quality control reports and the like, as requested by Contractor. Failure of Subcontractor to maintain the required DBE documentation is a material breach of contract. At its option, upon seven (7) Working Days written notice, Contractor may either, in its sole discretion, (i) terminate this Agreement, or (ii) withhold progress pay estimates as a remedy should the Subcontractor fall in arrears regarding administrative submittals required by the Contract Documents unless Subcontract cures the breach within the notice period.

4.16 The Subcontractor shall attend scheduled job meetings and furnish written progress reports or any other reports required by the Prime Contract regarding the Work, as requested by the Contractor, including information on the status of the materials and equipment under this Subcontract. Subcontractor shall participate in meetings between Owner and Contractor, upon the Owner's request, concerning matters pertaining to the Subcontract or the Work, provided that all direction to such Subcontractor shall be provided by Contractor, and provided further that nothing in this Section shall limit the authority of the Owner to give such direction or take such action which, in its opinion, is necessary to remove an immediate and present threat to the safety of life or property. All reports or other actions shall be undertaken and completed with reasonable promptness and, in any event, within sufficient time for Contractor to provide similar reports or materials to Owner within the time periods required under the Prime Contract.

4.17 Subcontractor shall ensure that any uniforms, badges, logos and other identification worn by personnel of Subcontractor shall bear colors, lettering, design or other features to assure clear differentiation from those of the Owner and its employees.

## ARTICLE V

### SUBCONTRACTOR RESPONSIBILITIES

5.1 Subcontractor represents that it has the requisite power and all required licenses to carry on its present and proposed activities under this Subcontract, and has full power, right and authority to execute and deliver this Agreement and to perform each and all of the obligations of Subcontractor provided for herein. Subcontractor represents that it has not been debarred or suspended from submitting bids by any agency of the State of Texas and that it is in good standing with the State of Texas.

#### 5.2 Compliance with the Contract Documents.

A. The Subcontractor has read and is thoroughly familiar with the Contract Documents and agrees to be bound to the Contractor by the terms of the Contract Documents insofar as they relate to any part of or in any way to the Work undertaken herein and to assume toward the Contractor, in connection

with Work covered by this Subcontract, all of the obligations and responsibilities which the Contractor by the Contract Documents assumes toward the Owner or anyone else.

B. The Subcontractor acknowledges that special attention has been directed to the special, general and amended conditions constituting the Contract Documents, and that it is familiar with all of same, as well as all of the provisions of this Subcontract. It is understood that this Subcontract and its Exhibits constitute the only agreement between the parties hereto relating to the Work to be done hereunder and contains all agreements and provisions between the parties in connection therewith and further that the provisions hereof and the agreements between the Contractor and the Subcontractor shall not be changed, modified, abrogated or superseded unless it be in writing and executed by an authorized officer of the Contractor and the Subcontractor.

C. The Subcontractor warrants that all materials and equipment furnished and incorporated by it into the Project shall be new unless otherwise specified and that all work performed under this Subcontract shall be of good quality, free from faults and defects, and in conformance with the Contract Documents. All work not conforming to these standards may be considered defective. The Subcontractor guarantees any and all Work performed by it on this Project against defective workmanship and materials for the period called for in the Contract Documents. Manufacturers' and equipment warranties and guarantees shall be in accordance with the requirements of applicable sections of the Contract Documents. The warranty provided in this Section shall be in addition to and not in limitation of any other warranty or remedy provided by law or required by the Contract Documents.

D. The Work included in this Subcontract shall be performed under the direction of the Contractor for the Owner's behalf. The Contractor's decisions as to the true construction and meaning of the Contract Documents shall be final. The Subcontractor shall conform to and abide by any additional specifications, drawings or explanations furnished by the Contractor in detail and to illustrate the Work to be done.

E. The Subcontractor shall timely prepare and submit technical submittals, shop drawings, fabrication details, or working drawings as required by the Plans and Specifications of the Contract Documents. Submittal procedures outlined in the Contract Documents shall be followed. It shall be the responsibility of the Subcontractor to review the working drawings for all requirements so as to comply with the Contract Documents. If required by the Contract Documents, the working drawings shall be signed, sealed and dated by a Registered Professional Engineer. Review and approval of the working drawings by the Contractor and/or Owner shall not relieve the Subcontractor of its responsibility to furnish all items of material, equipment or construction as required by the Contract Documents.

F. The Subcontractor shall be responsible for all dimensions, quantities, discrepancies and any unauthorized deviations from the Contract Documents for the category of construction covered by this Subcontract.

G. In addition, if required by the Contract Documents, the Subcontractor shall comply with all requirements regarding the furnishing of information for sources of supply and quality of materials.

### **5.3 Compliance with Laws.**

A. The Subcontractor shall comply with all Laws applicable to the Work.

B. Subcontractor shall pay all fees, licenses, taxes, including sales and use taxes, and expenses required by the applicable Laws, including, but not limited to, taxes and contributions imposed or required by any law for any employment insurance, pensions, old age retirement funds or similar purposes, in respect to the Work under this Subcontract and the employees of the Subcontractor in the performance of said Work. The Subcontractor shall have the status of an employer as defined by the applicable state unemployment compensation act and all similar federal laws and all social security laws. The Subcontractor accepts exclusive liability for all taxes and contributions required of the Contractor or the Subcontractor by the Federal Social Security Act and the Unemployment Compensation Law or any similar law of any state, with respect to the employees of the Subcontractor used in the performance of Work.

C. The Subcontractor shall comply with minimum wages required by federal and/or state law and as stipulated in the Prime Contract. The Subcontractor shall submit certified labor payrolls to the Contractor as required by the Contract Documents or requested by the Contractor. The Contractor reserves the right to deduct from any payments due the Subcontractor any amounts that may be withheld by Owner unless or until the Subcontractor's responsibilities under this provision are satisfied.

D. The Subcontractor is responsible for maintaining its own compliance with immigration laws, rules, and regulations regarding eligibility to work in the United States.

5.4 Subcontractor shall supervise, direct and be responsible for the actions, omissions, negligence, willful misconduct, or breach of applicable Law or contract by any employee, agent, representative or sub-subcontractor, or anyone for whom Subcontractor is responsible.

5.5 The Subcontractor represents that it has carefully examined the location of the Work to be done together with the physical conditions anticipated to be encountered therein and that it is thoroughly familiar with all of same.

5.6 The Subcontractor is responsible for obtaining the approval and acceptance of its Work by the Owner.

5.7 Subcontractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, procedures and safety and for coordinating all portions of its Work under this Subcontract, subject, however, to all requirements contained in the Contract Documents. The Subcontractor is obligated to safeguard the Work (in progress or completed) until accepted by the Owner.

5.8 The Subcontractor shall pay for all materials, equipment and labor used in connection with the performance of this Subcontract through the period covered by previous payments received from the Contractor, and shall furnish satisfactory evidence, when requested by the Contractor, to verify compliance with the above requirements.

5.9 Subcontractor shall use commercially reasonable efforts to cause all of its activities and the activities of its employees, agents, officers and sub-subcontractors and all other Persons for whom Subcontractor may be legally or contractually responsible to be undertaken in a manner that will minimize the effect on surrounding property and the public.

5.10 In the event Subcontractor, or any of its sub-subcontractors, employees, representatives or anyone over whom Subcontractor exercises control, damages or destroys work performed by Contractor or other subcontractors on the Project site, Subcontractor shall be responsible for the costs associated therein. Contractor shall provide Subcontractor three (3) Working Days' notice of a claim for damage or destruction to said work performed. If Subcontractor does not cure or take reasonable steps to cure the breach, Contractor shall be entitled to repair the damaged or destroyed work and offset the associated costs from any amounts due to Subcontractor under this Agreement.

**5.11 Safety.**

A. The Contractor considers safety an important part of its business and the Work to be performed pursuant to the Prime Contract. Subcontractor acknowledges responsibility for implementing, maintaining and coordinating its safety plan with the approved Safety and Health Plan during the performance of its Work. Subcontractor shall take all reasonable precautions and be solely responsible for the safety of, and shall provide protection to prevent damage, injury or loss to: (i) all employees of Subcontractor performing the Work and other persons who are on the Site or would reasonably be expected to be affected by Subcontractor's Work; (ii) the Work and materials and equipment to be incorporated therein; and (iii) all other property within or adjacent to the Site; provided, that Subcontractor's responsibilities under this Section are limited to those risks associated directly or indirectly with the Work under this Subcontract. In furtherance of its safety obligations, Subcontractor acknowledges:

(1) Prevention of accidents in connection with Work is the responsibility of the Subcontractor. Neither the establishment nor absence of a safety program by the Contractor shall relieve the Subcontractor of safety responsibilities.

(2) The Subcontractor shall establish its own safety program implementing safety measures, policies and standards conforming to those required or recommended by governmental and quasigovernmental authorities having jurisdiction and by the Contractor and Owner, including, but not limited to, requirements imposed by the Contract Documents.

(3) If the Subcontractor does not have its own safety program, the Subcontractor is encouraged to utilize the Contractor's Safety Manual to develop its own. Should the Subcontractor elect to mimic or otherwise utilize the Contractor's safety program, the Subcontractor shall indemnify and hold harmless the Contractor pursuant to Section 8.2.

(4) The Subcontractor must not allow any employee onto the jobsite that is under the influence of drugs or alcohol.

(5) The Subcontractor is urged to have his jobsite personnel attend the Contractor's Safety Meetings.

(6) The Subcontractor's personnel will be required to wear the following personal protective equipment (PPE) to access the jobsite: (1) OSHA approved hard hat, (2) steel toed safety boots, and (3) a reflective vest that meets current ANSI/OSHA requirements. The Subcontractor is responsible for providing all OSHA required PPE to its employees for the prosecution of the work covered in this Subcontract.

(7) The Subcontractor shall stop any part of the Work which the Contractor or Owner deem unsafe until corrective measures satisfactory to the Contractor shall have been taken. The Contractor's failure to stop the Subcontractor's unsafe practices shall not relieve the Subcontractor of its responsibility for safety.

(8) The Subcontractor shall notify the Contractor immediately following an accident and promptly confirm the notice in writing. A detailed written report shall be furnished if requested.

(9) **THE SUBCONTRACTOR SHALL FULLY AND COMPLETELY INDEMNIFY, DEFEND AND HOLD HARMLESS THE CONTRACTOR FROM AND AGAINST ANY AND ALL FINES OR PENALTIES IMPOSED ON CONTRACTOR AS A RESULT OF SAFETY VIOLATIONS CAUSED IN WHOLE OR IN PART BY THE SUBCONTRACTOR'S (OR THOSE FOR WHOM IT IS RESPONSIBLE) FAILURE TO COMPLY WITH APPLICABLE SAFETY REQUIREMENTS.**

(10) The following conditions apply to this Subcontract pursuant to OSHA Regulation 1926.59 - Hazard Communication for Construction:

(a) Material Safety Data Sheets (MSDS) must accompany all hazardous materials that are delivered to the Contractor jobsites. MSDS must also be sent to the Contractor's home office along with the signed copies of the purchase order or Subcontract agreement.

(b) All containers of hazardous material must be labeled prior to delivery to the Contractor jobsites. One (1) label must be provided for each five (5) gallon quantity of material. Unlabeled deliveries will not be accepted at the Contractor's jobsite.

(c) If a determination is made that materials are not covered by OSHA Regulation 1926.59, a written statement to this effect must be prepared by supplier or the

Subcontractor and delivered to the Contractor's home office along with the signed copies of the Subcontractor prior to any delivery of materials to the jobsite.

B. Breach of any of the safety provisions of this Agreement is a material breach of this Agreement. If Contractor notifies Subcontractor that it is in violation of the safety provisions of the Contract Documents, Subcontractor shall have forty-eight (48) hours to correct the deficiency or take reasonable steps to do so, except in the case of a life/safety emergency, and in that instance, Contractor may secure the Site, cure the violation and charge the reasonable costs thereof to Subcontractor. If Subcontractor fails to cure or take reasonable steps to cure the safety violation within the time provided herein, then Contractor may, in its sole discretion, (i) terminate this Agreement for cause; (ii) suspend Subcontractor's Work until the violation is cured; or (iii) take reasonable steps to cure the violation and charge the costs thereof to Subcontractor.

#### **5.12 Inspection and Testing.**

A. Subcontractor shall perform all inspection, sampling and testing necessary to comply with its obligations under the Contract Documents, in accordance with its approved CQMP and the CQAP. At all points in performance of the Work at which specific inspections or approvals by the Contractor are required by the Contract Documents, Subcontractor shall not proceed beyond that point until the Contractor has completed such inspection or approval or waived its right to inspect or approve, which waiver shall be in writing. Inspections shall be performed in accordance with the time limits specified in the CQMP and the CQAP.

B. As part of the CQAP, all materials and each part or detail of the Work shall also be subject to inspection and testing by the Contractor. When any Governmental Entity, Utility Owner or railroad is to accept or pay for a portion of the cost of the Work, its respective representatives have the right to inspect the work. Such inspection does not make such Person a party to this Agreement nor will it change the rights of the parties hereto. Subcontractor hereby consents to such inspection and testing. Inspections shall be performed in accordance with the time limits specified in the CQMP and the CQAP.

#### **5.13 Environmental.**

A. Protection of the Environment is a priority for the Contractor and the Owner. The Subcontractor shall:

- (1) Abide by all of the environmental commitments included in the Contract Documents.
- (2) Conduct its operations in accordance with the Project permits.
- (3) Perform its Work in accordance with all environmental Laws, rules and regulations and the Contract Documents.
- (4) Observe good housekeeping practices by collecting and properly disposing of all litter and debris associated with the Subcontractor's Work.
- (5) When directed to remedy an environmental problem, respond and remedy within 24 hours or in an otherwise agreed upon timeframe.
- (6) Perform all environmental mitigation measures and comply with conditions and requirements of the Contract Documents and environmental and Governmental Approvals.

B. Subcontractor shall be solely responsible for: (a) compliance with all Laws applicable to Hazardous Materials brought onto the Site by Subcontractor; (b) use, containment, storage, management, transport and disposal of all Hazardous Materials in accordance with this Agreement and all applicable Laws and Environmental Approvals; and (c) payment of all penalties, expenses (including attorneys' fees and costs), costs, suits, judgments, claims, actions, damages (including damages to natural resources,

property or Persons), delays and liability associated with, arising out of or related to such Hazardous Materials, including any of the foregoing incurred or suffered by the Contractor.

#### **5.14 Use of Contractor's Equipment.**

A. The Subcontractor, its agents, employees, subcontractors or suppliers shall not use the Contractor's equipment, except in the case of emergency, without the express written permission Contractor. For the purpose of this Section, an emergency is defined as any event or occurrence where the safety of the site personnel or the traveling public is at risk or if there is an imminent risk to the Work. In an emergency, the Contractor will provide the operator for the piece of equipment. In such instances, the indemnity provisions of Section 8.2 shall apply.

B. The Subcontractor will not be permitted to lease equipment from the Contractor without an approved amendment to this Subcontract. For DBE Subcontractors such an amendment must be approved by the Owner prior to implementation. If approved and implemented, the indemnity provisions of Section 8.2 shall apply.

### **ARTICLE VI**

#### **CHANGES**

##### **6.1 Changes in Scope.**

A. Subcontractor shall not perform any changes in the Work without the written authorization of Contractor. Should Contractor, at any time during the progress of the Work, request any changes in the scope of the Work, Subcontractor shall within seven (7) working days thereafter submit an itemized estimate, in a format acceptable to Contractor, reflecting any cost associated with the requested change. Adjustments to the Subcontract Amount, for any change, shall be in the amount of the Subcontractor's unit prices as noted in Appendix B. Subcontractor's cost shall be determined as prescribed in the Contract Documents, or in the absence thereof, by written direction of Contractor.

B. If Contractor accepts Subcontractor's written proposal the parties shall execute a Change Order which shall set forth any changes in the Contract Time or Contract Sum and will be signed by both parties. Subcontractor acknowledges and agrees that a signed Change Order represents the entire compensation owed to Subcontractor on account of the proposed change and Subcontractor waives any claims for addition time or compensation as result of the change.

C. In the event the parties cannot agree on the terms of a written Change Order, Contractor may direct Subcontractor, in writing, to proceed with a change to the Subcontract Work, and Subcontractor shall immediately proceed with such change. Subcontractor shall be entitled to receive compensation for all additional work, as substantiated by daily written reports provided to Contractor, approved by Contractor at the rates listed in Appendix B.

D. Subcontractor shall be solely responsible for all costs and expenses associated with or arising out of any Subcontractor-initiated substitution, deviation or change in the Work performed without a written Change Order or written Change Directive by Owner.

**6.2 Owner Directed Change.** Subject to the provisions of Section 6.1, in the event the Owner directs a change in the scope of the Project and Subcontractor determines that the change will result in additional time or cost to Subcontractor's Work, then Subcontractor shall make any requests for extensions of time or for additional compensation in the same manner as prescribed in the Prime Contract for like requests of the Contractor upon Owner and in accordance with this Article VI, and in such time as will enable the Contractor to present such requests to Owner for payment or recognition. Contractor shall not be liable to the Subcontractor on any request not timely or properly presented. Under no circumstances shall Contractor be required to grant any extension of time or request for payment of additional costs unless or until Owner has approved a request by Contractor that includes Subcontractor's request. Subcontractor shall be entitled to an extension of time for performing and completing the Work only upon the same terms and conditions and only to the extent actually allowed to the Contractor by Owner. If the work for which the Subcontractor claims extra compensation to be due is determined by the Owner to be such



that the Contractor is not entitled to additional compensation for such work from the Owner, the Subcontractor waives its right to extra compensation for such work and releases the Contractor for any liability of payment therefor. **APPROVAL BY OWNER OF A CHANGE ORDER FOR AN EXTENSION OF TIME OR ADDITIONAL COST THAT INCLUDES SUBCONTRACTOR'S SPECIFIC REQUEST FOR SAME IS AN EXPRESS CONDITION PRECEDENT TO APPROVAL OF ADDITIONAL TIME AND/OR COSTS TO SUBCONTRACTOR.** The decision by the Owner is final.

### 6.3 Delays and Extensions of Time.

A. Excusable Delay. In the event Subcontractor's performance of the Subcontract Work is delayed or interfered with, for any reason or period of time, by acts or omissions of the Owner or the Contractor ("Excusable Delay"), Subcontractor may request an extension of time for performance of the Work or an adjustment to the Subcontract price for damages or additional compensation as a consequence of such delay. Any determination of a delay and the amount of an extension of time shall be made by Contractor in its sole discretion.

B. Force Majeure Delays. In the event Subcontractor's performance of the Subcontract Work is delayed or interfered with, for any reason or period of time, by acts or omissions of by a Force Majeure Event, Subcontractor may request an extension of time for performance of the Work in accordance with this Section but shall not be entitled to any increase in the Subcontract price or to damages or additional compensation as a consequence of such Force Majeure Event. Subcontractor is not entitled to terminate this Agreement if a Force Majeure Event occurs.

C. Notice. In the event of a Force Majeure Delay or an Excusable Delay, Subcontractor must deliver written notice of such delay within ten (10) Working Days from the beginning of the delay. Any failure on the part of the Subcontractor to provide adequate and timely notice in accordance with the timeframes established in this Section shall be deemed by the Contractor and the Subcontractor as a waiver of any and all claims as to time and compensation.

D. Supporting Documentation. In order to receive a time extension, in addition to the Notice required above, Subcontractor must provide the following information substantiating the delay:

(1) A Time Impact Schedule that compares the Subcontractor's Schedule and demonstrates the duration of the impact from the delay. The Time Impact Schedule must contain logic ties that demonstrate that the delays are attributable to the Excusable Delay or the Force Majeure Delay. The Time Impact Schedule must be submitted to the Contractor within ten (10) days of the notice provided in Section 6.3.C.

(2) Certified documentation of the costs of said delays. The format of the submission shall be in accordance with the procedures outlined in the Contract Documents.

(3) Additional Documentation required for Force Majeure Delay: An affidavit from Subcontractor, together with additional written documentation, establishing that a Force Majeure condition exists and an explanation as to why the Force Majeure Event prevents performance under this Subcontract.

E. Subcontractor shall mitigate delay, and damages due to delay, with respect to the Project in all circumstances, at no cost to the Contractor except as otherwise specified herein, to the extent reasonably possible, including by re-sequencing, reallocating or redeploying its forces to other work, and obtaining additional personnel, equipment and materials, as necessary.

F. Limitation on Time Extensions. Extensions of time shall not be given for delay to the extent that it (a) was due to the delay, breach, default, fault, act, omission, negligence, recklessness, gross negligence or willful misconduct of Subcontractor or anyone over whom Subcontractor exercises control; or (b) could reasonably have been avoided by Subcontractor or anyone over whom Subcontractor exercises control, including by re-sequencing, reallocating or redeploying its forces to other portions of the Work.

## ARTICLE VII

### WARRANTIES AND CORRECTION OF WORK

7.1 **Uncovering Work.** At all times prior to Final Payment to Subcontractor, Subcontractor shall remove or uncover such portions of the finished Work as directed by the Contractor. After examination by the Contractor, Subcontractor shall restore the Work to the standard required by the Contract Documents. If the Work exposed or examined is not in conformance with the requirements of the Contract Documents, then the cost of uncovering, removing and restoring the Work and of recovery of any delay to any Critical Path occasioned thereby shall be at Subcontractor's expense. Any Work done or materials used without adequate notice to and opportunity for prior inspection by the Contractor may be ordered uncovered, removed or restored at Subcontractor's expense, even if the Work proves acceptable and in conformance after uncovering. Except with respect to Work done or materials used as described in the preceding sentence, if Work exposed or examined under this Section is in conformance with the requirements of the Contract Documents, then any delay in any Critical Path from uncovering, removing and restoring Work shall be considered a Contractor caused delay, and Subcontractor shall be entitled to a Change Order for recovery of any delay to the Project Schedule occasioned thereby.

#### 7.2 **Correction of Nonconforming Work.**

A. Rejected Nonconforming Work shall be removed and replaced so as to be in accordance with the Contract Documents and acceptable to the Contractor and/or the Owner, at Subcontractor's expense; and Subcontractor shall promptly take all action necessary to prevent similar deficiencies from occurring in the future. If Subcontractor fails to correct any Nonconforming Work, or fails to provide an acceptable schedule to complete such Nonconforming Work and then begins such work, within five (5) Days of receipt of notice from the Contractor requesting correction, then the Contractor may cause the Nonconforming Work to be remedied or removed and replaced and may deduct the cost of doing so from any moneys due or to become due Subcontractor and/or obtain reimbursement from Subcontractor for such cost (plus interest thereon at the maximum rate allowable under applicable Law).

B. The Contractor may, but shall not be obligated to, accept any Nonconforming Work without requiring it to be fully corrected. In such event, the Contractor and/or the Owner shall be entitled to reimbursement of a portion of the Subcontract Amount equal to the greater of (a) the diminution in value of the Project attributable to the Nonconforming Work, including the present value of future maintenance and repair costs that the Contractor anticipates may be required as a result of the nonconformity, and (b) the difference between the cost of performing the Work in question in accordance with the Contract Documents and the actual cost of performing the Nonconforming Work. The Contractor shall deduct the amount owed from any sum owed by the Contractor to Subcontractor pursuant to this Agreement. Where applicable, the Contractor shall apply TxDOT Standard Specifications criteria in determining the amount of reduction in Subcontract Amount related to the nonconforming Work.

7.3 **Warranties.** All warranty and/or guaranty periods set forth in the Contract Documents are hereby incorporated into this Subcontract as if fully set forth herein. In particular, Subcontractor agrees that it shall, at its own expense, replace or repair any faulty or defective material or workmanship for such period of time as Owner may require of Contractor in the Prime Contract which shall not be less than those set forth in the Technical Provisions attached as Appendix "D" or Section 11 of the Prime Contract as set forth in Appendix "C". In addition, Subcontractor shall be responsible and pay for replacement or repair of adjacent materials or work which may be damaged due to the failure of Subcontractor's material or Work and/or damaged as a result of the replacement or repairs thereof.

A. The procedures, processes, tests, inspections, materials, equipment, machinery, personnel and other actions and items utilized or required under this Agreement with respect to the Work shall apply equally to any repaired, replaced or corrected Work.

B. The Warranties shall apply to all Work repaired, replaced or corrected pursuant to the terms of this Agreement. The Warranties for repaired, replaced or corrected Work shall extend beyond the original warranty period if necessary to provide at least the warranty period specified for such Work in the Technical Provision following acceptance by the Contractor of the repair, replaced or corrected Work.

C. The Warranties are in addition to all rights and remedies available under the Contract Documents or applicable Law or in equity, and shall not limit Subcontractor's liability or responsibility imposed by the Contract Documents or applicable Law or in equity with respect to the Work, including liability for design defects, latent construction defects, strict liability, breach, negligence, willful misconduct or fraud.

D. If Subcontractor fails or refuses to satisfy its obligations with respect to the Warranties, then, in addition to the Contractor's other rights and remedies hereunder, at Law or in equity, Subcontractor shall be liable for the cost of performance of such obligation, with interest thereon at the lesser of (i) 12% per annum or (ii) the maximum rate allowable by applicable Law.

E. Without in any way derogating the Warranties and Subcontractor's other obligations with respect to the Work, Subcontractor shall obtain from all sub-subcontractors and cause to be extended to the Contractor, and Owner for periods at least coterminous with the Warranties given by Subcontractor, appropriate representations, warranties, guarantees and obligations with respect to design, materials, workmanship, equipment, tools, supplies and other aspects of the Work furnished by such sub-subcontractors. All representations, warranties, guarantees and obligations (a) shall be written so as to survive all inspections, tests and approvals hereunder, and (b) shall run directly to and be enforceable by Subcontractor, the Contractor and/or their respective successors and assigns. Subcontractor assigns to the Contractor and Owner all of Subcontractor's rights and interest in all extended warranties for periods exceeding the applicable Warranty period which are received by Subcontractor from any of its sub-subcontractors. To the extent that any Subcontractor warranty or guaranty would be voided by reason of Subcontractor's negligence in incorporating material or equipment into the Work, Subcontractor shall be responsible for correcting such defect.

**7.4 Warranty Beneficiaries.** In addition to benefiting the Contractor, and its successors and assigns, the Subcontractor's warranties provided under this Section shall inure to the benefit of and shall be directly enforceable by Owner, local agencies and Utility Owners, with respect to their facilities. All warranties provided by Subcontractor herein shall inure to the benefit of Owner and shall be assigned to Owner upon Contractor's request.

**7.5 Transfer of Warranties to Owner.** Subcontractor acknowledges that, pursuant to the Contract Documents, ownership of the Project, together with all rights of the Contractor with respect to the enforcement of the Warranties described in this Section and in the Prime Contract, including the Technical Provisions, will be transferred by the Contractor to Owner following Final Acceptance of the Project. Subcontractor hereby consents to such transfer of Warranties and agrees that it shall be obligated to comply with all Warranty provisions under the Contract Documents, upon the terms and for the time periods specified herein, and that Owner shall be entitled to all rights of the Contractor hereunder to enforce such Warranties.

**7.6 Enforcement.** All warranties shall survive all Owner and/or Contractor inspections, tests or approvals. Upon receipt of a notice of failure of any of the Work to satisfy any Subcontractor warranty, representation, guarantee or obligation, Subcontractor shall enforce or perform such representation, warranty, guarantee or obligation, in addition to Subcontractor's other obligations hereunder. Owner and/or Contractor's rights of enforcement shall commence at the time such representation, warranty, guarantee or obligation is furnished and shall continue until expiration of the relevant warranty term. Until such expiration, the cost of any equipment, material, labor (including re-engineering) or shipping shall be for the account of Subcontractor if such costs is covered by a representation, warranty, guarantee or obligation and Subcontractor shall be required to replace or repair defective equipment, material or workmanship furnished by it or its sub-subcontractors.

**7.7 Effect of Owner Activities on Warranties.** Subcontractor acknowledges and agrees that Owner and its agents may perform certain maintenance work during the period in which the warranties are in effect and agrees that the warranties shall apply notwithstanding such activities; provided, however that Subcontractor does not waive any rights, claims or remedies which it may be entitled as a result of such activities.

**7.8 No Limitation on Liability.** The warranties under this Article VII are in addition to all rights and remedies available under this Agreement, the Prime Contract, or applicable Law or in equity, and shall not limit Subcontractor's liability or responsibility imposed by this Agreement, the Prime Contract or the applicable Law or in equity with respect to Work, including liability for design defects, latent construction defects, strict liability, breach negligence, intentional misconduct or fraud.

## ARTICLE VIII

### BONDS, INDEMNIFICATION AND INSURANCE

8.1 Prior to commencing work under this Subcontract, the Subcontractor \_\_\_\_\_ is \_\_\_\_\_ is not required to furnish the Contractor with a payment and a performance bond with a Surety acceptable to the Contractor securing its obligations under this Subcontract.

#### 8.2 Indemnification.

A. **INDEMNITY – GENERAL.** TO THE FULLEST EXTENT PERMITTED BY LAW, AND EXCEPT AS SET OUT IN §8.2.B AND §8.2.C BELOW, SUBCONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND CONTRACTOR, OWNER, AND ALL OF THEIR OFFICERS, DIRECTORS, AGENTS AND/OR EMPLOYEES (COLLECTIVELY, THE "INDEMNITEES" AND SINGULARLY THE "INDEMNITEE") FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES, ARISING OUT OF OR RESULTING FROM (1) THE VIOLATION OF ANY ORDINANCE, REGULATION, STATUTE OR OTHER APPLICABLE LAW BY SUBCONTRACTOR OR ANY SUB-SUBCONTRACTOR (OR ANY OF THEIR EMPLOYEES) OF ANY TIER; AND/OR (2) ANY LIEN OR BOND CLAIM ASSERTED BY ANY SUB-SUBCONTRACTOR OR SUPPLIER OF ANY TIER FOR WORK OR MATERIALS PROVIDED TO THE PROJECT; AND/OR (3) BODILY INJURY OR DEATH OF ANY PERSON, OR PROPERTY DAMAGE, INCLUDING LOSS OF USE OF PROPERTY, ANY OF WHICH ARISE OR ARE ALLEGED TO ARISE OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR SUBCONTRACTOR'S PERFORMANCE OF THE WORK OR OTHER ACTIVITIES OF SUBCONTRACTOR OR ANY SUB-SUBCONTRACTOR, BUT ONLY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT OR OMISSION OF SUBCONTRACTOR OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY SUBCONTRACTOR OR ANYONE FOR WHOSE ACTS SUBCONTRACTOR MAY BE LIABLE.

B. **INDEMNITY – EMPLOYEE INJURY CLAIMS.** IN ADDITION TO THE INDEMNIFICATION PROVIDED IN § 8.2.A AND TO THE FULLEST EXTENT PROVIDED BY LAW, SUBCONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS, CONTRACTOR, OWNER AND INDEMNITEES FROM AND AGAINST ANY CLAIM, DAMAGE, LOSS, OR EXPENSE (INCLUDING BUT NOT LIMITED TO THE OWNER'S AND THE INDEMNITEES' ATTORNEYS' FEES AND COSTS AND EXPENSES OF ANY DISPUTE RESOLUTION PROCEEDING) ARISING OUT OF, RESULTING FROM OR ATTRIBUTABLE TO ANY CLAIM OF BODILY INJURY, SICKNESS, DISEASE OR DEATH OF ANY EMPLOYEE OF SUBCONTRACTOR, ANY SUB-SUBCONTRACTOR, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY EITHER, BROUGHT BY SUCH INJURED EMPLOYEE OR THE EMPLOYEE'S WORKERS COMPENSATION INSURANCE CARRIER (HEREINAFTER REFERRED TO AS AN "EMPLOYEE INJURY CLAIM"), EVEN TO THE EXTENT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS CAUSED OR ALLEGED TO BE CAUSED, IN WHOLE OR IN PART, BY THE SOLE OR CONCURRENT NEGLIGENCE OF THE CONTRACTOR, OWNER AND/OR THE INDEMNITEES. SUBCONTRACTOR SHALL PROCURE LIABILITY INSURANCE COVERING ITS OBLIGATIONS UNDER THIS PARAGRAPH.

C. **INDEMNITY – COPYRIGHT INFRINGEMENT CLAIMS.** IN ADDITION TO THE INDEMNIFICATION PROVIDED IN §8.2.A AND/OR §8.2.B ABOVE, SUBCONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS CONTRACTOR, OWNER AND/OR THE INDEMNITEES FROM AND AGAINST ANY CLAIM, DAMAGE, LOSS, OR EXPENSE (INCLUDING BUT NOT LIMITED TO THE OWNER'S AND/OR THE INDEMNITEES' ATTORNEYS' FEES AND COSTS AND EXPENSES OF ANY DISPUTE RESOLUTION PROCEEDING) ARISING OUT OF, RESULTING FROM OR ATTRIBUTABLE TO ANY CLAIM THAT ANY MEANS, METHOD OR PROCESS, MATERIALS, GOODS OR SERVICES PROVIDED BY SUBCONTRACTOR OR ANY SUB-SUBCONTRACTOR IN THE PERFORMANCE OF WORK ON THE PROJECT INFRINGES ON ANY PATENT,

**COPYRIGHT, TRADEMARK, SERVICE MARK, OR TRADE NAME OR OTHER INTELLECTUAL PROPERTY RIGHT OF A THIRD PARTY, INVADES A THIRD PARTY'S RIGHT OF PUBLICITY OR PRIVACY, OR PLAGIARIZES THE WORK OF A THIRD PARTY, EVEN TO THE EXTENT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS ALLEGED TO BE CAUSED, IN WHOLE OR IN PART, BY THE SOLE OR CONCURRENT NEGLIGENCE OF THE CONTRACTOR, OWNER AND/OR THE INDEMNITEES OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM.**

D. In claims against any person or entity indemnified under this Section 8.2 by an employee of the Subcontractor, a sub-subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 8.2 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Subcontractor or sub-subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

E. It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligations under this Section 8.2 or the Additional Insured requirements under Section 8.3 such legal limitations are made a part of the contractual obligations and shall operate to amend the obligations to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the obligations shall continue in full force and effect. Should any provision in this Agreement be held invalid, unenforceable or contrary to public policy, law, statute or ordinance, then the remainder of the provision, paragraph, Section and/or Agreement shall not be affected thereby and shall remain valid and fully enforceable.

**F. THE OBLIGATIONS CONTAINED IN THIS SECTION 8.2 SHALL SURVIVE THE EXPIRATION, COMPLETION, ABANDONMENT AND/OR TERMINATION OF THE AGREEMENT AND FINAL COMPLETION OF THE WORK AND ANY OTHER SERVICES TO BE PROVIDED PURSUANT TO THIS AGREEMENT.**

### **8.3 Insurance.**

A. Before commencing its Work and as a condition of payment, Subcontractor shall purchase and maintain such insurance as will protect it from the claims arising out of its operations under this Agreement, whether such operations are by Subcontractor or any of its sub-subcontractors or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Subcontractor shall maintain in effect all insurance coverage required under Subparagraph 8.3 with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located and which is reasonably satisfactory to Contractor.

(1) **Worker's Compensation and Employer's Liability.** Subcontractor shall maintain workers compensation and employers liability insurance in the amount of \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease or within the statutory limits required under Texas law, whichever is greater. Subcontractor shall include a voluntary compensation endorsement, an alternative employer endorsement and an endorsement extending coverage to all states operation on an "if any" basis.

(a) The employer's liability insurance shall insure against liability for the death, bodily injury, illness or disease of all employees of Subcontractor working on or about the Site or otherwise engaged in the Work. The Subcontractor shall be the named insured.

(b) If marine vessels are involved:

Employers Liability	\$1,000,000 per accident
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(Endorsement shall include Hull Insurance coverage for Outer Continental Shelf Operations and liability for disease wages, maintenance and cure).

## P & I Protection & Indemnity Insurance

No less than \$10 Million coverage shall include Jones Act and other related marine liability coverage. The P & I shall be amended to include collision liability to the P & I limit.

The Contractor and Owner shall be named as assureds under such hull and P & I with respect to operations performed under this Subcontract.

(2) **Commercial General Liability Insurance.** Subcontractor shall maintain commercial general liability (CGL) insurance with a limit of not less than \$1,000,000 each occurrence with a \$2,000,000 general aggregate and \$2,000,000 products-completed operations aggregate. Coverage shall be provided on ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage). CGL insurance shall cover liability including, but not limited to, liability arising from premises; operations; independent contractors; products-completed operations for ten (10) years following completion of the Work under this Subcontract; property damage, including property damage liability arising out of the "XCU" hazards, explosion, underground and collapse; fellow employee coverage for supervisory personnel; personal injury; bodily injury; contractual liability; incidental medical malpractice; no exclusion for Work performed within 50 feet of a railroad; broad named insured endorsement; and except with regard to indemnifying a professional advisor, consultant or sub-consultant, supplier or manufacturer engaged by Subcontractor, no application of any limitation or exclusion for bodily injury or property damage arising out of professional services, including engineering, architecture and surveying, in any manner to (i) coverage respecting Subcontractor's supervision, coordination, management, scheduling or other similar services or (ii) products and completed operation coverage. The CGL policy shall provide for full separation of insureds and shall not include any insured v. insured exclusions or limitations. The CGL policy shall be endorsed so that the annual general aggregate applies separately to the Project. To the fullest extent of coverage allowed under Chapter 151 of the Texas Insurance Code, Contractor and the Owner, their officers, agents and employees, shall be included as additional insureds under the CGL policy, using ISO Additional Insured Endorsements CG 20 10 10 01 (ongoing operations) and CG 20 37 10 01 (completed operations), or equivalent. For Products-completed operations coverage shall be maintained in effect for two years after completion of Subcontractor's Work. This insurance shall apply as primary and non-contributing insurance with respect to any other insurance or self-insurance programs maintained by Contractor. There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.

(3) **Business Automobile Liability Insurance.** Subcontractor shall maintain business auto liability insurance with a limit of not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos). Business auto coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs maintained by Contractor. To the fullest extent of coverage allowed under Chapter 151 of the Texas Insurance Code, Contractor, Owner, the Indemnites and their officers, agents and employees, shall be included as additional insureds on this policy.

(4) **Pollution Liability Insurance.** Subcontractor shall provide Pollution Liability coverage for the Project for claims during the Project period and completed operations period with a minimum limit of \$1,000,000. Subcontractor's Pollution Liability shall cover a pollution event or release resulting from the Subcontractor or any Sub-subcontractor's activities under and during the term of this Agreement including the activities of Subcontractor, Sub-subcontractors, suppliers and vendors. Subcontractor's Pollution Liability coverage shall include mold, mold remediation and diminution in value resulting from mold as it pertains to work performed by the Subcontractor or its Sub-subcontractors. To the fullest extent of coverage allowed under Chapter 151 of the

Texas Insurance Code, Contractor and the Owner, their officers, agents and employees, shall be included as additional insureds on this policy.

(5) **Excess/Umbrella Liability Insurance.** Subcontractor shall maintain Excess/Umbrella Liability insurance covering liabilities over and above the limits specified above, with a limit not less than \$2,000,000.00 per occurrence. Such insurance shall be excess of the commercial general liability insurance, business auto liability insurance and employers liability insurance. Continuing commercial umbrella coverage, if any, shall include liability coverage for bodily injury and property damage arising out of or related to insured's completed work. This policy shall contain an endorsement that the policy is primary to any other insurance available to Contractor with respect to claims arising under this Agreement and shall not contain an exclusion relating to work from heights. Contractor and the Owner, their officers, agents and employees, shall be included as additional insureds on this policy.

(6) If not covered under the Builder's Risk policy of insurance or any other property or equipment insurance required by the Contract Documents, the Subcontractor shall procure and maintain at his own expense property or equipment insurance for portions of the Subcontractor's Work stored off the site or in transit, when such portions of the Subcontractor's Work are to be included in an application for payment.

B. **Additional Insured Status.** The Commercial General Liability, Business Automobile Liability, Pollution Liability, and the Excess/Umbrella Liability insurance policies shall be endorsed to include the Contractor and the Owner and their members, directors, officers, employees agents and Project consultants, as additional insureds. Each policy shall be provided on an "occurrence" basis and not a "claims made" basis. All primary and umbrella/excess insurance provided under this Section 8.3 which includes the Contractor as an additional insured shall provide the primary and first level of insurance coverage for the Contractor. If the Contractor has any other type of valid and collectible insurance whether primary, excess or otherwise, the insurance afforded by such policy shall be in excess of all insurance, primary and umbrella/excess, required under this Article. All policies shall apply separately to each insured and additional insured against whom a claim is made or suit is brought, except with respect to the aggregate limits of the insurer's liability. The Subcontractor shall advise its insurance carrier and carrier shall verify to the Contractor that the provisions of this Section are met. Any failure on the part of a named insured to comply with reporting provisions or other conditions of the policies, any breach of warranty, any action or inaction of a named insured or others, any foreclosure relating to the Project or any change in ownership of all or any portion of the Project shall not affect coverage provided to the other insureds or additional insureds.

C. **Waivers of Subrogation.** The Contractor and Subcontractor waive all rights against each other, against each of their agents and employees and against sub-subcontractors and their respective members, directors, officers, employees, agents and consultants and the Indemnitees for any claims, but only to the extent covered by insurance obtained pursuant to this Section, except such rights as they may have to the proceeds of such insurance; and provided further that Subcontractor shall not be entitled to additional compensation or time extension under this Agreement to the extent compensated by any insurance specified herein. Subcontractor shall cause all Sub-subcontractors to provide similar waivers in writing each in favor of all other parties enumerated above. Each policy, including workers' compensation, shall include a waiver of any right of subrogation against the Indemnitees and additional insureds (and their respective members, directors, officers, employees, agents and consultants).

D. **Evidence/Proof of Insurance.** Before commencing work hereunder, the Subcontractor shall furnish to the Contractor Certificates of Insurance evidencing insurance limits and coverages specified in Section 8.3. The policies shall be endorsed or shall otherwise contain a provision that requires Contractor to be notified in writing thirty (30) calendar days prior to cancellation or a material change. The policy shall also be endorsed to provide the additional insured endorsement specified in Section 8.3.B. The Contractor shall have no duty to pay or perform under this Agreement until such certificate(s) shall have been delivered to the Contractor. Upon the Contractor's request, copies of each of the insurance policies (including all endorsements and amendments) required under this Section shall be provided to the Contractor. Not less than 30 Days prior to the expiration date of any policy of insurance required by this Section, Subcontractor shall deliver to the Contractor a binder or certificate of insurance with respect to

each renewal policy, bearing a notation evidencing payment of the premium therefor, or accompanied by other proof of payment satisfactory to the Contractor. If requested by the Contractor from time to time, certified duplicate copies of the renewal policy shall also be provided.

E. Subcontractor shall be responsible for payment of premiums for all insurance required under this Section. Subcontractor shall be solely responsible for all other deductibles and self-insured retentions hereunder. Subcontractor further agrees that for each claim, suit or action made against insurance provided hereunder, with respect to all matters for which Subcontractor is responsible hereunder, Subcontractor shall be solely responsible for amounts in excess of the coverage provided.

F. **Sub-subcontractor Insurance Requirements.** Subcontractor shall cause each sub-subcontractor to provide insurance that complies with requirements for Subcontractor-provided insurance set forth in this Section in circumstances where the sub-subcontractor is not covered by Subcontractor-provided insurance and provided that Subcontractor shall have sole responsibility for determining the limits of coverage required to be obtained by sub-subcontractors, which determination shall be made in accordance with reasonable and prudent business practices. Subcontractor shall cause each such sub-subcontractor to include Owner, Contractor and Subcontractor as additional insureds on a primary and non-contributory basis, under such sub-subcontractor's commercial general liability, umbrella excess liability, and business automobile liability insurance policies. Subcontractor shall require each such sub-subcontractor to require that its insurer agree to waive any subrogation rights the insurers may have against the Owner, Contractor and Subcontractor. The Contractor shall have the right to contact the sub-subcontractors directly in order to verify the above coverage. To the extent applicable, each Subcontractor policy shall not contain an exclusion relating to work from heights.

G. **Prosecution of Claims.** Unless otherwise directed by the Contractor in writing, Subcontractor shall report and process all potential claims by the Contractor or Subcontractor against the insurance required to be provided in this Section. Subcontractor agrees to report timely to the insurer(s) any and all matters which may give rise to an insurance claim and to promptly and diligently pursue any and all insurance claims on behalf of the Contractor, whether for defense or indemnity or both. The Contractor agrees to notify Subcontractor of the Contractor's incidents, potential claims, and matters which may give rise to an insurance claim by the Contractor, to tender its defense or the claim to Subcontractor, and to reasonably cooperate with Subcontractor for Subcontractor to fulfill its duties hereunder.

## **ARTICLE IX**

### **PAYMENT**

#### **9.1 Progress Payments.**

A. The Subcontractor will coordinate monthly with the Owner's representative on the Project with regards to quantities eligible for payment in the subject month.

B. Each month, within ten (10) Calendar days after the Contractor receives its monthly progress estimate from the Owner covering the preceding month's work, the Contractor shall submit to the Subcontractor a statement of the Work performed by the Subcontractor during that preceding month based upon the Owner's monthly progress estimate. Any amounts shown due to the Subcontractor by said monthly statement shall be paid, less retainage, to the Subcontractor within ten (10) Calendar days after the receipt by the Contractor of its payment for that month from Owner.

C. The Contractor, at its sole option, will retain [REDACTED] percent of each estimate due the Subcontractor until the final payment as stated in Section 9.2 below. Interest will not be paid to the Subcontractor on retainage held by the Contractor. In lieu of retainage, the Subcontractor has the option to provide a performance bond, payment bond, and retainage bond at the Subcontractor's expense.

D. As a condition precedent to Subcontractor's right to receive payment hereunder, upon the request of Contractor, Subcontractor shall provide a Conditional Waiver and Release on Progress Payment covering the amount due under the pending application for payment and an Unconditional Waiver and



Release on Progress Payment covering Work paid by previously funded applications for payment. Said forms shall be in conformance with Texas law.

## **9.2 Final Payment/Final Acceptance.**

A. Final payment, including retainage, will be paid to the Subcontractor within ten (10) calendar days after Subcontractor's Work is satisfactorily completed and accepted by Owner and the administrative requirements of the Contract Documents have been satisfied.

B. Subcontractor's Work shall not be finally accepted until:

(1) Subcontractor has fulfilled the Subcontract requirements and the requirements under the Contract Documents for the Subcontract Work, including the submission of all submittals required by the Subcontract and Contract Documents; and

(2) The Subcontract Work performed by the Subcontractor has been inspected and approved in accordance with the Contract Documents and the final quantities of the Subcontractor's Work have been determined and agreed upon.

(3) Subcontractor has submitted a Conditional Waiver and Release Upon Final Payment in a form in compliance with Texas law.

C. The foregoing payment requirements apply to all tiers of Subcontractors and shall be incorporated by Subcontractor into all sub-subcontracts.

**9.3 Subcontractor's Payments.** Compliance with the prompt payment statutes and associated provisions in the Contract Documents is a responsibility of the Subcontractor.

A. If the Contractor is made aware that the Subcontractor is in arrears regarding payments for materials, equipment, supplies, labor and/or other expenses used by the Subcontractor or any of its Subcontractors in connection with the work, or that Subcontractor has not timely made payment to sub-subcontractors as required by this Subcontract or any prompt payment statute the Contractor may, at its sole option, satisfy the matter in accordance with Section 9.3.E(1) or 9.3.E(2) below.

B. The Contractor, at its sole option, may demand the Subcontractor or its sub-subcontractors furnish evidence that all bills for material, equipment, supplies, labor and/or other expenses incurred by the Subcontractor or its sub-subcontractors in connection with the Work have been paid or are being paid.

C. In addition, the Contractor shall have the right to contact any person or persons whom the Contractor believes have supplied materials, equipment, supplies, labor and the like to the Subcontractor or any of its sub-subcontractors in connection with the Work in order to verify what amounts, if any, may then be due by the Subcontractor or any of its sub-subcontractors to said person or persons and whether said amount of amounts have been paid or are past due and owing.

D. Pending the outcome of actions taken under Sections 9.3.B or 9.3.C, the Contractor is authorized to withhold amounts necessary in to satisfy debts in dispute from the amount due and owing to the Subcontractor until such time as satisfactory evidence has been furnished and/or the investigation has been completed.

E. In the event that satisfactory evidence is not furnished and/or the investigation indicates Subcontractor or its sub-subcontractors have not met their payment obligations for the Work, then the Contractor, at its sole option and in its sole discretion, may upon seven (7) Calendar Days written notice:

(1) Withhold any and all sums then due to the Subcontractor until satisfactory evidence of the payment of such person or persons is furnished to the Contractor by the Subcontractor, or

(2) Issue checks jointly payable to the Subcontractor and to any such person or persons owed by the Subcontractor or any of its sub-subcontractors for materials, equipment, supplies, labor and the like owed in connection with the work hereunder.

(3) Terminate this Agreement for cause.

(4) In the event Contractor believes it necessary to issue checks jointly payable to the Subcontractor and any other person pursuant to 9.3(E)(2) above and Contractor is made aware that Subcontractor is refusing to furnish said joint check to the ultimate payee, Contractor may, upon three (3) days written notice to Subcontractor, stop payment on the joint check and re-issue a check directly to the payee. Any such sums paid shall be deducted from the next pay application submitted by Subcontractor.

F. Notwithstanding the foregoing, Contractor shall, at all times, comply with any and all DBE regulations concerning payment to sub-subcontractors and issuance of joint checks and such regulations shall take precedence over these provisions to the extent applicable.

G. Contractor may issue joint checks payable the Subcontractor and to any such person or persons owed by the Subcontractor in connection with the Work in an on-going or interim basis at the request of the Subcontractor. The Subcontractor shall make the request in writing. The Contractor's joint check agreement or an acceptable alternative provided by the other affected parties that is compliant with prompt pay statutes, prompt pay provisions to the Prime Contract, and with the DBE regulations must be executed.

9.4 Contractor and Subcontractor have addressed the contingency that Owner may not pay Contractor for the Subcontract Work and Subcontractor has agreed and does hereby agree to accept the risk of nonpayment by Owner, for whatever reason, **IT BEING SPECIFICALLY UNDERSTOOD THAT PAYMENT BY OWNER TO CONTRACTOR FOR THE SUBCONTRACT WORK, WHETHER FOR A MONTHLY PROGRESS PAYMENT OR FINAL PAYMENT, IS AN EXPRESS CONDITION PRECEDENT TO CONTRACTOR'S RESPONSIBILITY TO PAY SUBCONTRACTOR.** The Subcontract Amount includes an amount for assuming said risk of non-payment.

9.5 No payment made under this Subcontract shall be construed to be an acceptance by the Contractor or the Owner of any portion of the Subcontractor's Work.

9.6 The Subcontractor agrees to render performance under this Subcontract free and clear from all claims, encumbrances and liens for labor, services, or materials, and to protect and save harmless the Contractor from all claims, encumbrances and liens growing out of the performance of this work and furnishing of materials, labor, and equipment within five (5) days of receipt of notice by Contractor to Subcontractor of the assertion of a lien or payment bond claim. In the event suit is filed by any person, firm or corporation asserting a claim or lien for labor, services, or materials used or purchased for use in the Work covered by this Subcontract, the Subcontractor will at its own cost and expense, including counsel fees, defend such suit and any judgment rendered herein.

9.7 Failure by the Contractor to pay any amount in dispute shall not postpone, alleviate, diminish, release, alter or modify in any respect Subcontractor's obligation to perform under the Contract Documents, including Subcontractor's obligation to complete all Work within the time periods provided in the Project Schedule and in strict accordance with the Contract Documents. Subcontractor shall not cease or otherwise reduce its performance under this Agreement on account of any such dispute. Any dispute regarding such payment shall be resolved pursuant to Article XI of this Agreement.

## ARTICLE X

### SUBLETTING AND ASSIGNMENT

10.1 The Subcontractor shall not sublet, assign, pledge, transfer or otherwise alienate or encumber this Subcontract or any part thereof without the Contractor's written consent.

10.2 It is specifically understood that the prohibitions contained in this Article shall extend to, but not be limited to, any pledge or assignment of any monies which may be due or may become due to the Subcontractor in

accordance with the provisions of this Subcontract. Unless the Subcontractor shall have obtained the Contractor's prior written consent, any subletting, assignment, pledge, transfer or other alienation or encumbrance of this Subcontract or any part hereof or of any monies which may be due or may become due to the Subcontractor shall be null and void and of no effect whatsoever against the Contractor, its surety or the Owner.

10.3 The Subcontractor shall be required to submit to the Contractor copies of any and all agreements or other documents which will be executed in connection with any sublease, assignment, pledge, transfer or other alienation or encumbrance of this Subcontract or any part hereof or of any monies which may be due or which will become due to the Subcontractor under the provisions of this Subcontract prior to requesting the Contractor's written consent in accordance with Section 10.1 above. If the Contractor gives its written consent, the Subcontractor shall furnish the Contractor fully executed and completed copies of any agreements or other documents evidencing any such sublease, assignment, pledge, transfer or other alienation or encumbrance of this Subcontract or any part hereof or of any monies which may be due or which may become due to the Subcontractor under the provisions of this Subcontract within seven (7) calendar days of the date of execution of such agreements or other documents.

10.4 Pursuant to Section 7.3.6(c) of the Prime Contract, all rights of Contractor under this Subcontract as freely assignable to Owner (and Owner's permitted assigns) contingent upon written request by Owner or its successors or assigns following default of Contractor or termination or expiration of the Prime Contract. Under this assignment the Owner or its successor, assign or designee shall assume the benefit of Contractor's rights with liability only for those remaining obligations of the Contractor accruing after the date of the assumption. The assignment shall include the benefit all Subcontractor warranties, indemnities, guarantees, and personal responsibility. Owner may accept said assignment at any time during the course of construction prior to Final Completion. The acceptance of such an assignment by the Owner or its successor, assign or designee shall not operate to make the assignee responsible for any breach of the Subcontract by the Contractor or for any amounts due and owing under this Agreement for Work or services rendered prior to the assumption. Subcontractor covenants and attorns to Owner upon receipt of written notice from Owner that it has exercised its right of assignment under the Prime Contract, without necessity for consent or approval from Contractor or to determine whether Owner validly exercised its rights, and Contractor's covenant to waive and release any claim or cause of action against Subcontractor arising out of or relating to its recognition and attornment in reliance on any such written notice.

10.5 **[Use only for Major Subcontracts, as defined in the DBA].** Subcontractor covenants that it will promptly execute and deliver to Owner a new contract between Subcontractor and Owner on the same terms and conditions as this Agreement in the event (i) this Agreement is rejected by the Contractor in bankruptcy or otherwise wrongfully terminated by Contractor and (ii) Owner delivers a written request for the new contract following the termination or expiration of the Prime Contract. Subcontractor's covenants contained in this Section shall survive termination of this Agreement.

## ARTICLE XI

### DISPUTES

11.1 In case of any disputes between the Subcontractor and the Contractor, the Subcontractor agrees to be bound by the claims and disputes procedure set forth in Section 19 of the Prime Contract between Owner and the Contractor, and by any and all decisions or determinations made as authorized in the Prime Contract.

A. Subcontractor agrees to (i) submit its dispute to Contractor in a proper form in sufficient time to allow processing by Contractor in accordance with Section 19 of the Prime Contract; (ii) be bound by the terms of Section 19 of the Prime Contract to the extent applicable to the dispute; (iii) that completion of all steps required under Section 19 of the Prime Contract shall be a condition precedent to pursuit by Subcontractor of any other remedy permitted by Law, including institution of a Lawsuit against Contractor; (iv) that any dispute brought against Contractor's surety, that is also actionable against Owner through the Contractor, shall be stayed until completion of all steps required under Section 19.4(c) of the Prime Contract; and (v) that the existence of a dispute resolution process for disputes involving Subcontractor shall not be deemed to create any claim, right or cause of action by Subcontractor against Owner. Subcontractor shall at all times have rights and remedies only against the Contractor.

B. Unless otherwise agreed in writing, Subcontractor shall continue to perform the Work during any dispute mitigation or resolution proceeding. If Subcontractor continues to perform, Contractor

shall continue to make payments in accordance with this Agreement for amounts not in dispute. Subcontractor shall include in all contracts with sub-subcontractors a provision similar to this 11.1, particularly requiring all lower tier subcontractors to fully participate in the dispute resolution procedure set forth in the Prime Contract if requested by either Contractor or Owner.

11.2 In the event that a claim or dispute arising between the Contractor and the Subcontractor falls outside the scope of the Prime Contract dispute resolution procedure, such claims, disputes and other matters in question arising out of, or relating to, this Subcontract or the breach thereof, shall be decided as follows:

A. **Direct Discussions.** The parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions. If the parties' representatives are not able to resolve such matter within five (5) Working Days of the date of first discussion, the parties' representatives shall immediately inform senior executives of the parties in writing that resolution was not affected. Upon receipt of such notice, the senior executives of the parties shall meet within five (5) Working Days to endeavor to reach resolution. If the dispute remains unresolved after fifteen (15) Working Days from the date of first discussion, the parties shall submit such matter to the dispute resolution procedures selected herein.

B. **Litigation of Disputes.** If the matter remains unresolved after submission of the matter to direct discussions, the parties shall submit the matter to litigation in either the state or federal court having competent jurisdiction. Venue of any such litigation matter shall be in Harris County, Texas except to the extent any applicable Law requires it be brought in the county or district in which the Project is located.

11.3 **Lien Rights.** Nothing in this Article XI shall limit any rights or remedies not expressly waived by Subcontractor that Subcontractor may have under lien laws. Subcontractor acknowledges that under no circumstances shall any liens, claims and/or charges levied by it or any of its consultants attach to any interest of the Owner or the Final Right of Way.

11.4 Should the Contractor employ an attorney to enforce any of the provisions hereof, or to protect its interest in any manner arising under this Subcontract, or to collect damages for the breach of this Subcontract, the Subcontractor agrees to pay the Contractor all reasonable costs, charges, expenses and attorney's fees expended or incurred in connection therewith.

11.5 Pursuant to Section 7.3.6(j) of the Prime Contract, in the event of a dispute resolution proceeding between Contractor and Owner, if participation is requested by Owner or Contractor, Subcontractor shall give evidence in the dispute resolution proceeding.

## ARTICLE XII

### DEFAULT AND TERMINATION

12.1 **Events of Default.** The Subcontractor shall be in default under the terms of this Subcontract upon the happening of any of the following events or conditions:

A. Immediately upon notification of ineligibility as a Disadvantaged Business Enterprise;

B. If Subcontractor is certified as a DBE and fails to perform a commercially useful function (as defined in State & Federal rules and regulation) due to actions on the part of the Subcontractor, if applicable;

C. Failure to begin Work promptly as provided for under this Subcontract;

D. Failure to perform the Work with sufficient workmen, equipment or materials to assure prompt completion of said Work within the time limits set forth in this Subcontract or pursuant to the Project Schedule;

E. Performance of the Work unsuitably, or neglect, or refusal to remove materials, or perform anew any Work rejected as unacceptable;

F. Discontinuance of prosecution or abandonment of the Work;

G. Failure to complete the Project within the time specified herein;

H. Failure to resume Work which has been discontinued within a reasonable time after notice has been given to do so (which such time shall in no event exceed five (5) Working Days after written notice to resume work has been given to the Subcontractor by the Contractor);

I. If the Subcontractor is adjudged bankrupt, becomes insolvent, makes any assignments for the benefit of creditors, or if a receiver or trustee is appointed for any of the assets of the Subcontractor, whether insolvent or not, unless such receiver or trustee be removed within ten (10) Calendar Days; or the commencement of any proceedings under any bankruptcy or insolvency law by or against the Subcontractor;

J. If any final, non-appealable judgment requiring the payment of money be rendered against the Subcontractor and remains unsatisfied for a period of ten (10) Calendar Days;

K. Failure of the Subcontractor to obtain the prior written permission of Contractor before entering into any sublease, assignment, pledge, transfer or other alienation of encumbrance of this Subcontract or any part hereof or of any monies which may be due or will become due to the Subcontractor under the provisions of this Subcontract;

L. Failure of the Subcontractor to furnish to the Contractor executed and completed copies of any agreements or other documents evidencing any sublease, assignment, pledge, transfer or any other alienation or encumbrance of this Subcontract or of any part hereof or of any monies which may be due or may become due to the Subcontractor under the provisions of this Subcontract;

M. Making any false representation, report or claim in connection with the business relationship between the Contractor and the Subcontractor;

N. Failure in the performance of any obligation, agreement or undertaking contained or referred to in this Subcontract;

O. Failure to perform or the breach of any of the terms, provisions and conditions of the Contract Documents in the manner and within the time therein specified;

P. Disregards regulations or the terms of this Subcontract and/or orders of the Contractor or the Owner;

Q. If the Subcontractor's payments for materials, equipment, supplies, labor and any other expenses relating to this Project or this Subcontract is determined by the Contractor, in its sole judgment, to be inadequate, too slow, or not in accordance with the terms of this Subcontract or the Contract;

R. Failure of the Subcontractor to pay for any materials, equipment, supplies, labor and the like related to the Subcontractor's undertakings under this Subcontract in a prompt and a commercially reasonable manner;

S. The filing of any claim or lien against the Owner, the Contractor or the Contractor's Surety by any person or persons who have supplied materials, equipment, supplies, labor and the like to the Subcontractor or to the Sub-subcontractors unless the Subcontractor or his sub-subcontractors bond such claim or lien with good and solvent surety within ten (10) Calendar Days of the filing of such claims or liens;

T. Failure of the Subcontractor to supply the insurance and certificates covering both the Subcontractor and Contractor required in Article 8;

U. Failure to comply with the safety requirements set forth in this Agreement and the Contract Documents;

V. Failure to repair rejected or nonconforming Work as set forth in this Agreement; or

W. A material breach of any of the provisions of this Agreement.

**12.2 Contractor's Right to Cure.** If the Subcontractor fails or neglects to carry out the Work in accordance with this Subcontract, or fails to timely perform any term, condition, or requirement of this Subcontract, the Contractor may give the Subcontractor written notice to cure such failure or neglect. If the Subcontractor fails to commence and diligently continue to cure the same within three (3) Calendar Days after receipt of written notice, the Contractor may cure the Subcontractor's deficiencies by whatever means or methods the Contractor may deem necessary and Subcontractor shall pay, upon presentation of an invoice by Contractor, the costs of said cure within ten (10) Calendar Days. The Contractor may exercise this right to cure without further notice to the Subcontractor, and without prejudice to or waiver of any other right or remedy.

### **12.3 Termination for Cause.**

A. Upon the occurrence of any one of such events of default set forth in this Agreement, and at any time thereafter, the Contractor may, at its option, without prejudice to any other rights or remedies, after five (5) Working Days' notice to the Subcontractor, terminate this Subcontract except that prior approval of the Owner is required for a DBE Subcontractor and withhold all further progress payments or other monies due to the Subcontractor and the Contractor may immediately, on its own or by use of independent contractor(s), immediately commence completion of this Subcontract and take possession of all materials, equipment, supplies, machinery and tools owned or leased by the Subcontractor located on the Project site, and use such materials, supplies, equipment, and tools, or any part thereof, together with any additional equipment, tools and supplies as the Contractor deems necessary, to complete the performance of the work under this Subcontract. The Contractor may contract with others for the completion of such work and the Contractor shall be entitled to receive all payments and funds due or thereafter earned as a result of the completion of said work from the Owner.

B. In connection and upon such event of default, the Subcontractor assigns and transfers to the Contractor all of its right, title and interest in and to all such materials and supplies and hereby grants the Contractor the right to possess and use any of such of the Subcontractor's machinery, equipment, and tools located on the project site (whether owned or leased), which such right of possession and use shall not terminate until the work called for in this Subcontract has been completed and accepted by the Owner. No rental payment or other payment shall be due by the Contractor to the Subcontractor or any other person, including, but not limited to, lessors or mortgage holders for the possession and use of such material, supplies, equipment, machinery or tools, it being the intention of the parties that this right of possession and use shall serve to help indemnify the Contractor from any potential loss due to the Subcontractor's default.

(1) By exercising its right of possession and use, the Contractor shall not assume nor become liable for any indebtedness to the Subcontractor's creditors or lessors having claims secured by any of the supplies, materials, machinery, equipment or tools possessed or used by the Contractor. Upon completion of the Subcontract, possession of all remaining material and supplies and the machinery, equipment and tools shall be given over to the Subcontractor. Furthermore, the Contractor shall not be liable for any physical damage or wear and tear or depreciation of any machinery, equipment, or tools used by it or its Subcontractors pursuant to this provision to complete the work called for by this Subcontract.

C. In the event the reasonable cost of completing the Work under this Subcontract incurred by the Contractor exceeds the monies which remain to be paid to the Subcontractor under this Subcontract, the Subcontractor shall promptly pay the amount of excess cost, together with any other advances or debts, to the Contractor, at Houston, Texas, upon demand, and the Contractor may set off such sums from any other contracts or obligations due the Subcontractor until paid; however, if the monies which would have been due to the Subcontractor hereunder for the completion of the work under this Subcontract exceed the total cost for completing such work as incurred by the Contractor and any other advances to, and payments

of debts of, the Subcontractor, then the Contractor shall promptly pay the amount of such excess from such monies to the Subcontractor.

D. The Subcontractor further agrees that the judgments and decisions of the Contractor in exercising the rights provided herein shall be final and conclusive and the Subcontractor agrees to cooperate fully with the Contractor in order to facilitate the completion of said work under this Subcontract. In no event shall any monies be payable to the Subcontractor until the Project has been completed, accepted by the Owner, and the period for the filing of claims against the Project has expired.

#### **12.4 Termination for Convenience by Contractor (NON-DBE Subcontractors ONLY)**

A. Contractor may terminate this Subcontract, in whole or in part, at any time for convenience or for any reason whatsoever, with or without cause and without the Subcontractor being in default hereunder, by giving the Subcontractor written notice of termination, such termination to be effective immediately unless otherwise stated in such notice.

B. Upon receipt of such notice of termination, the Subcontractor shall immediately cease to perform Work or incur expenses pursuant to this Subcontract unless otherwise expressly directed in the Contractor's termination notice. Subcontractor shall be entitled to payment for the Work completed prior to the termination. Subcontractor shall not be entitled to profit or overhead on Work not completed. Contractor may deduct any amounts disputed in good faith and any deductions or credits to which the Contractor is entitled pursuant to this Subcontract. The Subcontractor expressly agrees to complete performance of any of the portions of the Work not terminated.

**12.5 Termination for Convenience by Owner.** In the event of a termination for convenience by Owner, this Agreement shall be terminated. Subcontractor shall not be entitled to any anticipatory or unearned profit on Work terminated or partly terminated, or to any payment which constitutes consequential damages on account of the termination or partial termination.

**12.6 Termination by Subcontractor.** Subcontractor may terminate this Agreement **only** upon a material breach of the Agreement and then only after written notice is provided to Contractor of the alleged breach and Contractor fails to cure said breach within thirty (30) Working Days after receipt of said notice.

**12.7** If the Contractor pursues any of the foregoing remedies, all monies expended including the Contractor's attorneys' fees, court costs and expert witness fees and all losses, damages and extra expenses (including, but not limited to, any liquidated, consequential or other damages which may become due to Owner or others as required by the Prime Contract or other legal actions) shall be deducted from the Subcontract Sum, and if such amounts exceed the amount otherwise due to the Subcontractor under this Subcontract the Subcontractor shall reimburse and be liable to the Contractor for the full amount of such excess.

### **ARTICLE XIII**

#### **MISCELLANEOUS**

**13.1** Waiver of any breach of this Subcontract shall not constitute a waiver of any subsequent breach of the same or any other provision hereof.

**13.2** This Agreement is executed in Harris County, Texas and will be governed by and construed in accordance with the laws of the State of Texas without giving effect to any principles of conflicts of laws, choice of laws or rules thereof.

**13.3** This Subcontract and the Contract Documents shall constitute the entire agreement between the Contractor and the Subcontractor and shall not be amended, modified, or changed except in writing, duly executed by the Contractor and the Subcontractor. This Subcontract supersedes any and all other representations or agreements, written or oral, between the Contractor and the Subcontractor.

**13.4** The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision. The failure of either party hereto to insist, in any

one or more instances, upon the performance of any of the terms, promises or conditions of this Agreement, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, promise or condition as respects further performance.

### 13.5 Audits.

A. Subcontractor shall, throughout the term of this Agreement maintain usual and customary books and records for the type and scope of operations of business in which it is engaged and will permit audit thereof by Contractor or Owner upon reasonable notice. Subcontractor shall maintain at its Project administration office a complete set of all books and records prepared or employed by Subcontractor in its management, scheduling, cost accounting and other activities related to the Subcontract Work and the Project. Subcontractor shall grant to Contractor and Owner such audit rights and shall allow Contractor and Owner such access to and the right to copy such books and records as Contractor and Owner may request in connection with the issuance of Change Orders, the resolution of Disputes, and such other matters as Contractor and Owner may reasonably deem necessary for purposes of verifying compliance with this Agreement and applicable Law.

(1) At a minimum, the auditors shall have the following documents available to them: daily time sheets and supervisors daily reports; union agreements; insurance, welfare and benefits records; payroll registers; earnings records; payroll tax forms; material invoices and requisitions; material cost distribution worksheet; equipment records (list of company equipment, rates, etc.); sub-subcontractors' (including suppliers) invoices; sub-subcontractors' and agents payment certificates; cancelled checks (payroll and suppliers); job cost report; job payroll ledger; general ledger; cash disbursement ledger; project schedules; all documents that relate to each and every claim or dispute together with all documents that support the amount of damages as to each claim or dispute; worksheets used to prepare the claim or dispute establishing the cost components for items of the claim or dispute, including labor, benefits, insurance, materials, equipment, subcontractors, all documents that establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals.

(2) Subcontractor shall warrant to TxDOT and the Contractor the completeness and accuracy of all information provided with respect to an audit under this Agreement.

B. The provisions of Section 21.4 of the Prime Contract shall apply to all audits.

C. Nothing in the Prime Contract or this Agreement shall in any way limit the constitutional and statutory powers, duties and rights of elected State officials, including the independent rights of the State auditor, in carrying out his or her legal authority. Subcontractor understands and acknowledges that (a) the State auditor may conduct an audit of any person receiving funds from the State directly under the Prime Contract or indirectly through a Subcontract; (b) acceptance of fund paid under the Prime Contract, including funds paid indirectly through a Subcontract acts as acceptance of the authority of the State auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds; and (c) a person that is the subject of an audit or investigation must provide the State auditor with access to any information the State auditor considers relevant to the investigation or the audit.

13.6 Subcontract shall include in all sub-subcontracts, including purchase orders, the Job Training and Small Business Opportunity Plan, which is incorporated into this Agreement through Appendix A. The provisions of the Job Training and Small Business Opportunity Plan, set forth in Appendix A, is incorporated as if set forth fully herein and shall be fully incorporated into all sub-subcontracts and purchase orders.

13.7 Subcontractor shall not, other than as provided by Law, directly or indirectly, give, offer or promise anything of value to any present or former employee or consultant of the Owner or its agency partners that might reasonably tend to influence them in the discharge of their official duties or is offered with the intent to influence official conduct, for or because of any official act performed or to be performed by such employee. The phrase "anything of value", as used herein means any item of value, including invitations or tickets to sporting events, social gatherings, outings or parties, or the provision of meals or lodging, or the use of vehicles of any kind, and any other item or thing of monetary value.



13.8 The captions at the beginning of each Article of this Subcontract are for convenience only and are to be given no weight in construing the provisions of this Subcontract.

13.9 All rights and remedies of the Contractor provided in this Subcontract shall be cumulative, and none shall exclude any other rights or remedies allowed by law or in equity.

13.10 This Subcontract constitutes the entire agreement of the parties. It is specifically agreed and understood that the parties to this Subcontract or anyone acting on their behalf have made no promise or representation which is not expressly stated in this Subcontract.

#### **ARTICLE XIV**

##### **CONTRACTOR RESPONSIBILITIES**

14.1 The Contractor shall be bound to the Subcontractor by the terms of this Subcontract and the Contract Documents, and shall have the benefit of all rights, remedies and redress against the Subcontractor which Owner, by the Contract Documents, has against the Contractor insofar as applicable to this Subcontract, provided that where any provision of the Contract Documents between Owner and the Contractor is inconsistent with any provision of this Subcontract, this Subcontract shall govern.

14.2 The Contractor shall promptly notify the Subcontractor of all modifications to the Contract between Owner and the Contractor which affect this Subcontract and which are issued or entered into subsequent to the execution of this Subcontract.

14.3 The Contractor will cooperate with the Subcontractor in scheduling and performing its work to avoid conflicts or interference in the Subcontractor's work, and may reschedule the Subcontractor's Work pursuant to Section 3.4

14.4 The Contractor will permit the Subcontractor to be present and to submit evidence in any proceeding involving the Subcontractor's rights.

#### **ARTICLE XV**

##### **NOTICE**

15.1 All notices shall be in writing addressed to the parties at the addresses set out in this Subcontract unless subsequently changed in conformance with this notice provision.

15.2 Notices shall be considered as delivered on the third business day after the date of mailing if sent by certified mail, or when received in all other cases, including telecopy or other printed electronic medium or personal delivery.

#### **ARTICLE XVI**

##### **SIGNATORY**

Those persons signing below as officers of the respective parties to this Agreement, do hereby obligate and guarantee the faithful and prompt performance of this Subcontract and all of its provisions. The Subcontractor shall provide a copy of the Corporate Resolution that authorizes the individual to obligate the firm.

IN WITNESS WHEREOF, the parties hereto have caused this Subcontract to be executed by their respective duly authorized officer as of the date first written:

WITNESSES:

**CONTRACTOR:**

**WILLIAMS BROTHERS CONSTRUCTION CO., INC.**

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

WITNESSES:

**SUBCONTRACTOR:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**\*\*By executing this Subcontract, Subcontractor certifies that it has received, has read, and understands the listed Special Provisions and required Contract Documents. In addition, the Subcontractor certifies that it is obligated to incorporate the same into all of its sub-subcontracts. Furthermore, the Subcontractor understands that the Special Provisions and required Prime Contract Documents are part of this Subcontract and the Subcontractor is bound accordingly to compliance therewith.**

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**Appendix A: Prime Contract Required Subcontract Provisions**

<b>Exhibit 3</b>	Federal Requirements in All Contracts
<b>Exhibit 6</b>	TxDot's Disadvantaged Business Enterprise (DBE) Special Provisions
<b>Exhibit 8</b>	Job Training/Small Business Opportunity Plan

**Note- Will need to include the actual pages after this cover page.**

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**Appendix B: Scope of Work**

ITEM NO.	DESCRIPTION	UM	ESTIMATED QUANTITY	UNIT PRICE	TOTAL
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**Appendix C: The Prime Contract General Conditions**

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# Appendix 6 – Federally Required Provisions

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**EXHIBIT 3**  
**FEDERAL REQUIREMENTS**

<b><u>Exhibit Description</u></b>	<b><u>No. of Pages</u></b>
Attachment 1 – Federal Requirements for Federal-Aid Construction Projects	2
Attachment 2 – FHWA Form 1273	21
Attachment 3 – Wage Determination of the Secretary of Labor	3
Attachment 4 – Equal Employment Opportunity	5
Attachment 5 – Affirmative Action	5
Attachment 6 – Lobbying Certification	1
Attachment 7 – Compliance with Buy America Requirements	2
Attachment 8 – Certification of Nondiscrimination in Employment	1
Attachment 9 – On-the-Job Training Program	1

## **ATTACHMENT 1 TO EXHIBIT 3**

### **FEDERAL REQUIREMENTS FOR FEDERAL-AID CONSTRUCTION PROJECTS**

GENERAL. — Regardless of whether the Work herein proposed will be financed in whole or in part with Federal funds, all of the statutes, rules and regulations promulgated by the Federal Government that would be applicable to work financed in whole or in part with Federal funds will apply to such work. The “Required Contract Provisions, Federal-Aid Construction Contracts, Form FHWA 1273,” are included in this Exhibit 3. Whenever in said required contract provisions references are made to:

- (a) “contracting officer” or “authorized representative”, such references shall be construed to mean TxDOT or its Authorized Representative;
- (b) “contractor”, “prime contractor”, “bidder”, “Federal-aid construction contractor”, “prospective first tier participant” or “First Tier Participant”, such references shall be construed to mean DB Contractor or its authorized representative;
- (c) “contract”, “prime contract”, “Federal-aid construction contract” or “design-build contract”, such references shall be construed to mean the Design-Build Agreement (“DBA”) between DB Contractor and TxDOT for the Project;
- (d) “subcontractor”, “supplier”, “vendor”, “prospective lower tier participant”, “lower tier prospective participant”, “Lower Tier Participant” or “lower tier subcontractor”, such references shall be construed to mean any Subcontractor or Supplier; and
- (e) “department”, “agency”, “department or agency with which this transaction originated” or “contracting agency”, such references shall be construed to mean TxDOT, except where a different department or agency or officer is specified.

PERFORMANCE OF PREVIOUS CONTRACT. — In addition to the provisions in Section II, “Nondiscrimination,” and Section VI, “Subletting or Assigning the Contract,” of the Form 1273 required contract provisions, DB Contractor shall comply with the following:

The bidder shall execute the CERTIFICATION WITH REGARD TO THE PERFORMANCE OF PREVIOUS CONTRACTS OR SUBCONTRACTS SUBJECT TO THE EQUAL OPPORTUNITY CLAUSE AND THE FILING OF REQUIRED REPORTS located in the proposal. No request for subletting or assigning any portion of the contract in excess of \$10,000 will be considered under the provisions of Section VI of the required contract provisions unless such request is accompanied by the CERTIFICATION referred to above, executed by the proposed subcontractor.

NON-COLLUSION PROVISION. — The provisions in this section are applicable to all contracts except contracts for Federal Aid Secondary Projects. Title 23, United States Code, Section 112, requires as a condition precedent to approval by the Federal Highway Administrator of the contract for this work that each bidder file a sworn statement executed by, or on behalf of, the person, firm, association, or corporation to whom such contract is to be awarded, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted bid. A form to

make the non-collusion affidavit statement required by Section 112 as a certification under penalty of perjury rather than as a sworn statement as permitted by 28 U.S.C., Sec. 1746, is included in the Proposal.

PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN SUBCONTRACTING. — Part 26, Title 49, Code of Federal Regulations applies to the Project. Pertinent sections of said Code are incorporated within other sections of the DBA and the TxDOT Disadvantaged Business Enterprise Program adopted pursuant to 49 CFR Part 26.

#### CONVICT PRODUCED MATERIALS

a. FHWA Federal-aid projects are subject to 23 CFR § 635.417, Convict produced materials.

b. Materials produced after July 1, 1991, by convict labor may only be incorporated in a Federal aid highway construction project if such materials have been: (i) produced by convicts who are on parole, supervised release, or probation from a prison, or (ii) produced in a prison project in which convicts, during the 12 month period ending July 1, 1987, produced materials for use in Federal aid highway construction projects, and the cumulative annual production amount of such materials for use in Federal aid highway construction does not exceed the amount of such materials produced in such project for use in Federal aid highway construction during the 12 month period ending July 1, 1987.

#### ACCESS TO RECORDS

a. As required by 49 CFR 18.36(i)(10), DB Contractor and its subcontractors shall allow FHWA and the Comptroller General of the United States, or their duly authorized representatives, access to all books, documents, papers, and records of DB Contractor and subcontractors which are directly pertinent to any grantee or subgrantee contract, for the purpose of making audit, examination, excerpts, and transcriptions thereof. In addition, as required by 49 CFR 18.36(i)(11), DB Contractor and its subcontractors shall retain all such books, documents, papers and records for three years after final payment is made pursuant to any such contract and all other pending matters are closed.

b. DB Contractor agrees to include this section in each Subcontract at each tier, without modification except as appropriate to identify the subcontractor who will be subject to its provisions.



**ATTACHMENT 2 TO EXHIBIT 3**  
**REQUIRED CONTRACT PROVISIONS**  
**FEDERAL-AID CONSTRUCTION CONTRACTS**

**FHWA Form 1273**  
**Revised May 1, 2012**

- I. General**
- II. Nondiscrimination**
- III. Nonsegregated Facilities**
- IV. Davis-Bacon and Related Act Provisions**
- V. Contract Work Hours and Safety Standards Act Provisions**
- VI. Subletting or Assigning the Contract**
- VII. Safety: Accident Prevention**
- VIII. False Statements Concerning Highway Projects**
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act**
- X. Compliance with Governmentwide Suspension and Debarment Requirements**
- XI. Certification Regarding Use of Contract Funds for Lobbying**

**I. GENERAL**

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment,

termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

## **II. NONDISCRIMINATION**

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

**1. Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

“It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training.”

**2. EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

**3. Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

**4. Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: “An Equal Opportunity Employer.” All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to

yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

**5. Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

## **6. Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this

subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

**8. Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

**9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of

materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

**10. Assurance Required by 49 CFR 26.13(b):**

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

**11. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

### **III. NONSEGREGATED FACILITIES**

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

### **IV. DAVIS-BACON AND RELATED ACT PROVISIONS**

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

#### **1. Minimum wages**

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as

provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.



d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

## **2. Withholding**

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## **3. Payrolls and basic records**

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee ( e.g. , the last four digits of the employee's social security number).

The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### **4. Apprentices and trainees**

##### **a. Apprentices (programs of the USDOL).**

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

##### **b. Trainees (programs of the USDOL).**

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified

in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

**6. Subcontracts.** The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

**7. Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes

between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**10. Certification of eligibility.**

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

**1. Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**2. Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

**3. Withholding for unpaid wages and liquidated damages.** The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

**4. Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

## **VI. SUBLETTING OR ASSIGNING THE CONTRACT**

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and

engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

## **VII. SAFETY: ACCIDENT PREVENTION**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

## **VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential

that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

“Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both.”

## **IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.



## **X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

### **1. Instructions for Certification – First Tier Participants:**

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and

Voluntary Exclusion-Lower Tier Covered Transactions,” provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

\* \* \* \* \*

## **2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:**

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

## **2. Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of

its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

\* \* \* \* \*

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-- Lower Tier Participants:**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\* \* \* \* \*

**XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative

agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT 3 TO EXHIBIT 3**  
**FEDERAL PREVAILING WAGE RATE**

(Attached; subject to change)

## **ATTACHMENT 4 TO EXHIBIT 3**

### **EQUAL EMPLOYMENT OPPORTUNITY**

#### **SPECIAL PROVISION**

**000---006**

#### **Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)**

1. As used in these specifications:
  - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
  - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
  - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
  - d. "Minority" includes:
    - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
    - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
    - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
    - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North American and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan.

Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing contracts in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the contract is being performed. Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any Office of Federal Contract Compliance Programs office or any Federal procurement contracting officer. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.
5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
  - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
  - b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.



- c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
- d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral Process has impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and Collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment

source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.
  - k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
  - l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
  - m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
  - n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
  - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
  - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the

Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. Nondiscrimination programs require that Federal-aid recipients, subrecipients, and contractors prevent discrimination and ensure nondiscrimination in all of their programs and activities, whether those programs and activities are federally funded or not. The factors prohibited from serving as a basis for action or inaction which discriminates include race, color, national origin, sex, age, and handicap/disability. The efforts to prevent discrimination must address, but not be limited to a program's impacts, access, benefits, participation, treatment, services, contracting opportunities, training opportunities, investigations of complaints, allocations of funds, prioritization of projects, and the functions of right-of-way, research, planning, and design.
11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

16. In addition to the reporting requirements set forth elsewhere in this contract, the Contractor and the subcontractors holding subcontracts, not including material suppliers, of \$10,000 or more, shall submit for every month of July during which work is performed, employment data as contained under Form PR 1391 (Appendix C to 23 CFR, Part 230), and in accordance with the instructions included thereon.

## **ATTACHMENT 5 TO EXHIBIT 3**

### **AFFIRMATIVE ACTION**

#### **SPECIAL PROVISION 000--004**

#### **Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)**

1. **General.** In addition to the affirmative action requirements of the Special Provision titled "Standard Federal Equal Employment Opportunity Construction Contract Specifications" as set forth elsewhere in this proposal, the Bidder's attention is directed to the specific requirements for utilization of minorities and females as set forth below.
2. **Goals.**
  - a. Goals for minority and female participation are hereby established in accordance with 41 CFR 60-4.
  - b. The goals for minority and female participation expressed in percentage terms for the Contractor's aggregate work force in each trade on all construction work in the covered area, are as follows:

**Goals for minority  
participation in  
each trade (per-  
cent)**

See Table 1

**Goals for female  
participation in  
each trade (per-  
cent)**

6.9

- c. These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction. The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Standard Federal Equal Employment Opportunity Construction Contract Specifications Special Provision and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority and female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of

the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

- d. A contractor or subcontractor will be considered in compliance with these provisions by participation in the Texas Highway-Heavy Branch, AGC, Statewide Training and Affirmative Action Plan. Provided that each contractor or subcontractor participating in this plan must individually comply with the equal opportunity clause set forth in 41 CFR 60-1.4 and must make a good faith effort to achieve the goals set forth for each participating trade in the plan in which it has employees. The overall good performance of other contractors and subcontractors toward a goal in an approved plan does not excuse any covered contractor's or subcontractor's failure to make good faith efforts to achieve the goals contained in these provisions. Contractors or subcontractors participating in the plan must be able to demonstrate their participation and document their compliance with the provisions of this Plan.
3. **Subcontracting.** The Contractor shall provide written notification to the Department within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation pending concurrence of the Department in the award. The notification shall list the names, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.
  4. **Covered Area.** As used in this special provision, and in the contract resulting from this solicitation, the geographical area covered by these goals for female participation is the State of Texas. The geographical area covered by these goals for other minorities are the counties in the State of Texas as indicated in Table 1.
  5. **Reports.** The Contractor is hereby notified that he may be subject to the Office of Federal Contract Compliance Programs (OFCCP) reporting and record keeping requirements as provided for under Executive Order 11246 as amended. OFCCP will provide direct notice to the Contractor as to the specific reporting requirements that he will be expected to fulfill.

**Table 1**

<b>County</b>	<b>Goals for Minority Participation</b>	<b>County</b>	<b>Goals for Minority Participation</b>
Anderson	22.5	Concho	20.0
Andrews	18.9	Cooke	17.2
Angelina	22.5	Coryell	16.4
Aransas	44.2	Cottle	11.0
Archer	11.0	Crane	18.9
Armstrong	11.0	Crockett	20.0
Atascosa	49.4	Crosby	19.5
Austin	27.4	Culberson	49.0
Bailey	19.5	Dallam	11.0
Bandera	49.4	Dallas	18.2
Bastrop	24.2	Dawson	19.5
Baylor	11.0	Deaf Smith	11.0
Bee	44.2	Delta	17.2
Bell	16.4	Denton	18.2
Bexar	47.8	DeWitt	27.4
Blanco	24.2	Dickens	19.5
Borden	19.5	Dimmit	49.4
Bosque	18.6	Donley	11.0
Bowie	19.7	Duval	44.2
Brazoria	27.3	Eastland	10.9
Brazos	23.7	Ector	15.1
Brewster	49.0	Edwards	49.4
Briscoe	11.0	Ellis	18.2
Brooks	44.2	El Paso	57.8
Brown	10.9	Erath	17.2
Burleson	27.4	Falls	18.6
Burnet	24.2	Fannin	17.2
Caldwell	24.2	Fayette	27.4
Calhoun	27.4	Fisher	10.9
Callahan	11.6	Floyd	19.5
Cameron	71.0	Foard	11.0
Camp	20.2	Fort Bend	27.3
Carson	11.0	Franklin	17.2
Cass	20.2	Freestone	18.6
Castro	11.0	Frio	49.4
Chambers	27.4	Gaines	19.5
Cherokee	22.5	Galveston	28.9
Childress	11.0	Garza	19.5
Clay	12.4	Gillespie	49.4
Cochran	19.5	Glasscock	18.9
Coke	20.0	Goliad	27.4
Coleman	10.9	Gonzales	49.4
Collin	18.2	Gray	11.0
Collingsworth	11.0	Grayson	9.4
Colorado	27.4	Gregg	22.8
Comal	47.8	Grimes	27.4
Comanche	10.9	Guadalupe	47.8

<b>County</b>	<b>Goals for Minority Participation</b>	<b>County</b>	<b>Goals for Minority Participation</b>
Hale	19.5	Lavaca	27.4
Hall	11.0	Lee	24.2
Hamilton	18.6	Leon	27.4
Hansford	11.0	Liberty	27.3
Hardeman	11.0	Limestone	18.6
Hardin	22.6	Lipscomb	11.0
Harris	27.3	Live Oak	44.2
Harrison	22.8	Llano	24.2
Hartley	11.0	Loving	18.9
Haskell	10.9	Lubbock	19.6
Hays	24.1	Lynn	19.5
Hemphill	11.0	Madison	27.4
Henderson	22.5	Marion	22.5
Hidalgo	72.8	Martin	18.9
Hill	18.6	Mason	20.0
Hockley	19.5	Matagorda	27.4
Hood	18.2	Maverick	49.4
Hopkins	17.2	McCulloch	20.0
Houston	22.5	McLennan	20.7
Howard	18.9	McMullen	49.4
Hudspeth	49.0	Medina	49.4
Hunt	17.2	Menard	20.0
Hutchinson	11.0	Midland	19.1
Irion	20.0	Milam	18.6
Jack	17.2	Mills	18.6
Jackson	27.4	Mitchell	10.9
Jasper	22.6	Montague	17.2
Jeff Davis	49.0	Montgomery	27.3
Jefferson	22.6	Moore	11.0
Jim Hogg	49.4	Morris	20.2
Jim Wells	44.2	Motley	19.5
Johnson	18.2	Nacogdoches	22.5
Jones	11.6	Navarro	17.2
Karnes	49.4	Newton	22.6
Kaufman	18.2	Nolan	10.9
Kendall	49.4	Nueces	41.7
Kenedy	44.2	Ochiltree	11.0
Kent	10.9	Oldham	11.0
Kerr	49.4	Orange	22.6
Kimble	20.0	Palo Pinto	17.2
King	19.5	Panola	22.5
Kinney	49.4	Parker	18.2
Kleberg	44.2	Parmer	11.0
Knox	10.9	Pecos	18.9
Lamar	20.2	Polk	27.4
Lamb	19.5	Potter	9.3
Lampasas	18.6	Presidio	49.0
LaSalle	49.4	Rains	17.2



<b>County</b>	<b>Goals for Minority Participation</b>	<b>County</b>	<b>Goals for Minority Participation</b>
Randall	9.3	Webb	87.3
Reagan	20.0	Wharton	27.4
Real	49.4	Wheeler	11.0
Red River	20.2	Wichita	12.4
Reeves	18.9	Wilbarger	11.0
Refugio	44.2	Willacy	72.9
Roberts	11.0	Williamson	24.1
Robertson	27.4	Wilson	49.4
Rockwall	18.2	Winkler	18.9
Runnels	20.0	Wise	18.2
Rusk	22.5	Wood	22.5
Sabine	22.6	Yoakum	19.5
San Augustine	22.5	Young	11.0
San Jacinto	27.4	Zapata	49.4
San Patricio	41.7	Zavala	49.4
San Saba	20.0		
Schleicher	20.0		
Scurry	10.9		
Shackelford	10.9		
Shelby	22.5		
Sherman	11.0		
Smith	23.5		
Somervell	17.2		
Starr	72.9		
Stephens	10.9		
Sterling	20.0		
Stonewall	10.9		
Sutton	20.0		
Swisher	11.0		
Tarrant	18.2		
Taylor	11.6		
Terrell	20.0		
Terry	19.5		
Throckmorton	10.9		
Titus	20.2		
Tom Green	19.2		
Travis	24.1		
Trinity	27.4		
Tyler	22.6		
Upshur	22.5		
Upton	18.9		
Uvalde	49.4		
Val Verde	49.4		
Van Zandt	17.2		
Victoria	27.4		
Walker	27.4		
Waller	27.3		
Ward	18.9		
Washington	27.4		

## **ATTACHMENT 6 TO EXHIBIT 3**

### **CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

By signing and submitting its proposal or bid, and by executing the DBA or Subcontract, each prospective DB Contractor and subcontractor (at all tiers) shall be deemed to have signed and delivered the following:

1. The prospective DB Contractor/subcontractor certifies, to the best of its knowledge and belief, that:
  - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
  - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, and shall include a copy of said form in its proposal or bid, or submit it with the executed DBA or Subcontract.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
3. DB Contractor/subcontractor shall require that the language of this certification be included in all lower tier Subcontracts which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.
4. The undersigned certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the undersigned understands and agrees that the provisions of 31 U.S.C. §3801, et seq., apply to this certification and disclosure, if any.

[Note: Pursuant to 31 U.S.C. §1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure or failure.]

## **ATTACHMENT 7 TO EXHIBIT 3**

### **COMPLIANCE WITH BUY AMERICA REQUIREMENTS**

DB Contractor shall comply with the Federal Highway Administration (FHWA) Buy America Requirement in 23 CFR 635.410, which permits FHWA participation in the DBA only if domestic steel and iron will be used on the Project. To be considered domestic, all steel and iron used and all products manufactured from steel and iron must be produced in the United States and all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes that protect or enhance the value of the material to which the coating is applied. This requirement does not preclude a minimal use of foreign steel and iron materials, provided the cost of such materials does not exceed 0.1% of the contract price under the DBA.

Concurrently with execution of the DBA, DB Contractor has completed and submitted, or shall complete and submit, to TxDOT a Buy America Certificate, in format below. After submittal, DB Contractor is bound by its original certification.

A false certification is a criminal act in violation of 18 U.S.C. 1001. Should this DBA be investigated, DB Contractor has the burden of proof to establish that it is in compliance.

At DB Contractor's request, TxDOT may, but is not obligated to, seek a waiver of Buy America requirements if grounds for the waiver exist. However, DB Contractor certifies that it will comply with the applicable Buy America requirements if a waiver of those requirements is not available or not pursued by TxDOT. A request for a waiver shall be treated as a Request for Change Order under Section 13.3 of the DBA.

## **BUY AMERICA CERTIFICATE**

The undersigned certifies on behalf of itself and all proposed Subcontractors (at all tiers) that only domestic steel and iron will be used in the Project.

- A. DB Contractor shall comply with the Federal Highway Administration ("FHWA") Buy America Requirements of 23 CFR 635.410, which permits FHWA participation in the DBA only if domestic steel and iron will be used on the Project. To be considered domestic, all steel and iron used and all products manufactured from steel and iron must be produced in the United States, and all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes which protect or enhance the value of the material to which the coating is applied. This requirement does not preclude a minimal use of foreign steel and iron materials, provided the cost of such materials does not exceed 0.1% of the Price.
- B. A false certification is a criminal act in violation of 18 U.S.C. 1001. Should this DBA be investigated, DB Contractor has the burden of proof to establish that it is in compliance.
- C. At DB Contractor's request, TxDOT may, but is not obligated to, seek a waiver of Buy America requirements if grounds for the waiver exist. However, DB Contractor certifies that it will comply with the applicable Buy America requirements if a waiver of those requirements is not available or not pursued by TxDOT.

<b>PROPOSER</b>	
<b>SIGNATURE</b>	
<b>NAME (printed or typed)</b>	
<b>TITLE</b>	
<b>DATE</b>	

## **ATTACHMENT 8 TO EXHIBIT 3**

### **CERTIFICATION OF NONDISCRIMINATION IN EMPLOYMENT**

2004 Specifications

#### **SPECIAL PROVISION**

**000---009**

#### **Certification of Nondiscrimination in Employment**

By signing this proposal, the bidder certifies that he has participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Orders 10925, 11114, or 11246, or if he has not participated in a previous contract of this type, or if he has had previous contract or subcontracts and has not filed, he will file with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

**Note:** The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1)), and must be submitted by bidders and proposed subcontractors only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally only contracts or subcontracts of \$10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

Proposed prime contractors and subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U. S. Department of Labor.

## **ATTACHMENT 9 TO EXHIBIT 3**

### **ON-THE-JOB TRAINING PROGRAM**

2004 Specifications

#### **SPECIAL PROVISION**

**000—1676**

##### **On-the-Job Training Program**

**1. Description.** The primary objective of this Special Provision is the training and advancement of minorities, women and economically disadvantaged persons toward journeyworker status. Accordingly, make every effort to enroll minority, women and economically disadvantaged persons to the extent that such persons are available within a reasonable area of recruitment. This training commitment is not intended, and shall not be used to discriminate against any applicant for training, whether or not he/she is a member of a minority group.

**2. Trainee Assignment.** Training assignments are determined based on the past contract volume of federal-aid work performed with the Department. Contractors meeting the selection criteria will be notified of their training assignment at the beginning of the reporting year by the Department's Office of Civil Rights.

**3. Program Requirements.** Fulfill all of the requirements of the On-the-Job Training Program including the maintenance of records and submittal of periodic reports documenting program performance. Trainees shall be paid at least 60% of the appropriate minimum journeyworker's rate specified in the contract for the first half of the training period, 75% for the third quarter and 90% for the last quarter, respectively. Contractors may be reimbursed \$0.80 per training hour at no additional cost to the Department.

**4. Compliance.** The Contractor will have fulfilled the contractual responsibilities by having provided acceptable training to the number of trainees specified in their goal assignment. Noncompliance may be cause for corrective and appropriate measures pursuant to Article 8.6., "Abandonment of Work or Default of Contract," which may be used to comply with the sanctions for noncompliance pursuant to 23 CFR Part 230.

**EXHIBIT 8**

**DB CONTRACTOR'S JOB TRAINING AND SMALL BUSINESS OPPORTUNITY  
PLAN**

(Attached)

WILLIAMS BROTHERS CONSTRUCTION CO., INC.

# OJT & Small Business Plan

Project: Loop 1604 Western Extension Project

A handwritten signature in blue ink, appearing to read "Bob Lanham", is positioned above the signature block text.

Prepared by: Bob Lanham, President & DBE Compliance Manager

Initial Draft: 10/21/2013

Revision 1:

Revision 2:

Revision 3:



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## ON THE JOB TRAINING

### 1. Policy

Williams Brothers Construction Company, Inc. (WBCC) is an Equal Employment Opportunity employer. Employees are provided equal opportunity with regards to employment, wages, promotions, transfers and training. This policy applies to all aspects of our employment relationship without regard to a person's race, creed, color or national origin, sex, age, or ability limitations. Equal encouragement is extended to all employees to prepare themselves to assume job responsibilities suitable to their individual abilities, talents, and interests.

The U.S. Department of Transportation, the Federal Highway Administration and the Texas Department of Transportation have implemented an OJT Program in support of equal opportunity and affirmative action. As a federal-aid highway construction firm, Williams Brothers Construction is assigned annual goals for the OJT Program. Fulfillment of these OJT training goals or demonstration of a "good faith effort" is an obligation. WBCC will utilize the Project to the maximum extent possible to support its annually assigned goal.

### 2. Qualifications to Participate

To qualify to participate in the OJT Program, the following conditions must be met:

- The OJT candidate must not be a "yellow hat" (still in their 6 month probationary period).
- The supervisor must attest to the conduct, character and attitude of the OJT candidate.
- The supervisor must attest to the aptitude and motivation of the OJT candidate.

For the purposes of the OJT Program, any candidate that has completed their 6 month probationary period but has been with the company for than 1 year will be considered a "new hire".

To be selected for the OJT Program is an honor. It is the responsibility of the supervisor to nurture, guide and train the candidate through the appropriate program curriculum.

It is the philosophy and practice of Williams Brothers Construction to exercise fairness to its existing employees with regards to ALL corporate policies and programs. Our decision making for the OJT Program is governed by the same. Since OJT goals are assigned based on a 3 year average backlog, the goals for any given year may not accurately reflect current market conditions.

### 3. Market Considerations

Our implementing principles for the OJT Program will vary due to changing market conditions. They are summarized below:

#### a. Progressive Market (Positive Growth)

This is a period of economic prosperity. The company has a positive market and is in a growth mode. Hiring is done to fill new opportunities within the company. Many opportunities exist. Training of existing or new employees is common depending on the requirements of the position to be filled.

#### b. Stagnant Market (No-Growth)

This is a period of economic doldrums. The backlog of the company is static. There is no opportunity for growth. Hiring is done only to fill critical vacancies. This handled in one of 3 ways: (1) hire a new employee with the appropriate skills; (2) "OJT" an existing employee; or (3) hire and "OJT" a new employee.



**c. Recessive Market (Negative Growth)**

When faced with a downturn in our market, the company is forced to lay-off employees. Our first option is to use existing, experienced, trained employees that are facing lay-off to fill any vacancies. The second option is to “call back” any employee that was “laid-off” to fill a need. The third option is to: (1) hire a new employee with the appropriate skills; (2) “OJT” an existing employee; or (3) hire and “OJT” a new employee.

**4. Training Program**

**a. OJT Program Document**

WBCC will utilize the Associated General Contractors (AGC) of Texas approved OJT program. See Appendix 3 for a copy of the currently approved program. Appendix 3 will be updated as revisions to the AGC program occurs.

**b. Enrollment**

Design for construction will be completed in incrementally which is inherent in the name of the delivery method – “Design/Build”. As designs are completed, opportunities for trainees will be assessed. Candidates will be selected in accordance with WB policy and enrolled.

**5. Outreach**

WBCC will continue its practice of working with specific programs supported by TxDOT Civil Rights such as the Texas Construction Career Academy (TCCA) and Houston Women in Highway Construction (HWHC) where we serve advisors. Our Equal Opportunity outreach will support our OJT program as well.

**6. Goals**

WBCC will use the Project to the maximum extent possible to support its annually assigned OJT goal. Opportunities will exist throughout the duration of the Project to provide OJT to new and existing employees with emphasis on minority and female candidates.

**7. Reporting**

Any OJT performed on the Project, in support of the annually assigned goal, will be reported in a manner consistent with the requirements of the Program.

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## SMALL BUSINESS CONTRACTING

**1. Policy**

Williams Brothers Construction Company, Inc. (WBCC) does not discriminate against any subcontractor firm based on size, race, color, sex, ethnic origin, or religious background. WBCC does not tolerate any conduct in its workforce that discriminates against any subcontractor based on the same. WBCC actively supports and encourages the participation of small businesses in the highway construction industry.

**2. Commitment**

WBCC is committed to fully integrating meaningful small businesses participation into our team for this TxDOT Loop 1604 Western Extension Project (Project) through outreach, technical assistance/supportive services,



monitoring and reporting. WBCC proposes to accomplish this through an organized outreach, solicitation, and subcontracting plan.

### 3. Anticipated Areas of Small Business Opportunities

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

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

### 4. Outreach

Our outreach programs in partnership with TxDOT will be conducted in tandem with the processes outlined for DBE participation. Refer to the DBE Performance Plan for more detail.

### 5. Professional Services Procurement

#### a. General

Professional services firms are chosen on a Qualification Based Selection process. The general steps followed are outlined below. The process is more subjective than construction subcontracting which relies on prequalified firms. The criteria outlined in Section 5.d(1) must be evaluated and matched to the needs of the project and how all commitments are fulfilled.

#### b. Proposal Phase Solicitations

SBE firms that were identified as meeting the requirements of Section 5d below as well as being available as exclusive partners during the proposal phase were engaged by teaming agreements and participated in the proposal process.

#### c. Execution Phase Solicitations

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

- (a) Added scope to the Project
- (b) Scope that was not fully defined during the Proposal preparation
- (c) Additional assistance or resources were determined to be necessary to support the Project schedule
- (d) The inability to successfully negotiate a scope of service or fee with a previously selected firm.

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

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

- (a) Use our corporate vendor list,



- (b) Contacts develop from outreach events
- (c) Use of TxDOT SBE directory
- (d) Coordination with other subcontractor advocacy groups

**d. Proposal Evaluation & Negotiation**

- (1) The following criteria will be used for professional services:
  - (a) Ability to provide the number of qualified personnel to complete the required tasks on time.
  - (b) Possess the requisite licenses for both the firm and personnel to authorize participation.
  - (c) Documentation of design project completion on time and within budget.
  - (d) Quality of previous project work completed, including references from past project owners (clients).
  - (e) Ability to start when required.
- (2) Attempt to negotiate scope, terms, conditions, and price with the selected proposer.
- (3) If the negotiations stall or fail, repeat the process.

**6. Construction Subcontractor Procurement**

**a. General**

It is prevalent practice in the design-build procurement process for the Design-Builder to solicit pricing from the subcontracting community based on 30% (or less) plans. This procedure puts subcontractors in financial jeopardy due to temporal variations, quantity uncertainty, material and commodity prices escalations, and variability in the character and nature of the scope.

WBCC's approach will be implemented once subcontract packages have been designed to approximately 75% completion to allow for greater certainty in the bidding process. For subcontractors, this process eliminates financial risk and uncertainty on quantity/scope. Using this deferred procurement approach for the construction phase provides greater opportunity for the success of the subcontractors especially SBE subcontractors.

**b. Bid Package Development**

- (1) As described in Section 6a, excessive risk can be transferred to a subcontractor by asking for proposals on 30% plans. Our approach is to provide more fully developed plans to the subcontracting community prior to requesting price proposals. Ideally, the plans would be 75% complete prior to releasing. This may vary based on the type of work.
- (2) Bid packages will be developed and presented for price proposals in support of the overall project construction schedule. Bid packages made for a single phase or segment or for multiple.
- (3) Bid packages will be posted in our on-line plan room which is a component of our document management system. These materials will be available free of charge to any interested subcontractors where they can view or print. File format will be PDF.
- (4) Our on-line system will have a consolidated email address where all quotations will be sent for review.
- (5) For subcontractors without access to computers, internet access, and email, hard copies of the bid packages will be made available upon request.

**c. SBE Identification & Solicitations**

- (1) As bid packages are completed, solicitations for price proposals will be made. Various resources will be used to target the subcontracting community such as but not limited:



- (a) Use our corporate vendor list,
- (b) Use of information from outreach events
- (c) Use of TxDOT SBE directory
- (d) Coordination with other subcontractor advocacy groups

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

- Project information
- Scope or items of work
- Date proposal is due
- Where to view plans and specs
- Where and how to submit price proposal
- To whom the proposal should be directed
- To whom all questions should be directed

(3) First time responders to a WBCC solicitation will be required to complete a subcontractor questionnaire and participate in an interview to determine qualifications, capabilities and capacity in order to avoid potential issues such as SBEs failing to perform a commercially useful function.

(4) Time is of the essence on this project. Every effort will be made to allow two weeks to respond to any price proposal solicitation however this cannot be guaranteed. Exceptions may be granted on a case basis for non critical items at the discretion of WBCC.

(5) Responsiveness – We will attempt to contact any subcontractor that did not respond to the solicitation. The reason for not quoting, if provided, will be documented.

**d. Proposal Evaluation**

(1) Completeness – Each proposal will be reviewed for completeness. All pertinent contact information must be provided by the subcontractor.

(2) Scope - Any qualifications or exceptions included in the price proposal will be noted. A dollar value (positive or negative) associated with any proposal qualifications will be assigned to the proposal.

(3) Pricing – Proposals will be ranked according to ultimate price/cost.

(4) Negotiations – Should the price proposal contain undesirable qualifications or exceptions, an attempt will be made to negotiate a compromise. If opportunities exist for scope modification or expansion, this will be negotiated accordingly.

(5) Selection – A successful subcontractor will be selected with consideration of the SBE goal for the project.

**7. Subcontract Agreement**

a. Subcontract agreements (Subcontract) shall identify, define, and include those specific services, items, terms, and conditions that are consistent with the Contract and the scope of work including anticipated duration.

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

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

- (1) Identification of parties
- (2) Definition of work (scope, methods, end results)
- (3) Definition of Client's responsibility
- (4) Provisions for contract changes
- (5) Compensation
- (6) Method of payment





- (7) Federally required provisions
- d. The following terms and items are included in all construction subcontracts:
  - (1) Parties to the contract
  - (2) Contract start and end dates
  - (3) Scope of Work, including deliverables
  - (4) Payment due dates
  - (5) Terms and conditions relating to premature contract termination
  - (6) Terms and conditions relative to undue delays
  - (7) Means to resolve claims and disputes
  - (8) Indemnification terms and conditions
  - (9) Federally required provisions
- e. Any exceptions taken by the Subcontractor with regards to any of the business terms and conditions of the subcontract document will be negotiated (that is in the purview to negotiate).
- f. Upon complete execution of the document, a copy will be provided to TxDOT.
- g. See Appendix 4 for a blank "DRAFT" consultant agreement
- h. See Appendix 5 for a blank "DRAFT" construction subcontract
- i. See Appendix 6 for federally required provisions.

## **8. Execution of the Work**

### **a. Small Business Responsibilities**

- (1) Subcontracted work will be executed in a professional manner.
- (2) The subcontractor will be an independent business and employer under the laws of Texas and will assume all the rights and responsibilities accordingly.
- (3) The subcontractor will be required to diligently and faithfully execute the work covered by its agreement.
- (4) The subcontractor will comply with all of the requirements of its subcontract and the Contract.

### **b. Administration**

- (1) The subcontractor will report monthly at an agreed upon recurring monthly date, their progress quantities for the previous pay period for verification by and concurrence of the Project Manager, Deputy Project Manager, or the Construction Manager.
- (2) The subcontractor will be required to carry the requisite insurance outlined in the Contract.
- (3) The subcontractor will comply with administrative obligations imposed by federal requirements.
- (4) The subcontractor will be required to submit any applicable reports such as but not limited to:
  - (a) Monthly progress quantities
  - (b) Daily quality control reports
  - (c) Certified payrolls
  - (d) SBE participation reports





**c. Direction and Management**

- (1) The subcontractor will receive overall schedule and work priorities from Project Manager, Deputy Project Manager, or Construction Manager.
- (2) The subcontractor is an independent business and will be required to plan, manage, oversee, and execute their contracted work in accordance with project schedule and the direction of the Project Manager, Deputy Project Manager, or Construction Manager.
- (3) The subcontractor will be a licensed participant in the contractor's document management software at a security level deem appropriate by the Project Manager, Deputy Project Manager, or Construction Manager.

**d. Quality**

- (1) The subcontractor will be obligated to abide by the Project Quality Management Plan (QMP).
- (2) The subcontractor will be accountable for their deficient work and responsible for the implementation of the approved correction or remedy.
- (3) The subcontractor will be responsible for initiating their own technical submittals associated with the items of work.

**e. Environment**

- (1) Protection of the environment is a priority for every project. The Subcontractor shall abide by the Project Comprehensive Environmental Protection Plan (CEPP).
- (2) The subcontractor will be required to attend the project environmental briefing/training.
- (3) The subcontractor will be required to comply with all environmental commitments on the project that have direct bearing on its work.
- (4) The subcontractor will comply with all applicable permits, laws, and regulations governing this project and the work subcontracted.

**f. Safety**

- (1) The contractor has a corporate goal of "ZERO" accidents. The subcontractor is required to have its own safety program or model one after the contractor's.
- (2) The subcontractor will insure their safety program is no less stringent than the Project Safety & Health Plan.
- (3) The subcontractor will comply with the Project Safety & Health Plan
- (4) The subcontractor will participate in project safety briefings.
- (5) The subcontractor shall be responsible for the safety of its employees.
- (6) The subcontractor shall comply with all local, state, and federal safety requirements and regulations.

**g. Assistance to SBEs**

- (1) WBCC shall not provide any assistance to the SBE in the general performance of its work. The term assistance is defined in the broadest possible sense:
  - (a) Labor, equipment, or materials
  - (b) Supervision



- (c) Ordering materials for the SBE from their suppliers
  - (d) Fuel
  - (e) Any other item one would reasonably expect a viable subcontractor to provide for themselves.
- (2) The only exceptions permitted by specification and allowed by WBCC are under emergency conditions where:
- (a) The safety of workers and the public is at risk.
  - (b) The work in progress is subject to a total loss (i.e. lose a concrete pour).
  - (c) The traveling public will be seriously impacted and excessive travel delays incurred.
- (3) WBCC serves as an advocate for all of their subcontractors (DBE and non-DBE) with TxDOT in the event of changes, change orders, and payment.

## **9. Payment**

### **a. Monthly Progress Payments & Reporting**

- (1) Monthly progress payments will be made by the 10th business day following payment received by WBCC for the items of work performed by the subcontractor.
- (2) A number of instances can impact payment time that are outside the control of the Contractor or higher tier Consultant:
- (a) The failure of the subcontractor to provide an invoice in a timely manner.
  - (b) Quality issues with the subcontractor's work.
  - (c) Apparent prompt pay or violations of other federally required provisions.
  - (d) Failure to pay vendors for materials purchased and used in the project.
  - (e) TxDOT's failure to provide copies of pay estimates in a timely manner.
  - (f) Delays by TxDOT in payments to the Design Builder.

### **b. Withholding Progress Payments**

- (1) Progress payments may be withheld for any violation or breach of a subcontract requirement such as but not limited to:
- (e) Failure to comply with prompt pay requirements
  - (f) Failure to be responsive to TxDOT or WBCC
  - (g) Failure to comply with any subcontract provision that creates a non-compliance with the Contract
- (2) Efforts by WBCC will be made to expeditiously remedy any impediments so that payments can be made as soon as possible.

## **10. Reporting**

SBE monthly progress will be reported on Form SMS 4903 on or about the 15th of each month. Prompt Pay Certifications, Form 2177 will be submitted by the 20<sup>th</sup> of each month. Within 60 days of final acceptance, the final SBE participation will be reported on Form SMS 4907. (See Appendix 1 – Forms and Appendix 2 - Schedule)

## **11. Mentoring**

- a. As discussed in Section 8g, the level and type of assistance/mentoring that WBCC can provide is restricted by state and federal program regulations. To avoid contravening any programmatic rules, WBCC will work in collaboration with TxDOT. Jointly, we will assess the needs of the participating DBE and small business firms by



identifying areas of improvement. Training classes or workshops will be offered to help them become better businesses.

- b. The needs assessment will determine:
  - The type of technical classes or workshops and need to be conducted
  - Whether there is a specific and recurring audience
  - Whether there is a genuine interest in attending by the DBE/small business firm thus establishing frequency
- c. In addition to training provided through this contract, we will work as a conduit for information for TxDOT and other educational institutions that may offer training conducive to their needs.
- d. We will collaborate with our insurance and bonding industry partners to integrate training on these financial issues with the DBE/small business firms.
- e. All training will be recorded digitally and uploaded to our electronic document management system. The training video files will be stored in "public" folders so that the training will be available to any and all interested firms. The videos will be available for downloading and sharing by the DBE/small business firms.
- f. Project briefings will be conducted with each DBE firm as they begin work on the project. Briefings will cover their responsibilities with regards to compliance with the Project Management Plan. Any performance issues will be addressed quickly to preclude any adverse impacts to quality and the financial well being of the DBE.

## 12. Termination

- a. For termination of DBE subcontractors, refer to the DBE Performance Plan.
- b. Termination may occur due to the direction of TxDOT.
- c. Termination for breach of contract may be for any action(s) include but are not limited to:
  - (1) Safety/OSHA violations
  - (2) Environmental violations
  - (3) Illegal or illicit conduct (misappropriation, etc.)
  - (4) Failure to perform work according to TxDOT specifications
  - (5) Violation of DBE rules and regulations (i.e. commercially useful function, etc.)
  - (6) Nonpayment of employees or bills (materials)
  - (7) Non-responsive to the project schedule
  - (8) Failure to provide adequate resources
  - (9) Unprofessional conduct
  - (10) A subcontractor removal request by TxDOT
- d. TxDOT must be notified of any subcontractor termination.

## 13. SBE Program Oversight

- a. Corporate:
  - (1) Compliance Manager – Robert C. (Bob) Lanham, PE, President
  - (2) Program Administration – Corina Taylor, Admin Asst
- b. Project:
  - (1) Project Manager – Leon Wright



- (2) Deputy Project Manager – Mac Qualls
- (3) Construction Manager – Keith Mittel
- (4) Document Manager – Lynette Birdsong



# Appendix 1 – Forms

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## Prompt Payment Certification (Federal-Aid Projects)

Form 2177  
(Rev. 7/2007)  
(GSD-EPC)  
Page 1 of 1

In accordance with the requirements of Article 6.e of the DBE special provision and the prompt payment clause under Article 9.6.B and related special provisions, submit this certification form to the Engineer prior to the end of the month following the month payments were received from the department and the month following the month when final acceptance occurred, at the end of the project. (Final submission may be made prior to final acceptance if all subcontractor work and supplier material furnished for the project is complete and the subcontractors and suppliers final payments have been made in full.) The Engineer may withhold payments or suspend work for failure to submit this form or provide prompt payment in accordance with the contract. This certification is applicable to materials the Contractor purchases to remain as part of the final project and to first tier subcontractors on the project and associated project specific locations. (Subcontractors and suppliers are to comply with the prompt payment requirements.)

### Certification

*"I certify that to the best of my knowledge and with the exception of those subcontractors or suppliers listed below, all subcontractors and suppliers have been paid in accordance with the contract (10 days after receiving payment for the work performed by the subcontractor) and that any retainage held on a subcontractor or supplier's work has been released within 10 days after satisfactory completion of all of the subcontractors' or suppliers' work."*

Project Number: \_\_\_\_\_ CCSJ: \_\_\_\_\_

Estimate Period: \_\_\_\_\_ or \_\_\_\_\_  
Month Year Final Subcontractor and Supplier Payment Date

\_\_\_\_\_  
Signature Title Date

Printed Name: \_\_\_\_\_

The following firms have not been paid for reasons listed:

Firm	* Reason for Non-Payment

\*Only reasons based on dispute on subcontractor or supplier noncompliance may be accepted.

This certification is for the department's information only and does not place any obligations on the part of the department with regard to any part, including but not limited to, any subcontractor and Contractor's surety.



## SBE Monthly Progress Report

Form SMS.4907  
(Rev. 4/2006)  
(GSD-EPC)  
Page 1 of 1

Project: \_\_\_\_\_  
County: \_\_\_\_\_  
Letting Date: \_\_\_\_\_  
Contractor: \_\_\_\_\_  
SBE Goal: \_\_\_\_\_ %

Contract CSJ: \_\_\_\_\_  
District: \_\_\_\_\_  
For Month of: (Mo./Yr.): \_\_\_\_\_  
Contract Amount: \_\_\_\_\_  
SBE Goal Dollars \_\_\_\_\_

Vendor Number	Name of SBE Sub/Supplier	*SBE, DBE, HUB, DH	Type of Work	* SBE \$ Amt. Pd. for Work Performed this Period	Amt. Pd. to SBE to Date

\* Include payments to all certified SBEs, DBEs, HUBs and DBE/HUBs. (Code S=SBE; D=DBE; H=HUB; DH=both DBE and HUB.)

If using a non-SBE hauling firm that leases from SBE truck owner-operators, payments made to each owner-operator must be reported separately.

Any changes to the SBE commitments previously approved by the department must be reported to the area engineer.

For projects with assigned SBE Goals, submission of this report for periods of negative SBE activity is required. This report is required until all SBE subcontracting or material supply activity is completed.

I hereby certify that the above is a true and correct statement of the amounts paid to the SBE firms listed above.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Company Official

This report must be sent to the area engineer's office within 15 days following the end of the calendar month.

The Texas Department of Transportation maintains the information collected through this form. With few exceptions, you are entitled on request, to be informed about the information that is collected about you. Under §§552.021 and 552.023 of the Texas Government Code, you also are entitled to receive and review the information. Under §559.004 of the Government Code, you are also entitled to have us correct information about you that is incorrect.



## SBE Final Report

Form SMS.4908  
(Rev. 4/2006)  
(GSD-EPC)  
Page 1 of 1

The SBE final report form should be filled out by the contractor and submitted to the appropriate district office upon completion of the project. One copy of the report must be submitted to the area engineer's office. The report should reflect all SBE activity on the project. The report will aid in expediting the final estimate for payment. If the SBE goal requirements were not met, documentation supporting good faith efforts must be submitted.

Project: \_\_\_\_\_ Contract CSJ: \_\_\_\_\_  
County: \_\_\_\_\_ Control Project: \_\_\_\_\_  
Letting Date: \_\_\_\_\_ SBE Goal: \_\_\_\_\_ %  
Contractor: \_\_\_\_\_ Contract Amount: \_\_\_\_\_

Vendor Number	Name of SBE Sub/Supplier	* SBE, DBE, HUB, or DH	Total \$ Amt. Pd. to SBE to Date

\* Include all payments to certified SBEs, DBEs, HUBs, and DBE\HUBs. (Codes: S=SBE; D=DBE; H=HUB; DH=both DBE and HUB.)

This is to certify that \_\_\_\_% of the work was completed by Small Business Enterprises as stated above.

By \_\_\_\_\_ Per: \_\_\_\_\_  
Name of General Contractor Contractor's Signature

Subscribed and sworn to before me, this \_\_\_\_\_ day of \_\_\_\_\_, A.D. \_\_\_\_\_.

Notary Public \_\_\_\_\_ County

My commission expires: \_\_\_\_\_.

The Texas Department of Transportation maintains the information collected through this form. With few exceptions, you are entitled on request, to be informed about the information that is collected about you. Under §§552.021 and 552.023 of the Texas Government Code, you also are entitled to receive and review the information. Under §559.004 of the Government Code, you are also entitled to have us correct information about you that is incorrect.



## Appendix 2 – Report Schedule

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# REPORT SCHEDULE

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REPORT	DUE DATE
SBE PROGRESS REPORT	15 <sup>th</sup> of the Month for Payments made the Preceding Month
PROMPT PAY CERTIFICATION	20 <sup>th</sup> of the Month for Payments made the Preceding Month

## Appendix 3 – AGC of Texas OJT Program

# ON THE JOB TRAINING PROGRAM



## AGC OF TEXAS HIGHWAY, HEAVY, UTILITIES AND INDUSTRIAL BRANCH

PREPARED BY

# AGC OF TEXAS

HIGHWAY, HEAVY, UTILITIES AND INDUSTRIAL BRANCH  
P.O. Box 2185  
AUSTIN, TX 78768

AND

THE TEXAS DEPARTMENT OF TRANSPORTATION  
OFFICE OF CIVIL RIGHTS

AN EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

REVISED APRIL 2012

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U.S. DEPARTMENT OF LABOR  
OFFICE OF FEDERAL CONTRACT COMPLIANCE  
WASHINGTON, D.C. 20210

July 29, 1968

MEMORANDUM

TO: Contract Compliance Officers

FROM: Ward McCreedy  
Acting Director

SUBJECT: Acceptable Affirmative Action Program for  
Certain Federally-Involved Contract Construction  
Projects in Texas

The Texas Highway-Heavy Branch of the Associated General Contractors has committed itself and its 235 contractor members, beginning this month, to a positive program of recruitment, training, and up-grading of minority groups for the construction industry. The 235 members of the Branch now employ approximately 22,000 workmen of whom some 70% are of minority groups, about evenly divided among Negroes and Mexican-Americans. The 70% minority representation throughout the labor force also exists among the machine operator and other higher-paying skills.

The Affirmative Action program of the Branch is: (1) to seek, employ, and train as many minorities as may be available and to continue this program so long as the economic situation warrants, (2) to immediately recruit and hire 350 minorities evenly divided among Negroes and Mexican-Americans and place them in a training program consisting of 24 skilled trades, of which 85% of the trainees are to become machine operators.

This Office recommends that agencies find participation by a bidder in this program constitutes acceptable affirmative action with respect to the 24 skills covered in the Training Program. Therefore, a statement of such participation should be accepted in lieu of that portion of a required affirmative action plan which would otherwise be directed to these job categories. However, if the low bidder intends to use construction craftsmen in other categories usually described as the mechanical crafts (electrical, ironwork, plumbing, pipefitting, sheetmetal), the usual determination for affirmative action programs will apply, unless similar multi-employer programs have been accepted by this Office.

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE SOLICITOR  
WASHINGTON 20210

JUL 23 1968

Mr. Robert W. Norris  
Staff General Counsel  
Texas Highway-Heavy Branch  
Associated General Contractors  
P. O. Box 1609  
Austin, Texas 78767

RECEIVED

JUL 25 1968

A. G. C.  
AUSTIN, TEXAS

Dear Mr. Norris:

This is with further reference to your June 6 letter and subsequent conversations with members of my staff regarding the approval of your On-the-Job Training Program, which we understand complies with the standards established by the Office of Federal Contract Compliance.

Our review for Davis-Bacon purposes indicates that the proposed training program conforms with the criteria outlined in our All-Agency Memorandum No. 74, dated August 28, 1967, and subsequent policy statements regarding bona fide youth, poverty and similar manpower training programs. Accordingly, the program is approved.

As indicated in our discussions, we will continue to follow our present policy of not incorporating trainee rates into any wage determinations issued by this office.

Yours sincerely,

  
Charles Donahue  
Solicitor



U.S. DEPARTMENT OF LABOR  
OFFICE OF THE REGIONAL DIRECTOR  
7TH FLOOR — 1100 COMMERCE STREET

Dallas, Texas 75202

October 3, 1972

Mr. Tom Johnson  
Texas Chapter  
Associated General Contractors  
P.O. Box 2185  
Austin, Texas 78767



Dear Mr. Johnson:

This office is in receipt of a letter from the Assistant Secretary for Manpower, U. S. Department of Labor, allowing highway-heavy contractors to utilize the on-job training program which was approved by the Secretary of Transportation to satisfy their Order 72-2(2) on highway-heavy type construction.

It was pointed out that your on-job training program paralleled the objectives of 29 CFR 5a and therefore, participation in this program exempts participating contractors from the requirements of 29 CFR 5a on highway-heavy type construction. As you know, highway-heavy construction is defined as construction such as dams, streets, utilities, site grading, air fields and similar type construction.

Should any awarding agencies have any questions about the applicability of this training program, I hope they will not hesitate to contact this office.

Sincerely,

*Truman Branscum*  
Truman Branscum  
Regional Director

U.S. DEPARTMENT OF LABOR  
EMPLOYMENT STANDARDS ADMINISTRATION  
Office of Federal Contract Compliance  
~~WASHINGTON, D.C. 20340~~  
2320 La Branch - Room 261  
Houston, Texas 77004



March 21, 1972

Mr. Thomas L. Johnson  
Executive Secretary  
AGC, Texas Highway-Heavy Branch  
P. O. Box 2185  
Austin, Texas

Dear Mr. Johnson:

On March 10, 1972, I met with Mr. Nathaniel Pearson, Assistant Director of the Office of Federal Contract Compliance, for the purpose of discussing the Manpower Development and Training Programs sponsored by AGC, Highway-Heavy Branches, in the southwestern states.

In our discussions, Mr. Pearson indicated that prior to these programs receiving approval from OFCC as an approved Department of Labor Affirmative Action Program, they had to be updated in the following manner:

1. The starting pay of a trainee must be increased to 70% of the prevailing wage rate of a journeyman in the particular trade for which the trainee is being trained.
2. A specific numerical goal for the number of minorities to be trained must be established on a yearly basis.
3. A formal monthly reporting system to the Regional Director must be established.
4. Minority community involvement must be continued, and minority group referral sources must be utilized.

I am in receipt of your letter of March 20, 1972, in which your Association agrees to these requirements. My office feels that the numerical

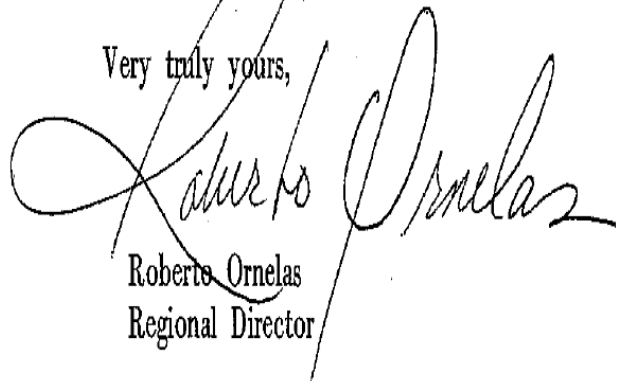
Mr. Thomas L. Johnson

March 21, 1972

goal that you have established for the training of minorities is reasonable and acceptable, and in view of your agreement to our recommendations, I hereby give tentative approval to your program.

I will further recommend to my national office that they issue final approval of your program as an acceptable Affirmative Action Program approved by the Department of Labor.

Very truly yours,

A large, stylized handwritten signature in black ink, appearing to read "Roberto Ornelas". The signature is written over the typed name and title.

Roberto Ornelas  
Regional Director

RO:me

U.S. DEPARTMENT OF LABOR  
EMPLOYMENT STANDARDS ADMINISTRATION  
Office of Federal Contract Compliance  
WASHINGTON, D.C. 20210



MAY 11 1972

RECEIVED

MAY 20 1972

A. G. C.  
AUSTIN, TEXAS

In Reply Refer To: 4506-14

TO: HEADS OF ALL AGENCIES

FROM: *George L. Holland*  
George L. Holland  
Director

SUBJECT: Approval of Texas Heavy-Highway Plan

*The Office of Federal Contract Compliance has granted approval to the Texas Heavy-Highway Plan as an acceptable voluntary plan.*

*The following crafts are utilized by the Texas Heavy-Highway Industry:*

*Electricians*

*Painters*

*Carpenters*

*Operating Engineers*

*1. Operators*

*2. Mechanics*

*Pipefitters and Plumbers*

*Ironworkers*

*Cement Masons*

*A copy of the Plan will be forwarded to your Office.*



U.S. DEPARTMENT OF LABOR  
EMPLOYMENT STANDARDS ADMINISTRATION  
Office of Federal Contract Compliance  
WASHINGTON, D.C. 20210



APR 24 1972

RECEIVED

MAY 13 1972

A. G. C.  
AUSTIN, TEXAS

In Reply Refer To: 4506-14

Mr. Thomas L. Johnson  
Executive Secretary  
Associated General Contractors  
P. O. Box 2185  
Austin, Texas 78767

Dear Mr. Johnson:

*The Office of Federal Contract Compliance is granting approval to the Texas Heavy-Highway Plan as an acceptable voluntary plan.*

*The following crafts are utilized by the Texas Heavy-Highway Industry:*

*Electricians  
Ironworkers  
Cement Masons  
Operating Engineers  
1. Operators  
2. Mechanics*

*Pipefitters and Plumbers  
Painters  
Carpenters*

*We look forward to a successful plan and continued progress in the area of equal employment opportunity.*

Sincerely,

  
George L. Holland  
Director

**U.S. Department of Labor**

Employment Standards Administration  
Office of Federal Contract  
Compliance Programs  
A. Macco Smith Federal Building,  
525 South Griffin Street, Room 840  
Dallas, Texas 75202-5007



February 19, 1997

Ken Naquin, Secretary  
OJT Administrative Committee  
Louisiana Associated General Contractor, Inc.  
620 North Street  
Baton Rouge, LA 70802

Dear Mr. Naquin:

I appreciate the opportunity to meet with you and Mr. Bill Driskell on February 13, 1997. It was gratifying to learn that we share the same vision of a partnership between the AGC and OFCCP to ensure compliance with the spirit and intent of the rules and regulations administered by the OFCCP.

During the meeting you raised a question regarding the approval of the Louisiana AGC Heavy Highway Training Plan. These programs are approved at the National OFCCP level. As discussed on Thursday all AGC training programs in Louisiana, Arkansas, Oklahoma, Texas, and New Mexico are approved until further notice. Each contractor will be individually judged on the participation of minorities and women in the training program operating on their job sites to determine compliance with 41 CFR 60-4.3(a) contract specification 7e.

I did note that the January 1997 issue of the "AGC Action News" stated that it is no longer required that bidders sign an EEO form. Since successful bidders will be subject to the rules and regulations administered by OFCCP, it is recommended that you clarify to your members that the deletion of that DOTD EEO form does not absolve them from the EEO requirements of Executive Order 11246, as amended. If you have any questions please call me or Theresa Lee at (214) 767-2804.

Sincerely,

  
ALBERT C. PADILLA  
Regional Director

cc: Bill Driskell





# MEMORANDUM

RECEIVED

FEB 10 2009

OFFICE/EXECUTIVE DIRECTOR

**TO:** Amadeo Saenz, Jr., P.E.

**DATE:** February 10, 2009

**THROUGH:** Edward Serna *ES*

**FROM:** Jesse W. Ball, Jr. *JWB*

**SUBJECT:** On-the-Job Training Program Memorandum of Agreement

Pursuant to 23CFR§230.111, the Texas Department of Transportation (TxDOT) is required to implement an On-the-Job Training (OJT) Program. The primary objectives of the OJT Program are the training and upgrading of minorities, women and economically disadvantaged persons toward journey worker status.

**Signature:** Attached are three copies of the Memorandum of Agreement. Please sign page two of each copy.

**Summary:** TxDOT and the Associated General Contractors of Texas (AGC) have had a long-standing partnership in administering the OJT program which has helped create thousands of well-paying jobs for skilled workers.

On December 10, 2008, a meeting was held with Federal Highway Administration (FHWA), TxDOT and AGC officials to address issues and concerns regarding the administration and ownership of the OJT program.

FHWA officials acknowledged AGC's program and their contributions to provide opportunities to minorities and females. FHWA recommended that a Memorandum of Agreement be established between TxDOT and AGC to solidify the partnership and administration of the OJT program. Furthermore, FHWA indicated that both parties must make efforts to increase the number of trainees and this commitment should be incorporated into the agreement.

**ON-THE-JOB TRAINING PROGRAM  
MEMORANDUM OF AGREEMENT**

**Between**

**Texas Department of Transportation  
and  
Associated General Contractors of Texas**

WHEREAS, the Texas Department of Transportation (TxDOT) and the Associated General Contractors of Texas (AGC) enter into a Memorandum of Agreement to implement and administer the On-the-Job Training (OJT) Program effective upon the date of final execution and continuing through the duration of the OJT Program or upon 30 days written notice of termination by either party;

WHEREAS, TxDOT and AGC agree through this Agreement to follow the directives of 23 CFR Part 230, Subpart A, Equal Employment Opportunity on Federal and Federal-aid Construction Contracts (including Supportive Services), and applicable Federal Statutes, to increase the skill level of minorities, women, and disadvantaged persons in the construction skilled trades working at least in part on TxDOT Federal-Aid projects;

WHEREAS, TxDOT and AGC agree to increase the number of trainees in the program and will meet as needed to evaluate, establish and publish annual training goals by January 31 each year. TxDOT and AGC agree to develop and document a trainee selection process;

WHEREAS, TxDOT and AGC agree to facilitate outreach initiatives for potential trainee candidates and prime contractors participating in an OJT Program;

WHEREAS, TxDOT and AGC agree to meet quarterly to evaluate the achievement of the program's goals and objectives;

WHEREAS, TxDOT and AGC agree to monitor efforts in locating, hiring, training, qualifying and upgrading minorities, women and disadvantaged persons through the OJT Program;

WHEREAS, TxDOT and AGC agree to work in a collaborative manner to resolve OJT Program compliance issues as they occur;



THEREFORE, in order to support the OJT Program goals and objectives, TxDOT and AGC agree to be responsible for the following duties:

**TxDOT**

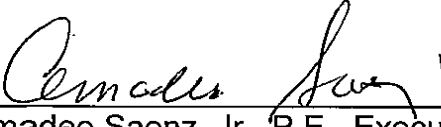
1. TxDOT will ensure compliance with program requirements with the Federal Highway Administration (FHWA) as the final authority on compliance.
2. TxDOT will publish and forward to FHWA an annual report on the achievement of the OJT Program goal.
3. TxDOT will manage and promote the Construction Career Academy, an OJT Supportive Services Program designed to support program recruitment initiatives.

**AGC**

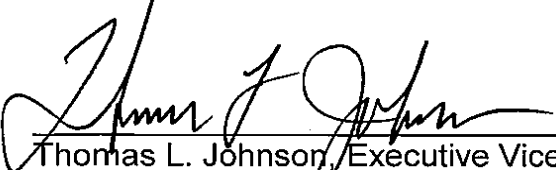
1. AGC will commit to timely reporting.
2. AGC will ensure maintenance of OJT Program records and TxDOT/FHWA's access to OJT Program records.
3. AGC will host semi-annual meetings to promote the utilization of TxDOT's Construction Career Academy and other outreach avenues.

No alteration of the TxDOT or AGC OJT Program, this Memorandum of Agreement, or any special provision affecting its use, may be performed without the mutual, written consent of FHWA, TxDOT and AGC.

This document is executed in duplicate counterpart originals.

  
\_\_\_\_\_  
Amadeo Saenz, Jr., P.E., Executive Director  
Texas Department of Transportation

2/13/09  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Thomas L. Johnson, Executive Vice President  
Associated General Contractors of Texas

2-24-09  
\_\_\_\_\_  
Date

# **ON-THE-JOB TRAINING PROGRAM MEMORANDUM OF AGREEMENT**

**Between**

**Texas Department of Transportation  
and  
Associated General Contractors of Texas**

WHEREAS, the Texas Department of Transportation (TxDOT) and the Associated General Contractors of Texas (AGC) enter into a Memorandum of Agreement to implement and administer the On-the-Job Training (OJT) Program effective upon the date of final execution and continuing through the duration of the OJT Program or upon 30 days written notice of termination by either party;

WHEREAS, TxDOT and AGC agree through this Agreement to follow the directives of 23 CFR Part 230, Subpart A, Equal Employment Opportunity on Federal and Federal-aid Construction Contracts (including Supportive Services), and applicable Federal Statutes, to increase the skill level of minorities, women, and disadvantaged persons in the construction skilled trades working at least in part on TxDOT Federal-Aid projects;

WHEREAS, TxDOT and AGC agree to increase the number of trainees in the program and will meet as needed to evaluate, establish and publish annual training goals by January 31 each year. TxDOT and AGC agree to develop and document a trainee selection process;

WHEREAS, TxDOT and AGC agree to facilitate outreach initiatives for potential trainee candidates and prime contractors participating in an OJT Program;

WHEREAS, TxDOT and AGC agree to meet quarterly to evaluate the achievement of the program's goals and objectives;

WHEREAS, TxDOT and AGC agree to monitor efforts in locating, hiring, training, qualifying and upgrading minorities, women and disadvantaged persons through the OJT Program;

WHEREAS, TxDOT and AGC agree to work in a collaborative manner to resolve OJT Program compliance issues as they occur;

THEREFORE, in order to support the OJT Program goals and objectives, TxDOT and AGC agree to be responsible for the following duties:

**TxDOT**

1. TxDOT will ensure compliance with program requirements with the Federal Highway Administration (FHWA) as the final authority on compliance.
2. TxDOT will publish and forward to FHWA an annual report on the achievement of the OJT Program goal.
3. TxDOT will manage and promote the Construction Career Academy, an OJT Supportive Services Program designed to support program recruitment initiatives.

**AGC**

1. AGC will commit to timely reporting.
2. AGC will ensure maintenance of OJT Program records and TxDOT/FHWA's access to OJT Program records.
3. AGC will host semi-annual meetings to promote the utilization of TxDOT's Construction Career Academy and other outreach avenues.

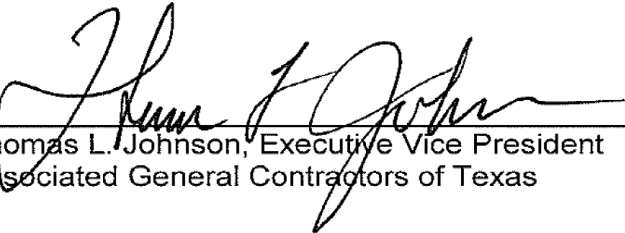
No alteration of the TxDOT or AGC OJT Program, this Memorandum of Agreement, or any special provision affecting its use, may be performed without the mutual, written consent of FHWA, TxDOT and AGC.

This document is executed in duplicate counterpart originals.



Phil Wilson, Executive Director  
Texas Department of Transportation

2/19/12  
Date



Thomas L. Johnson, Executive Vice President  
Associated General Contractors of Texas

2-29-12  
Date

# ON-THE-JOB TRAINING PROGRAM LETTER OF AGREEMENT

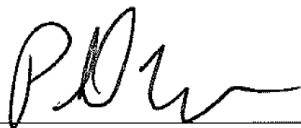
between

**Texas Department of Transportation  
and  
Associated General Contractors of Texas**

Updates to the On-the-Job Training (OJT) Program are as follows:

1. Methodology: The methodology used for goal allocation remains the same. However, the calculation was amended to include total federal and state highway construction contract funds awarded by the Texas Department of Transportation (TxDOT). Local-let and maintenance contract amounts are not included in the calculation.
2. Special Provision 000--1676, OJT Program: Section 2, Training Assignment, is being updated to remove federal-aid contract restriction. The calculation was amended to also include state highway construction contract funds.
3. Classifications: Classifications were revised to include a training classification for all Davis-Bacon wage classifications for Texas, excluding Flagger and Common Laborer, as of the November 2011 letting.
4. Goals: Two goal credits are now awarded to contractors for each trainee graduating from a classification with a maximum training schedule greater than or equal to 2040 hours. Requests for partial credit will be determined on a case-by-case basis by TxDOT.
5. Goals: One goal credit is now awarded to contractors for each employee hired from the Texas Construction Career Academy (TCCA). The TCCA graduate may be placed into the OJT program for an additional goal credit.

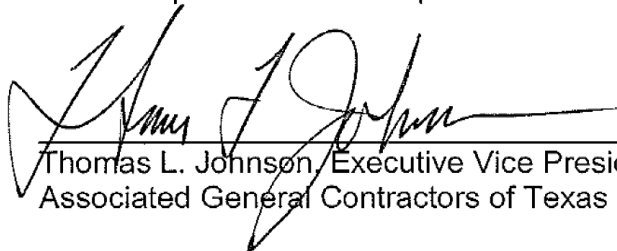
By signing below, you consent to these updates.



Phil Wilson, Executive Director  
Texas Department of Transportation

04/3/12

Date



Thomas L. Johnson, Executive Vice President  
Associated General Contractors of Texas

4-9-12

Date

# AGC OF TEXAS ON THE JOB TRAINING PROGRAM HIGHWAY, HEAVY UTILITIES AND INDUSTRIAL BRANCH

## ~A NOTE TO TRAINEES~

Welcome to the AGC of Texas On the Job Training Program. This program was initiated to increase the participation of minorities, women and disadvantaged persons in the construction skilled trades on TxDOT Federal-Aid construction projects. It gives eager, hardworking individuals a means to learn new skills and earn higher wages. The training time is cut just as short as possible, so each trainee must apply himself or herself to the fullest extent. While this may sound difficult, the rewards are great. After successful completion of your training, you will become a skilled employee and your wages will reflect your new expertise.

Your employer welcomes you into this training program and looks forward to making you more valuable to the operation of the business. With hard work and effort you will see your wages rise, which will in turn help raise the standard of living for you and your family.

The job classifications listed herein contain outlines of what you should expect from your training. Each of the training curricula serves as a general guideline. As contractors expect different things from their employees, it is the employer's decision how to handle your training and when to graduate you from the program. Keep in mind, however, that the hours listed are a maximum, and you shall not be kept in the training program for longer than the maximum number of hours.

We hope the AGC of Texas On-the-Job Training Program will be a fresh start in your career, and enable you to increase your knowledge, pay and value to your employer. With your best effort and your employer's best knowledge and help, let's begin.

# CONTRACTOR QUICK GUIDE

The Contractor shall begin assigning and scheduling OJT training within 30 days of receipt of annual notification. If at least one trainee is not earning training hours within 60 days, the Contractor must submit to the Department a **Contractor On-the-Job Training Form**.

Within seven days of intent to begin training, the contractor shall electronically submit to AGC an **AGC OJT Enrollment Request Form** AND mail a hard copy signed by the trainee and a contractor representative. Trainees must be enrolled on a federal-aid project but can train on other projects. AGC will review the request and send a letter to the contractor confirming or rejecting trainee enrollment. If approved, a copy of the letter is forwarded to the affected area engineer(s). AGC will forward an electronic version of the enrollment request to TxDOT's Office of Civil Rights.

The contractor is required to furnish each trainee with a copy of the program schedule (the "Orange Book"). AGC will provide these to the contractor for distribution.

Each month thereafter the contractor shall electronically submit a **Monthly Reporting Form** both to AGC and the affected area engineer(s), regardless of whether training occurred for that month.

If a trainee is transferred to another project, the contractor shall advise the new and previous area engineers and note the move on the **Monthly Reporting Form**.

Upon completion or termination of training, the Contractor must notify the area engineer(s) and AGC within seven business days by noting it on the Monthly Reporting Form. AGC shall supply a copy of the final form to TxDOT's Office of Civil Rights (OCR). Graduation ceremonies are encouraged and AGC will furnish the contractor with a diploma and wallet card to be given to the trainee upon graduation.

If warranted, outreach and recruitment opportunities will be facilitated by AGC. Two joint meetings will be scheduled by AGC of Texas each year to review training and recruitment effort. Before a recruitment meeting, AGC will send letters to TxDOT, FHWA, and member contractors requesting ideas for recruitment events, invitee lists, and other related participation.

Annual Outreach Reporting Forms detailing recruitment meetings and outreach events shall be retained by AGC and shall list participants (to include organizations, and federal and state officials) and potential recruits from the outreach efforts. They will also document all assistance given from FHWA and TxDOT or requested by AGC and member contractors. The Reporting Forms will be available to FHWA and TxDOT by request.

The Contractor and AGC shall retain training records for a period of three years following completion of the contract work. Such records shall be made available at reasonable times and places for inspection by authorized representatives of TxDOT and the Federal Highway Administration.

# BACKGROUND

## **NONDISCRIMINATION IN PROGRAMS AND ACTIVITIES**

### **Title VII of the Civil Rights Act (1964)**

The Title VII of the Civil Rights Act of 1964 prohibits discrimination in employment and was passed to bring equality in hiring, transfers, promotions, compensation, access to training, and other employment-related decisions.

### **Form FHWA-1273 – Section II, Nondiscrimination**

A contractor's minimum EEO requirements are set forth in the contract provisions referenced in Form FHWA-1273 as "Section II, Nondiscrimination." These include acceptance of a general operating policy that prohibits discrimination based on race, color, religion, sex, national origin, age, or disability.

Contract provisions also require nondiscrimination in selection and retention of subcontractors, material suppliers and vendors; maintenance of non-segregated facilities; on-the-job training and training special provisions; and adherence to employment preference in Appalachian contracts, where applicable.

### **Title 49, Code of Federal Regulations, Part 21**

Title 49, Code of Federal Regulations (CFR), Part 21 of the DOT Regulations of the implementation of Title VI require assurances from states that no person on grounds of race, color, or national origin is excluded from participation, denied the benefits of, or in any other way subjected to discrimination under any program or activity for which the recipient receives assistance from the DOT, including the FHWA.

### **Title 23 CFR 230**

The provisions of 23 CFR 230 - are applicable to all state transportation agencies that receive federal financial assistance in connection with the Federal-aid Highway Program. Subpart A requires the establishment of the on-the-job training program and on-the-job training supportive services program.

### **Department Policy – Nondiscrimination Statement**

The Department, a recipient of federal financial assistance under Title VI of the Civil Rights Act of 1964 and related statutes, ensures that no person shall on the grounds of race, religion (where the primary objective of the financial assistance is to provide employment per 42 U.S.C. \*2000d-3), color, national origin, sex, age and disability be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any Department programs or activities.

## **ALTERNATE TRAINING PROGRAMS**

Approval\* or acceptance of a training program shall be obtained from the State prior to commencing work on the classification covered by the program. It is the intention of 23 CFR Part 230 Appendix B of Subpart A that training is to be provided in the construction crafts rather than clerk-typists or secretarial-type positions. Training is permissible in lower level management positions such as office engineers, estimators, timekeepers, etc., where the training is oriented toward construction applications. Training in the laborer classification may be permitted provided that significant and meaningful training is provided and approved by the FHWA division office. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

The contractor may propose another skilled or semi-skilled craft training program for use in fulfilling its OJT requirements, based on its company workforce needs, by submitting a written request detailing the reason for the proposed training program. The contractor's proposed skilled or semi-skilled craft training program must be approved by the U.S. Department of Labor.

This request should be forwarded to the Department's Office of Civil Rights (OCR). A copy of the contractor's proposed training program must accompany the contractor's written request.

\*Approval is implicit.

# PROGRAM GUIDELINES

## **POLICY STATEMENT**

The Department has established a Federal On-the-Job Training (OJT) Program in accordance with regulations of the U.S. Department of Transportation at 23 CFR Part 230, Subpart A, Equal Employment Opportunity on Federal and Federal-aid Construction Contracts. It is the policy of the Department to require full utilization of all available training and skill-improvement opportunities to assure the increased participation of minority groups, disadvantaged persons and women in all phases of the highway construction industry.

The Federal OJT Program is administered through a construction contract special provision. A copy of this special provision is located in Appendix A.

## **PROGRAM OBJECTIVES**

The OCR is the office of primary responsibility for the administration of the program with assistance from the Construction Division, Districts, and Area Offices in administering the program. The Department's policy requires full use of all available training and skill improvement opportunities by contractors to assure increased participation of minority groups, disadvantaged persons, and women in all phases of the highway construction industry.

The Federal OJT program targets women, minorities, and disadvantaged individuals for entry into journey-level positions to ensure that a competent workforce is available to meet highway construction hiring needs, and to address the historical under-representation of members of these groups in highway construction skilled crafts.

The program addresses the following considerations:

- Flexibility for contractors in selecting the projects they can place trainees on by removing project specific-based goals;
- Emphasis on the recruitment of trainees who are likely to become members of a contractor's regular workforce upon completion of the program;
- Emphasis on training in skilled craft classifications; and
- Assisting contractors in meeting their EEO goals through training of women, minorities, and disadvantaged individuals.

## **PROGRAM AREAS**

The Federal OJT Program has been designed to ensure that the trainee consistently receives the level and quality of training necessary to perform as a journeyman in his/her respective skilled trade classification. Standard training programs for each skilled construction trade classification were developed jointly by the Department, Associated General Contractors, construction industry representatives, and others. The approved training programs are listed in Appendix B.

Each training program details the training curriculum that should be provided to the trainee and the number of hours in each classification code. The training curriculum serves as a general guideline. As contractors expect different things from their employees, it is the contractor's decision how to handle training and when to graduate a trainee from the program. Keep in mind, however, that the hours listed are a maximum, and a trainee shall not be kept in the training program for longer than the maximum number of hours listed.



# GOAL REQUIREMENTS

## ANNUAL GOAL METHODOLOGY

Each year, OCR sets an overall agency goal on the number of trainees to be enrolled for the calendar year. The goal is based on the construction letting for the previous fiscal year and is sent to the FHWA for approval. OCR notifies contractors of their goal by January 31.

Each year, the ranges will be reviewed to maximize training potential. The formula for assigning contractor goals is illustrated in the following table:

<b>ANNUAL GOAL BASED ON TOTAL CONTRACT AMOUNT WITH DEPARTMENT</b>		
<b>Annual Estimated (Range) Contract Amount</b>		<b>Trainees Required Annually</b>
\$160,000,000.01	to \$195,000,000.00	6
\$90,000,000.01	to \$125,000,000.00	4
\$20,000,000.00	to \$55,000,000.00	2

## GOAL CREDIT

Credit will be counted toward the contractor's annual goal for the year in which the trainee entered training.

Credit will be counted, pending official enrollment, for each trainee on the project when it is documented that the trainee has graduated from the program. In the event the required number of trainees has graduated from the program and there are remaining active trainees, the contractor may apply the remaining trainees to the fulfillment of trainee requirements for the following year.

To encourage contractors to place trainees in the more technical classifications, which include more than 2080 maximum training hours, two credits will be counted per trainee graduation in the classifications denoted by an asterisk (\*) in Appendix B.

To address the historical under-representation of women, minorities and disadvantaged individuals in highway construction skilled crafts and to ensure a competent workforce is available to meet highway construction hiring needs, credit will be counted toward the contractor's annual goal if documentation is provided that a graduate from the Texas Construction Career Academy (TCCA) has been hired for employment. If the TCCA graduate is also enrolled as a trainee into the OJT program, an additional credit will be allowed when it is documented that the trainee has graduated from the program. (TCCA program information can be found in section 8, Supportive Services.)

Credit will not be counted when the contractor fails to provide acceptable training or evidences a lack of good faith effort in meeting the requirements of this program.

## GOOD FAITH EFFORT

If a contractor fails to meet the total trainee goal, OCR shall determine good faith effort on a case-by-case basis. Criteria used to determine good faith effort include, but are not limited to, the following:

- Percentage of completion based on the trainee's maximum training hours;
- Reason for termination;
- Contractor efforts to replace the trainee; and
- The state of the contractor's work load.

# TRAINEE GUIDELINES

## **TRAINEE REQUIREMENTS**

The contractor should satisfy the following requirements by including appropriate questions in the employee application or by other suitable means:

- No individual will be employed as a trainee in any classification in which he/she has successfully completed a training course leading to journeyman status, or in which he/she has been employed as a journeyman.
- The employee cannot have experience in the training program in which he/she is to be placed.

## **SELECTION PROCEDURES**

The contractor shall make every effort to enroll minority trainees and women (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent that such persons are available within a reasonable area of recruitment. The contractor will be responsible for demonstrating the steps taken in pursuance thereof, prior to a determination as to whether the contractor is in compliance with the training special provision.

This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not. The prospective trainee must express interest in entering the OJT Program, as well as exhibit sufficient commitment to complete the training. These criteria are captured on the Federal OJT Program Enrollment Form.

## **WAGE RATES**

The trainee will be paid the appropriate Davis-Bacon wage rates or the prevailing wage rate for training crafts on Department projects.

The contractor shall compensate the trainee at least 70 percent of the appropriate minimum journeyman's rate specified in the contract for the first third of the training period; 80 percent for second third; and 90 percent for the last third, respectively.

Contractors using alternate training programs as defined in the manual must compensate the trainee in accordance with the approved Davis-Bacon wage rates in the contract.

# CONTRACTOR RESPONSIBILITIES

## **RESPONSIBILITIES**

A contractor's responsibilities in implementing the training special provision include the following:

- Training must commence on a federal-aid highway construction project which also must contain the OJT special provision. If not, a change order must be generated;
- Training may occur on Department construction and maintenance projects and local-administered federal-aid projects, with approval of that local entity;
- Training may be provided by a subcontractor. Program requirements are still the responsibility of the contractor who has been assigned the goal;
- The number of trainees shall be distributed among the work classifications on the basis of the contractor's needs and the availability of journeymen in the various classifications within a reasonable area of recruitment;
- The contractor will periodically review the training and promotion potential of minorities, women, and disadvantaged employees and will encourage eligible employees to apply for such training and promotion;
- The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each;
- The contractor shall furnish each trainee with a copy of their enrollment form, the program curriculum, and training progress reports reflecting the total training hours accumulated;
- Upon graduation, the contractor will provide each trainee with a certificate showing the type and length of training satisfactorily completed; and
- If a trainee is terminated, the contractor is required to make a good faith effort to replace the trainee within 30 calendar days of the termination.

## **ENROLLMENTS**

Within 30 days of the annual notification, the contractor shall make every effort to enroll minority, women, and economically disadvantaged trainees to the extent that such persons are available within a reasonable area of recruitment.

Within 60 days of the annual notification, one or more of the trainees must be enrolled into the program. Should the contractor not have any individuals enrolled or undergoing training by this time, the following information must be provided to the OCR:

1. An action plan utilizing the Department's Contractor On-the-Job Training Plan form located in Appendix C;
2. A listing of recruitment sources used for minority, women, and disadvantaged individuals, such as minority, women, and disadvantaged organizations, associations, newspapers and flyers;
3. A copy of the applicant log that shows name of the applicant, gender, race/ethnicity, and date of application; and
4. The Metropolitan Statistical Area(s) used for outreach and recruitment where each of the contractor's projects are located.

## **REPORTING REQUIREMENTS**

The contractor is required to submit form 2201, Federal OJT Program Enrollment Form, within seven business days of its intent to assign trainees to a project and the training classification to be utilized.

The contractor will report on the previous month's OJT activity by submitting form 2202, Federal OJT Program Monthly Reporting Form, to each applicable Area Engineer(s) where training occurred by the **10<sup>th</sup> of each month**. A copy must also be submitted to OCR. If there are no hours worked during the month, the contractor's monthly report must reflect no hours. Upon graduation or termination, the contractor should include this information on the monthly report submitted. Additionally, if requested, reimbursement will be made under the federal-aid contract identified on this form.

If a trainee is transferred to another project, the contractor must notify both the Area Engineer on the previous project and the Area Engineer on the project the trainee is being transferred to. This information must also be indicated on the Federal OJT Program Monthly Reporting Form.

**The certified payroll must reflect the trainee's training classification and the actual number of hours training for that payroll period.**

The contractor will utilize the appropriate forms as described herein to notify AGC & the Department of the termination of a trainee and the enrollment of a replacement trainee. The replacement trainee need not be enrolled in the same training classification code as the terminated trainee. Copies of the reporting forms are located in Appendix C.

## **REIMBURSEMENT**

Except as otherwise noted below, the contractor, upon request, will be reimbursed 80 cents per hour upon completion of training given an employee in accordance with an approved training program:

- Reimbursement is not allowed for any trainee enrolled in the Federal OJT Program that is training on an American Recovery and Reinvestment Act of 2009 (ARRA) project.
- Reimbursement is not allowed if either the failure to provide the required training or the failure to hire the trainee as a journeyman is caused by the contractor.
- Reimbursement is not allowed if the contractor evidences a lack of good faith effort in meeting the requirements of the Training Special Provision.

## **COMPLIANCE**

The contractor has a fundamental role and responsibility to take all reasonable and necessary steps to ensure that the terms and conditions of its contract are fully met. This includes, but is not limited to, its employment policy. The contractor is responsible for having in place and implementing an equal opportunity policy that ensures equal access to employment and training.

Under 23 CFR 230 and 23 USC 140, the Department has the authority to conduct contractor compliance reviews of contractors to ensure compliance with the equal employment opportunity contract provisions and the implementation of special requirements for the provision of on-the-job training (23 CFR 230.111).

## **RECORDS**

The contractor shall retain the original training records for a period of three years following completion of the contract work. Such records shall be available at reasonable times and places for inspection by authorized representatives of the Department and the FHWA. AGC will also retain records for a period of three years.

# DEPARTMENT RESPONSIBILITIES

## **MONITORING REQUIREMENTS**

Upon receipt of the Federal OJT Program Enrollment Form, AGC will either approve or deny the request and notify the contractor of the decision in writing. If the request is approved, AGC will notify the applicable Department Area Engineer and the District Director of Construction.

Each month, the contractor will submit the Federal OJT Program Monthly Reporting Form, which will contain sufficient data and narrative content to enable evaluation of both progress and problems encountered. The Area Engineer, or designee, will verify the training hours indicated on the form against the certified payroll. The form must be signed and retained in the project files.

Area office personnel will conduct labor interviews and wage rate monitoring utilizing the Construction Division's Labor Standards Review Form. The area office should conduct at least one interview per trainee during their training period to verify their training status and/or progress toward completing the training program. Copies of the completed forms must be forwarded to AGC.

For reimbursement, district personnel will add a detail number during activation or by change order to pay the contractor. Reimbursement is allowed on multiple federal-aid contracts as long as the total hours to be reimbursed have been verified through a review of the certified payrolls and accurately reflects the total hours of actual training. The contractor will not be reimbursed if there was a lack of good faith effort on the part of the contractor in meeting the requirements of the program. Additionally, reimbursement is not allowed for any trainee enrolled in the Federal OJT Program that is training on an ARRA project.

To ensure that the contractors' trainee goals are complied with, AGC and the Department will monitor the contractor's recruitment efforts, training, and hiring. This will be accomplished by a review of the OJT Program reporting forms.

AGC and OCR will continually monitor the contractor's OJT progress through an OJT database developed and maintained by the Department. The OJT database will consist of information obtained from the contractor's reporting forms.

## **NONCOMPLIANCE MEASURES**

In the case of reporting lapses, AGC of Texas will contact the Contractor and work with the Contractor to rectify the lapse within ten business days. If full reporting compliance can not be achieved within this time, AGC will notify TxDOT OCR-CCS of the issue. TxDOT will send a letter to the contractor acknowledging the lapse and initiating a 45-day window for the Contractor to become completely up-to-date. If the reporting lapse is not rectified within 45 days, TxDOT OCR-CCS will forward the information to TxDOT Construction Division, who will initiate noncompliance measures as they deem appropriate.

## **ANNUAL REPORT**

On an annual basis, the Department will submit to FHWA a report on the achievement of the Department's annual training goal. The Federal OJT Program Annual Report Form is located in Appendix C.

In the event the Department does not achieve the annual training goal, the Department will inform the FHWA in writing by December 31 indicating the specific reasons the goal was not achieved and the steps the Department took in their methodology to adjust future goals.

## SUPPORTIVE SERVICES (Pursuant to 23 CFR Part 230.113(f)(1)(2))

The On-the-Job Training Supportive Services (OJT/SS) Program was established in Title 23 Code of Federal Regulations, Part 230 to supplement the OJT program and support state transportation agency training programs by providing services to highway construction contractors and assistance to highway construction trainees.

The primary objectives of the OJT/SS program are to increase the overall effectiveness of the State highway agencies' approved training programs and to seek other ways to increase the training opportunities for women, minorities, and disadvantaged individuals.

### **Texas Construction Career Academy**

The OCR has partnered with the University of Texas at Arlington to administer the TCCA. The TCCA is a recruitment and pre-employment training program.

The key benefits of the TCCA are listed below:

- Provides contractors with a means to demonstrate good faith efforts in meeting EEO objectives by participating in the program;
- Assists contractors in filling positions in under-represented classifications;
- Recruits motivated individuals for contractor employment consideration;
- Provides participants with a true understanding of the construction work environment;
- Provides participants with transportation assistance; and
- Hosts job fairs where contractors and potential employees will be introduced.

Training sessions will be conducted throughout the state. Program curriculum will include introductory courses and practical exercises related to the highway construction industry. Additional program and contact information can be found at [www.texasconstructioncareeracademy.org](http://www.texasconstructioncareeracademy.org).

# **APPENDIX A**

## **SPECIAL PROVISION**

## **SPECIAL PROVISION**

### **000—1676**

### **On-the-Job Training Program**

**1. Description.** The primary objective of this Special Provision is the training and advancement of minorities, women and economically disadvantaged persons toward journeyworker status. Accordingly, make every effort to enroll minority, women and economically disadvantaged persons to the extent that such persons are available within a reasonable area of recruitment. This training commitment is not intended, and shall not be used to discriminate against any applicant for training, whether or not he/she is a member of a minority group.

**2. Trainee Assignment.** Training assignments are determined based on the past contract volume of federal-aid work performed with the Department. Contractors meeting the selection criteria will be notified of their training assignment at the beginning of the reporting year by the Department's Office of Civil Rights.

**3. Program Requirements.** Fulfill all of the requirements of the On-the-Job Training Program including the maintenance of records and submittal of periodic reports documenting program performance. Trainees shall be paid at least 60% of the appropriate minimum journeyworker's rate specified in the contract for the first half of the training period, 75% for the third quarter and 90% for the last quarter, respectively. Contractors may be reimbursed \$0.80 per training hour at no additional cost to the Department.

**4. Compliance.** The Contractor will have fulfilled the contractual responsibilities by having provided acceptable training to the number of trainees specified in their goal assignment. Noncompliance may be cause for corrective and appropriate measures pursuant to Article 8.6., "Abandonment of Work or Default of Contract," which may be used to comply with the sanctions for noncompliance pursuant to 23 CFR Part 230.



# **APPENDIX B**

## **TRAINING CLASSIFICATIONS**

# CLASSIFICATION INDEX

One credit shall be counted for each trainee who graduates from the program.

Two goal credits shall be counted for each trainee who graduates from the more technical training classifications with more **than 2080** maximum training hours. These training classifications are denoted by an asterisk (\*).

<u>CODE</u>	<u>TRAINING CLASSIFICATION</u>	<u>MAXIMUM HOURS</u>
0106	Asphalt Raker.....	520
0112	Batching Plant Operator, Asphalt.....	720
0115	Batching Plant Operator, Concrete.....	720
0124	Concrete Finisher, Paving and Structures.....	1040
0139	Electrician*.....	4160
0143	Telecommunication Technician*.....	2080
0144	Communications Cable Installer.....	720
0145	Traffic Signal/Light Pole Worker*.....	4160
0151	Form Builder/Setter, Structures.....	1040
0160	Form Setter, Paving and Curb.....	720
0175	Laborer, Utility.....	520
0187	Mechanic.....	1440
0194	Servicer.....	520
0196	Painter, Structures.....	1040
0202	Piledriver.....	720
0205	Pipelayer.....	520
0214	Blaster.....	1040
0300	Asphalt Distributor Operator.....	1040
0303	Asphalt Paving Machine Operator.....	1040
0305	Broom or Sweeper Operator.....	320
0306	Crawler Tractor Operator.....	720
0315	Concrete Paving Curing, Float, Texturing Machine Operator.....	1040
0318	Concrete Pavement Finishing Machine Operator.....	1040
0329	Joint Sealer.....	520
0333	Concrete Saw Operator.....	520
0339	Subgrade Trimmer.....	1040
0341	Small Slipform Machine Operator.....	720
0342	Crane Operator, Lattice Boom 80 Tons or Less.....	1040
0343	Crane Operator, Lattice Boom Over 80 Tons*.....	2080
0344	Crane Operator, Hydraulic 80 Tons or Less.....	1040
0345	Crane Operator, Hydraulic Over 80 Tons.....	1040
0346	Loader/Backhoe Operator.....	1040
0347	Excavator Operator, 50,000 Pounds or Less.....	720

<b><u>CODE</u></b>	<b><u>TRAINING CLASSIFICATION</u></b>	<b><u>MAXIMUM HOURS</u></b>
0348	Excavator Operator, Over 50,000 Pounds .....	1040
0351	Crusher or Screen Plant Operator .....	1040
0360	Foundation Drill Operator, Crawler Mounted .....	1040
0363	Foundation Drill Operator, Truck Mounted.....	1040
0369	Front End Loader Operator, 3 CY or Less.....	520
0372	Front End Loader Operator, Over 3 CY .....	1040
0380	Milling Machine Operator .....	1040
0384	Reclaimer/Pulverizer Operator.....	720
0390	Motor Grader Operator, Fine Grade*.....	2080
0393	Motor Grader Operator, Rough .....	1040
0396	Pavement Marking Machine Operator .....	720
0399	Concrete/Gunite Pump Operator .....	720
0402	Roller Operator, Asphalt .....	1040
0405	Roller Operator, Other .....	520
0411	Scraper Operator .....	520
0413	Off Road Hauler .....	520
0417	Self-Propelled Hammer Operator .....	520
0428	Agricultural Tractor Operator.....	520
0437	Trenching Machine Operator, Light .....	520
0440	Trenching Machine Operator, Heavy .....	1040
0441	Tunneling Machine Operator, Heavy .....	1560
0442	Tunneling Machine Operator, Light.....	720
0443	Percussion or Rotary Drill Operator .....	520
0444	Boring Machine Operator.....	720
0445	Directional Drilling Operator .....	1040
0446	Directional Drilling Locator .....	720
0500	Reinforcing Steel Worker .....	720
0509	Structural Steel Worker .....	1040
0513	Sign Erector .....	1040
0515	Spreader Box Operator .....	520
0520	Work Zone Barricade Servicer.....	720
0600	Truck Driver, Single Axle.....	520
0606	Truck Driver, Single or Tandem Axle Dump Truck .....	720
0607	Truck Driver, Tandem Axle Tractor with Semi Trailer .....	1040
0609	Truck Driver Lowboy-Float.....	1040
0612	Truck Driver Transit-Mix .....	1040
0615	Boom Truck Operator .....	1040
0705	Structural Steel Welder* .....	2080
0706	Welder .....	1040
0708	Slurry Seal or Micro-Surfacing Machine Operator .....	1040

# ASPHALT RAKER – CODE 0106

**MAXIMUM TRAINING TIME: 13 WEEKS OR 520 HOURS**

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 7 weeks or 280 hours: 85% of prevailing wage in area.
- ◆ Wages after successful completion of training program: The prevailing wage in area.

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I. Orientation and Observation	
A. Safety procedures .....	10 hours
B. Observation of placement of materials.....	5 hours
C. Perform duties of asphalt raker .....	35 hours
II. Care and Maintenance	
A. Safety procedures .....	10 hours
B. Routine fueling, lubricating and servicing .....	35 hours
III. Actual Operation of Equipment	
A. Safe operating procedures.....	10 hours
B. Adjustment of screed to regulate width and depth of material.....	35 hours
C. Distribution of material.....	380 hours
Total.....	520 hours

# BATCHING PLANT OPERATOR, ASPHALT - CODE 0112

**MAXIMUM TRAINING TIME: 18 WEEKS OR 720 HOURS**

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 9 weeks or 360 hours: 80% of prevailing wage in area.
- ◆ Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.
- ◆ Wages after successful completion of training program: The prevailing wage in area.

\* \* \*

I. Orientation and Observation	
A. Safety Procedures.....	10 hours
B. Observation of equipment in operation .....	35 hours
C. Adjustment of scales, operation of controls and weighing .....	50 hours
II. Care and Maintenance	
A. Safety procedures .....	10 hours
B. Routine cleaning, lubrication and servicing .....	35 hours
III. Actual Operation of Equipment	
A. Safe operating procedures .....	10 hours
B. Operating controls and scales for measurement and discharge of asphaltic materials into trucks, or carriers.....	570 hours
Total.....	720 hours

# BATCHING PLANT OPERATOR, CONCRETE – CODE 0115

**MAXIMUM TRAINING TIME: 18 WEEKS OR 720 HOURS**

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 9 weeks or 360 hours: 80% of prevailing wage in area
- ◆ Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area
- ◆ Wages after successful completion of training program: The prevailing wage in area.

\* \* \*

I. Orientation and Observation	
A. Safety Procedures.....	10 hours
B. Observation of equipment in operation .....	35 hours
C. Adjustment of scales, operation of controls and weighing .....	50 hours
II. Care and Maintenance	
A. Safety procedures .....	10 hours
B. Routine cleaning, lubrication and servicing .....	35 hours
III. Actual Operation of Equipment	
A. Safe operating procedures.....	10 hours
B. Operating controls and scales for measurement and discharge of concrete materials into trucks, carriers or mixer .....	570 hours
Total.....	720 hours

# CONCRETE FINISHER, PAVING AND STRUCTURES – CODE 0124

**MAXIMUM** TRAINING TIME: 26 WEEKS OR 1040 HOURS

- ♦ Minimum starting wage: 70% of prevailing wage in area.
- ♦ Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area.
- ♦ Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.
- ♦ Wages after successful completion of training program: The prevailing wage in area.

\* \* \*

## I. Orientation and Observation

- A. Safety procedures.....10 hours
- B. Observation of use of machine in operation.....25 hours
- C. Starting and manipulating controls for moving  
equipment and attachments.....25 hours
- D. Observation of use of straight edges and steel trowels.....25 hours
- E. Observation of forming a finishing of edges and joints.....25 hours

## II. Care and Maintenance

- A. Safety procedures.....10 hours
- B. Routine cleaning work area and materials, holding materials,  
tools and handling canvas belting or burlap strips.....200 hours
- C. Routine fueling, lubricating and servicing.....35 hours

## III. Operation of Equipment

- A. Safe operating procedures.....10 hours
- B. Basic operation of tools and machine.....165 hours
- C. Use of straight edges, trowels, or floats.....100 hours
- D. Forming and finishing edges, joints, curbs and gutters.....200 hours
- E. Operation of finishing machine.....210 hours

Total.....1040 hours

# ELECTRICIAN\* – CODE 0139

**MAXIMUM** TRAINING TIME: 104 WEEKS OR 4160 HOURS

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 26 weeks or 1040 hours: 80% of prevailing wage in area.
- ◆ Minimum wage after 52 weeks or 2080 hours: 85% of prevailing wage in area.
- ◆ Minimum wage after 78 weeks or 3120 hours: 90% of prevailing wage in area.
- ◆ Wages after successful completion of training program: The prevailing wage in area.

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## I. Orientation

- A. Safety procedures ..... 10 hours
- B. Basic rules of National Electrical Code ..... 100 hours
- C. Basic tools – their care and uses ..... 100 hours

## II. Technical Studies and Review

- A. Safety procedures ..... 10 hours
- B. Advance study of National Electrical Code ..... 100 hours
- C. Construction blueprints, reading and application ..... 200 hours

## III. Applied Techniques of Electrical Construction

- A. Safety procedures ..... 10 hours
- B. Care and Maintenance of Trade Tools and Equipment..... 100 hours
- C. Wire ways – types, uses and methods of installation..... 900 hours
- D. Circuit wiring ..... 800 hours
- E. Protective equipment – switches, panels, etc ..... 300 hours
- F. Feeders and services ..... 300 hours
- G. Lighting fixtures and wall outlets ..... 250 hours
- H. Control wiring ..... 150 hours
- I. Testing of completed work ..... 100 hours
- J. Underground conduit and wire..... 300 hours
- K. Installation of outside lighting, maintenance and repairs..... 430 hours

Total.....4160 hours



# TELECOMMUNICATION TECHNICIAN\* – CODE 0143

**MAXIMUM TRAINING TIME: 52 WEEKS OR 2080 HOURS**

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 13 weeks or 520 hours: 80% of prevailing wage in area.
- ◆ Minimum wage after 26 weeks or 1040 hours: 85% of prevailing wage in area.
- ◆ Minimum wage after 39 weeks or 1560 hours: 90% of prevailing wage in area.
- ◆ Wages after successful completion of training program: The prevailing wage in area.

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I. Orientation	
A. Safety Procedures .....	10 hours
B. Theories and types of Telecommunications systems.....	40 hours
C. Operation of Specialized tools and equipment.....	40 hours
D. Familiarization with Standards and Practices.....	40 hours
II. Basic Design Familiarity	
A. Safety procedures .....	10 hours
B. Understanding and interpretation of specifications.....	20 hours
C. Blueprint or Construction Plans Reading .....	50 hours
III. Applied Techniques of Telecommunications Construction	
A. Safety procedures .....	10 hours
B. Care and Maintenance of trade tools and equipment .....	60 hours
C. Handling and Installation of copper Cables.....	300 hours
D. Handling and Installation of Fiber Cables .....	400 hours
E. Termination and Testing of Copper Cables.....	300 hours
F. Termination and Testing of Fiber Cables.....	250 hours
G. Installation and Deployment of Telco Equipment .....	250 hours
H. Operational Testing and troubleshooting of systems.....	250 hours
I. Documentation of tests and installations.....	50 hours
Total.....	2080 hours

# COMMUNICATIONS CABLE INSTALLER – CODE 0144

**MAXIMUM TRAINING TIME: 18 WEEKS OR 720 HOURS**

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 9 weeks or 360 hours: 80% of prevailing wage in area
- ◆ Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area
- ◆ Wages after successful completion of training program: The prevailing wage in area.

\* \* \*

I. Orientation	
A. Safety Procedures .....	10 hours
B. Theories and types of Telecommunications systems.....	5 hours
C. Operation of Specialized tools and equipment.....	25 hours
D. Familiarization with Standards and Practices.....	25 hours
II. Basic Design Familiarity	
A. Safety procedures .....	10 hours
B. Understanding and interpretation of specifications.....	20 hours
C. Blueprint or Construction Plans Reading .....	45 hours
III. Applied Techniques of Cable Installation	
A. Safety procedures .....	10 hours
B. Care and Maintenance of trade tools and equipment .....	70 hours
C. Handling and Installation of copper Cables... ..	100 hours
D. Handling and Installation of Fiber Cables .....	200 hours
E. Figure 8 Techniques and long pulls.....	100 hours
F. Handling and Installation of Innerduct.....	100 hours
Total.....	720 hours

# TRAFFIC SIGNAL/LIGHT POLE WORKER\* – CODE 0145

**MAXIMUM** TRAINING TIME: 104 WEEKS OR 4160 HOURS

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 26 weeks or 1040 hours: 80% of prevailing wage in area.
- ◆ Minimum wage after 52 weeks or 2080 hours: 85% of prevailing wage in area.
- ◆ Minimum wage after 78 weeks or 3120 hours: 90% of prevailing wage in area.
- ◆ Wages after successful completion of training program: The prevailing wage in area.

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## I. Orientation

- A. Safety procedures..... 10 hours
- B. Basic rules of National Electrical Code ..... 100 hours
- C. Basic tools – their care and uses ..... 100 hours

## II. Technical Studies and Review

- A. Safety procedures..... 10 hours
- B. Advance study of National Electrical Code ..... 100 hours
- C. Construction blueprints, reading and application ..... 200 hours

## III. Applied Techniques of Electrical Construction

- A. Safety procedures..... 10 hours
- B. Care and Maintenance of Trade Tools and Equipment..... 100 hours
- C. Wire ways – types, uses and methods of installation..... 900 hours
- D. Circuit wiring ..... 800 hours
- E. Protective equipment – switches, panels, etc. .... 300 hours
- F. Feeders and services ..... 300 hours
- G. Lighting fixtures and wall outlets..... 250 hours
- H. Control wiring..... 150 hours
- I. Testing of completed work ..... 130 hours
- J. Underground conduit and wire..... 300 hours
- K. Installation of outside lighting, maintenance and repairs..... 400 hours

Total.....4160 hours

# FORM BUILDER/SETTER, STRUCTURES – CODE 0151

**MAXIMUM** TRAINING TIME: 26 WEEKS OR 1040 HOURS

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area.
- ◆ Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.
- ◆ Wages after successful completion of training program: The prevailing wage in area.

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## I. Orientation and Observation

- A. Safety procedures.....10 hours
- B. Materials and tools selection.....15 hours
- C. Placing forms, form stripping and setting of precast concrete.....20 hours

## II. Applied techniques

- A. Safety Procedures.....10 hours
- B. Blueprint or construction plans reading and application.....30 hours
- C. Basic form design.....30 hours
- D. Formwork: Pier, pile and cap formwork; decking formwork;  
endwall formwork; box culverts, inlets and headwall  
formwork, parapet and hand railing formwork.....225 hours
- E. Stripping and salvage of forms for reuse and cleaning  
work area.....30 hours

## III. Actual Operation of Form Setting

- A. Safe operating procedures.....10 hours
- B. Align forms. Drive stakes for braces and erect  
Scaffolding.....100 hours
- C. Observe and assist in setting precast concrete.....25 hours
- D. Measure space between forms, fit together, line,  
plumb vertically, set to elevation.....250 hours
- E. Check forms while concrete is being poured.....285 hours

Total.....1040 hours

# FORM SETTER, PAVING AND CURB – CODE 0160

**MAXIMUM** TRAINING TIME: 18 WEEKS OR 720 HOURS

- ◆ Minimum starting wage: 70 percent of prevailing wage in area.
- ◆ Minimum wage after 9 weeks or 360 hours: 80% of prevailing wage in area.
- ◆ Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.
- ◆ Wages after successful completion of training program: The prevailing wage in area.

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## I. Orientation and Observation

- A. Safety procedures.....10 hours
- B. Observation of setting grade line.....20 hours
- C. Observation of pulling, loading, hauling and placing forms.....30 hours

## II. Care and Maintenance

- A. Safety procedures.....10 hours
- B. Routine cleaning of forms and care of air and hand tools.....25 hours

## III. Actual Operation of Form Setting

- A. Safe operating procedures.....10 hours
- B. Set grade line.....70 hours
- C. Pull, load, haul and place forms.....100 hours
- D. Set forms to finish grade, drive pins, set and check alignment, and  
spray forms.....375 hours
- E. Check forms while pouring concrete.....70 hours

Total.....720 hours

# LABOR, UTILITY – CODE 0175

**MAXIMUM TRAINING TIME: 13 WEEKS OR 520 HOURS**

- ◆ Minimum starting wage: 70 percent of prevailing wage in area.
- ◆ Minimum wage after 7 weeks or 280 hours: 85% of prevailing wage in area.
- ◆ Wages after successful completion of training program: The prevailing wage in area.

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## I. Orientation and Observation

- A. Safety procedures.....10 hours
- B. Observation of tools and machines.....20 hours

## II. Care and Maintenance

- A. Safety procedures.....10 hours
- B. Care of power and air tools.....15 hours
- C. Erosion control.....20 hours
- D. Dewatering systems.....20 hours

## III. Actual operation of equipment

- A. Safe operating procedures.....10 hours
- B. Erect shoring and bracing.....75 hours
- C. Pipe installation.....75 hours
- D. Equipment operator assistance: position machines,  
verify grades, signal operator to dumping positions.....115 hours
- E. Assist in placing and tying reinforcing steel.....75 hours
- F. Unload and transport material.....75 hours

Total.....520 hours

# MECHANIC – CODE 0187

**MAXIMUM** TRAINING TIME: 36 WEEKS OR 1 440 HOURS

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 8 weeks or 320 hours: 75% of prevailing wage in area.
- ◆ Minimum wage after 13 weeks or 520 hours: 80% of prevailing wage in area.
- ◆ Minimum wage after 20 weeks or 800 hours: 85% of prevailing wage in area.
- ◆ Minimum wage after 30 weeks or 1 200 hours: 90% of prevailing wage in area.
- ◆ Wages after successful completion of training program: The prevailing wage in area.

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## I. Orientation and Observation

- A. Safety procedures ..... 10 hours
- B. Cleaning, disassembling and inspection of engine parts.....40 hours
- C. Installation and adjustment of minor parts.....50 hours

## II. Care and Maintenance

- A. Safety procedures ..... 10 hours
- B. Engine reconditioning ..... 200 hours
- C. Clutch installation.....50 hours
- D. Transmission reconditioning ..... 100 hours

## III. Actual Repair of Equipment

- A. Safe operating procedures..... 10 hours
- B. Electrical systems ..... 200 hours
- C. Hydraulic systems ..... 200 hours
- D. Final drive and track assemblies..... 150 hours
- E. Welding and fabrication..... 100 hours
- F. General field maintenance ..... 320 hours

Total..... 1 440 hours

# SERVICER – CODE 0194

**MAXIMUM** TRAINING TIME: 13 WEEKS OR 520 HOURS

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 7 weeks or 280 hours: 85% of prevailing wage in area.
- ◆ Wages after successful completion of training program: The prevailing wage in area.

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## I. Orientation and Observation

- A. Safety procedures..... 10 hours
- B. Observing fueling, greasing and cleaning filters..... 40 hours
- C. Fuel and grease used for different types of equipment..... 40 hours

## II. Actual Operation

- A. Safe operating procedures..... 10 hours
- B. Servicing all types of equipment..... 80 hours
- C. Installation and adjustment of minor parts ..... 80 hours
- D. General field maintenance and operation of  
service truck..... 260 hours

Total..... 520 hours



# PAINTER, STRUCTURES – CODE 0196

**MAXIMUM** TRAINING TIME: 26 WEEKS OR 1040 HOURS

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area.
- ◆ Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.
- ◆ Wages after successful completion of training program **and may also require SSPC QP 1 or QP 2 certification**: The prevailing wage in area.

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I. Orientation and Observation	
A. Safety procedures .....	10 hours
B. Operate maintain and load equipment.....	40 hours
C. Product and work orientation.....	50 hours
II. Care and Maintenance	
A. Safety procedures .....	10 hours
B. Equipment maintenance and cleanup... ..	60 hours
III. Actual Operation of Equipment	
A. Safe operating procedures.....	10 hours
B. Brushing and rolling. ....	100 hours
C. Material training.....	50 hours
D. Hazardous materials... ..	200 hours
E. Sandblasting... ..	200 hours
F. Spraying .....	310 hours
Total.....	1040 hours

# PILEDRIIVER – CODE 0202

**MAXIMUM TRAINING TIME: 18 WEEKS OR 720 HOURS**

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 9 weeks or 360 hours: 80% of prevailing wage in area.
- ◆ Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.
- ◆ Wages after successful completion of training program: The prevailing wage in area.

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I. Orientation and Observation	
A. Safety procedures .....	10 hours
B. Observation of machine in operation.....	50 hours
C. Starting and manipulating controls for moving equipment and attachments .....	45 hours
II. Care and Maintenance	
A. Safety procedures .....	10 hours
B. Routine fueling, lubricating and servicing .....	35 hours
III. Actual Operation of Equipment	
A. Safe operating procedures.....	10 hours
B. Basic operation of crane or pile driving rig in hoisting and moving.....	200 hours
C. Placement of pile in preparation for driving.....	140 hours
D. Seating of pile hammer on pile in preparation for driving .....	120 hours
E. Driving of pile .....	100 hours
Total.....	720 hours

# PIPELAYER - CODE 0205

**MAXIMUM TRAINING TIME: 13 WEEKS OR 520 HOURS**

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 7 weeks or 280 hours: 85% of prevailing wage in area.
- ◆ Wages after successful completion of training program: The prevailing wage in area.

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I. Orientation and Observation	
A. Safety procedures .....	10 hours
B. Observation of spade operation and laying of pipe.....	20 hours
C. Study of various types of pipe and related materials .....	5 hours
II. Care and Maintenance	
A. Safety procedures .....	10 hours
B. Ditch preparation, handle materials and tools.....	20 hours
III. Actual Handling of Pipe and Spade	
A. Safe operating procedures.....	10 hours
B. Ditch grading with compressed air driven or hand spade.....	50 hours
C. Handle materials, assist in lowering pipe .....	50 hours
D. Work with pipe layer in laying all types of pipe and duct. Adjust pipe to elevation insert spigot end of pipe into bell end of last laid pipe .....	345 hours
Total.....	520 hours

# BLASTER – CODE 0214

**MAXIMUM** TRAINING TIME: 26 WEEKS OR 1040 HOURS

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area.
- ◆ Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.
- ◆ Wages after successful completion of training program: The prevailing wage in area.

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I. Orientation and Observation	
A. Safety procedures .....	10 hours
B. Observation of work of Powder man .....	50 hours
C. Assist Powder man by carrying explosives, placing in holes, connecting lead wires .....	45 hours
II. Applied Techniques of Powder man	
A. Safety procedures .....	15 hours
B. Storage, transporting, placing and discharging of explosives .....	330 hours
III. Actual Blasting Operations	
A. Safe operating procedures.....	25 hours
B. Use of detonators and explosives.....	100 hours
C. Storage, movement and placing of explosives .....	300 hours
D. Placing wires, detonators and explosives, tamping and discharging.....	165 hours
Total.....	1040 hours

# ASPHALT DISTRIBUTOR OPERATOR – CODE 0300

**MAXIMUM** TRAINING TIME: 26 WEEKS OR 1040 HOURS

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area.
- ◆ Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.
- ◆ Wages after successful completion of training program: The prevailing wage in area.

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## I. Orientation and Observation

- A. Safety procedures.....10 hours
- B. Observation of vehicle in operation.....35 hours
- C. Starting and manipulating valves and controls  
To distribute material and move equipment.....30 hours

## II. Care and Maintenance

- A. Safety procedures.....10 hours
- B. Routine fueling, lubricating and servicing.....35 hours

## III. Actual Operation of Equipment

- A. Safe operating procedures.....10 hours
- B. Regulates valves and levers to distribute oil  
Or bituminous liquid for highway surfacing.....115 hours
- C. Operation of equipment.....795 hours

Total.....1040 hours

# ASPHALT PAVING MACHINE OPERATOR - CODE 0303

**MAXIMUM** TRAINING TIME: 26 WEEKS OR 1040 HOURS

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area.
- ◆ Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.
- ◆ Wages after successful completion of training program: The prevailing wage in area.

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I. Orientation and Observation	
A. Safety procedures .....	10 hours
B. Observation of machine in operations .....	35 hours
C. Starting and manipulating controls for moving equipment and attachments .....	30 hours
II. Care and Maintenance	
A. Safety procedures .....	10 hours
B. Routine fueling, lubricating and servicing .....	35 hours
III. Actual Operation of Equipment	
A. Safety operating procedures .....	10 hours
B. Observation of machine in operations .....	120 hours
C. Operating of machine .....	790 hours
Total .....	1040 hours

# BROOM OR SWEEPER OPERATOR – CODE 0305

**MAXIMUM** TRAINING TIME: 8 WEEKS OR 320 HOURS

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 6 weeks or 240 hours: 85% of prevailing wage in area.
- ◆ Wages after successful completion of training program: The prevailing wage in area.

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I. Orientation and Observation	
A. Safety procedures .....	10 hours
B. Observation of machine in operation.....	5 hours
C. Starting and manipulating controls for moving equipment and attachments .....	10 hours
II. Care and Maintenance	
A. Safety procedures .....	10 hours
B. Routine fueling, lubricating and servicing .....	35 hours
III. Actual Operation of Equipment	
A. Safe operating procedures.....	10 hours
B. Proper start-up, proper engagement and position of broom and proper sweeping technique .....	15 hours
C. Removal and replacement of broom wafers .....	10 hours
D. Operation of sweeper in cleaning of pavements .....	215 hours
Total.....	320 hours

# CRAWLER TRACTOR OPERATOR - CODE 0306

**MAXIMUM TRAINING TIME: 18 WEEKS OR 720 HOURS**

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 9 weeks or 360 hours: 80% of prevailing wage in area.
- ◆ Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.
- ◆ Wages after successful completion of training program: The prevailing wage in area.

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I. Orientation and Observation	
A. Safety procedures .....	10 hours
B. Observation of machine in operation.....	35 hours
C. Starting and manipulating controls for moving equipment and attachments .....	30 hours
II. Care and Maintenance	
A. Safety procedures .....	10 hours
B. Routine fueling, lubricating and servicing .....	35 hours
III. Actual Operation of Equipment	
A. Safe operating procedures.....	10 hours
B. Movement and stockpiling of material.....	150 hours
C. Pushing and rough grading.....	125 hours
D. Clearing and grubbing .....	125 hours
E. Finish grading.....	160 hours
F. Special applications .....	30 hours
Total.....	720 hours



# CONCRETE PAVING CURING, FLOAT, TEXTURING MACHINE OPERATOR – CODE 0315

**MAXIMUM** TRAINING TIME: 26 WEEKS OR 1040 HOURS

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area.
- ◆ Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.
- ◆ Wages after successful completion of training program: The prevailing wage in area.

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I. Orientation and Observation	
A. Safety procedures .....	10 hours
B. Observation of machines in operation .....	35 hours
C. Starting and manipulating controls for moving equipment and attachments .....	30 hours
II. Care and Maintenance	
A. Safety procedures .....	10 hours
B. Routine fueling, lubricating and servicing .....	35 hours
III. Actual Operation of Equipment	
A. Safe operating procedures.....	10 hours
B. Operation of curing system.....	120 hours
C. Operation of machine .....	790 hours
Total.....	1040 hours

# CONCRETE PAVEMENT FINISHING MACHINE OPERATOR - CODE 0318

**MAXIMUM** TRAINING TIME: 26 WEEKS OR 1040 HOURS

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area.
- ◆ Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.
- ◆ Wages after successful completion of training program: The prevailing wage in area.

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I. Orientation and Observation	
A. Safety procedures .....	10 hours
B. Observation of machine in operation.....	35 hours
C. Starting and manipulating controls for moving equipment and attachments .....	30 hours
II. Care and Maintenance	
A. Safety procedures .....	10 hours
B. Routine fueling, lubricating and servicing .....	35 hours
III. Actual Operation of Equipment	
A. Safe operating procedures.....	10 hours
B. Screed regulation indoctrination and operation.....	120 hours
C. Operation of machine .....	790 hours
Total.....	1040 hours

# JOINT SEALER – CODE 0329

**MAXIMUM TRAINING TIME: 13 WEEKS OR 520 HOURS**

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 7 weeks or 280 hours: 85% of prevailing wage in area.
- ◆ Wages after successful completion of training program: The prevailing wage in area.

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I. Orientation and Observation	
A. Safety procedures.....	10 hours
B. Observation.....	10 hours
II. Care and Maintenance	
A. Safety procedures.....	10 hours
B. Routine cleaning and servicing.....	35 hours
III. Actual Operation	
A. Safe operating procedures.....	10 hours
B. Cleaning and sealing joints in concrete paving, sidewalks, driveways and approach slabs.....	445 hours
Total.....	520 hours

# CONCRETE SAW OPERATOR – CODE 0333

**MAXIMUM TRAINING TIME: 13 WEEKS OR 520 HOURS**

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 7 weeks or 280 hours: 85% of prevailing wage in area.
- ◆ Wages after successful completion of training program: The prevailing wage in area.

\* \* \*

## I. Orientation and Observation

- A. Safety procedures.....10 hours
- B. Observation of machine in operation.....35 hours

## II. Care and Maintenance

- A. Safety procedures.....10 hours
- B. Routine oiling, greasing, cleaning and servicing saw.....35 hours

## III. Actual Operation of Equipment

- A. Safe operating procedures.....10 hours
- B. Operation of saw.....420 hours

Total.....520 hours

# SUBGRADE TRIMMER – CODE 0339

**MAXIMUM** TRAINING TIME: 26 WEEKS OR 1040 HOURS

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area.
- ◆ Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.
- ◆ Wages after successful completion of training program: The prevailing wage in area.

\* \* \*

## I. Orientation and Observation

- A. Safety procedures.....10 hours
- B. Observation of machine in operation.....50 hours
- C. Use of paving forms or electronic controls.....40 hours
- D. Manipulation of hand and foot levers.....40 hours

## II. Care and Maintenance

- A. Safety procedures.....10 hours
- B. Routine fueling, lubricating and servicing.....35 hours

## III. Actual Operation of Equipment

- A. Safe operating procedures.....10 hours
- B. Raising and lowering screed; regulating width of screed.....100 hours
- C. Operation of machine.....745 hours

Total.....1040 hours

# SMALL SLIPFORM MACHINE OPERATOR – CODE 0341

**MAXIMUM** TRAINING TIME: 18 WEEKS OR 720 HOURS

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum starting wage after 9 weeks or 360 hours: 80% of prevailing wage in area.
- ◆ Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.
- ◆ Wages after successful completion of training program: The prevailing wage in area.

\* \* \*

I. Orientation and Observation	
A. Safety procedures.....	10 hours
B. Observation of machine in operation... ..	35 hours
C. Starting and manipulating controls for moving equipment and attachments.....	30 hours
II. Care and Maintenance	
A. Safety procedures .....	10 hours
B. Routine fueling, lubricating and servicing .....	35 hours
III. Actual Operation of Equipment	
A. Safe operating procedures.....	10 hours
B. Screed regulation indoctrination and operation.....	120 hours
C. Operation of machine .....	470 hours
Total.....	720 hours

# CRANE OPERATOR, LATTICE BOOM 80 TONS OR LESS - CODE 0342

**MAXIMUM** TRAINING TIME: 26 WEEKS OR 1040 HOURS

- ♦ Minimum starting wage: 70% of prevailing wage in area.
- ♦ Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area.
- ♦ Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.
- ♦ Wages after successful completion of training program *and may also require crane operator certification*: The prevailing wage in area.

\* \* \*

I. Orientation and Observation	
A. Safety procedures.....	10 hours
B. Observation of machine in operation.....	50 hours
C. Starting and manipulating controls for moving equipment and attachments.....	40 hours
II. Care and Maintenance	
A. Safety procedures .....	10 hours
B. Routine fueling, lubricating and servicing... ..	35 hours
III. Actual Operation of Equipment	
A. Safe operating procedures... ..	50 hours
B. Loading and unloading materials.....	110 hours
C. Hoisting materials.....	585 hours
D. Placement of beams, pipe, girders, piles, rock riprap, etc... ..	150 hours
Total... ..	1040 hours

# CRANE OPERATOR, LATTICE BOOM OVER 80 TONS\* – CODE 0343

**MAXIMUM** TRAINING TIME: 52 WEEKS OR 2080 HOURS

- ♦ Minimum starting wage: 70% of prevailing wage in area.
- ♦ Minimum wage after 13 weeks or 520 hours: 80% of prevailing wage in area.
- ♦ Minimum wage after 26 weeks or 1040 hours: 85% of prevailing wage in area.
- ♦ Minimum wage after 39 weeks or 1560 hours: 90% of prevailing wage in area.
- ♦ Wages after successful completion of training program *and may also require crane operator certification*: The prevailing wage in area.

\* \* \*

- I. Orientation and Observation
  - A. Safety procedures ..... 10 hours
  - B. Observation of machine in operation.....50 hours
  - C. Starting and manipulating controls for moving  
equipment and attachments .....40 hours
- II. Care and Maintenance
  - A. Safety procedures ..... 10 hours
  - B. Routine fueling, lubricating and servicing .....35 hours
- III. Actual Operation of Equipment
  - A. Safe operating procedures..... 100 hours
  - B. Loading and unloading materials ..... 150 hours
  - C. Hoisting materials..... 800 hours
  - D. Placement of beams, pipe, girders, piles, rock riprap, etc..... 885 hours
- Total.....2080 hours



# CRANE OPERATOR, HYDRAULIC 80 TONS OR LESS – CODE 0344

**MAXIMUM** TRAINING TIME: 26 WEEKS OR 1040 HOURS

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area.
- ◆ Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.
- ◆ Wages after successful completion of training program *and may also require crane operator certification*: The prevailing wage in area.

\* \* \*

I. Orientation and Observation	
A. Safety procedures .....	10 hours
B. Observation of machine in operation.....	50 hours
C. Starting and manipulating controls for moving equipment and attachments .....	40 hours
II. Care and Maintenance	
A. Safety procedures .....	10 hours
B. Routine fueling, lubricating and servicing .....	35 hours
III. Actual Operation of Equipment	
A. Safe operating procedures.....	50 hours
B. Loading and unloading materials .....	110 hours
C. Hoisting materials.....	280 hours
D. Placement of beams, pipe, girders, piles, etc.....	455 hours
Total.....	1040 hours

# CRANE OPERATOR, HYDRAULIC OVER 80 TONS – CODE 0345

**MAXIMUM** TRAINING TIME: 26 WEEKS OR 1040 HOURS

- ♦ Minimum starting wage: 70% of prevailing wage in area.
- ♦ Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area.
- ♦ Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.
- ♦ Wages after successful completion of training program *and may also require crane operator certification*: The prevailing wage in area.

\* \* \*

I. Orientation and Observation	
A. Safety procedures .....	10 hours
B. Observation of machine in operation.....	50 hours
C. Starting and manipulating controls for moving equipment and attachments .....	40 hours
II. Care and Maintenance	
A. Safety procedures .....	10 hours
B. Routine fueling, lubricating and servicing .....	35 hours
III. Actual Operation of Equipment	
A. Safe operating procedures.....	50 hours
B. Loading and unloading materials .....	110 hours
C. . Hoisting materials .....	280 hours
D. Placement of beams, pipe, girders, piles, etc.....	455 hours
Total.....	1040 hours

# LOADER/BACKHOE OPERATOR – CODE 0346

**MAXIMUM** TRAINING TIME: 26 WEEKS OR 1040 HOURS

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area.
- ◆ Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.
- ◆ Wages after successful completion of training program: The prevailing wage in area.

\* \* \*

I. Orientation and Observation	
A. Safety procedures .....	10 hours
B. Observation of machine in operation.....	50 hours
C. Starting and manipulating controls for moving equipment and attachments .....	45 hours
II. Care and Maintenance	
A. Safety procedures .....	10 hours
B. Routine fueling, lubricating and servicing .....	35 hours
III. Actual Operation of Equipment	
A. Safe operating procedures.....	10 hours
B. Trenching operations (for Pipe laying, etc.) .....	500 hours
C. Excavation (for structures, footings, etc.) .....	380 hours
Total.....	1040 hours

# EXCAVATOR OPERATOR, 50,000 LBS OR LESS – CODE 0347

**MAXIMUM TRAINING TIME: 18 WEEKS OR 720 HOURS**

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 9 weeks or 360 hours: 80% of prevailing wage in area.
- ◆ Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.
- ◆ Wages after successful completion of training program: The prevailing wage in area.

\* \* \*

I. Orientation and Observation	
A. Safety procedures .....	10 hours
B. Observation of machine in operation.....	25 hours
C. Starting and manipulating controls for moving equipment and attachments .....	25 hours
II. Care and Maintenance	
A. Safety procedures .....	10 hours
B. Routine fueling, lubricating and servicing .....	35 hours
III. Actual Operation of Equipment	
A. Safe operating procedures.....	10 hours
B. Excavation for footings and removal of unsuitable materials.....	250 hours
C. Loading materials .....	100 hours
D. Trenching for pipe, etc .....	165 hours
E. Placement of pipe, precast concrete structures, etc.....	90 hours
Total.....	720 hours

# EXCAVATOR OPERATOR, OVER 50,000 LBS – CODE 0348

**MAXIMUM** TRAINING TIME: 26 WEEKS OR 1040 HOURS

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area.
- ◆ Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.
- ◆ Wages after successful completion of training program: The prevailing wage in area.

\* \* \*

I. Orientation and Observation	
A. Safety procedures .....	10 hours
B. Observation of machine in operation.....	50 hours
C. Starting and manipulating controls for moving equipment and attachments .....	40 hours
II. Care and Maintenance	
A. Safety procedures .....	10 hours
B. Routine fueling, lubricating and servicing .....	35 hours
III. Actual Operation of Equipment	
A. Safe operating procedures.....	10 hours
B. Excavation for footings and removal of unsuitable materials.....	250 hours
C. Loading materials .....	190 hours
D. Trenching for pipe, etc. ....	255 hours
E. Placement of pipe, precast concrete structures, etc. ...	190 hours
Total.....	1040 hours

# CRUSHER OR SCREEN PLANT OPERATOR – CODE 0351

**MAXIMUM** TRAINING TIME: 26 WEEKS OR 1040 HOURS

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area.
- ◆ Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.
- ◆ Wages after successful completion of training program: The prevailing wage in area.

\* \* \*

I. Orientation and Observation	
A. Safety procedures .....	10 hours
B. Observation of machine in operation.....	35 hours
C. Starting of crusher operating conveyors.....	30 hours
II. Care and Maintenance	
A. Safety procedures .....	10 hours
B. Routine fueling, lubricating and servicing .....	35 hours
III. Actual Operation of Equipment	
A. Safe operating procedures.....	10 hours
B. Operation of conveyors and crusher operations .....	120 hours
C. Operation of crusher .....	790 hours
Total.....	1040 hours

# FOUNDATION DRILL OPERATOR, CRAWLER MOUNTED

## — CODE 0360

**MAXIMUM** TRAINING TIME: 26 WEEKS OR 1040 HOURS

- ♦ Minimum starting wage: 70% of prevailing wage in area.
- ♦ Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area.
- ♦ Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.
- ♦ Wages after successful completion of training program: The prevailing wage in area.

\* \* \*

I. Orientation and Observation	
A. Safety Procedures.....	10 hours
B. Observation of machine in operation.....	35 hours
C. Starting and manipulating controls for moving equipment and attachments .....	30 hours
II. Care and Maintenance	
A. Safety procedures .....	10 hours
B. Routine fueling, lubricating and servicing .....	35 hours
III. Actual Operation of Equipment	
A. Safe operating procedures.....	10 hours
B. Small hole drilling .....	300 hours
C. Large hole drilling.....	300 hours
D. Casing operation .....	110 hours
E. General operating.....	200 hours
Total.....	1040 hours

# FOUNDATION DRILL OPERATOR, TRUCK MOUNTED – CODE 0363

**MAXIMUM** TRAINING TIME: 26 WEEKS OR 1040 HOURS

- ♦ Minimum starting wage: 70% of prevailing wage in area.
- ♦ Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area.
- ♦ Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.
- ♦ Wages after successful completion of training program: The prevailing wage in area.

\* \* \*

I. Orientation and Observation	
A. Safety Procedures.....	10 hours
B. Observation of machine in operation.....	35 hours
C. Starting and manipulating controls for moving equipment and attachments.....	30 hours
II. Care and Maintenance	
A. Safety procedures.....	10 hours
B. Routine fueling, lubricating and servicing .....	35 hours
III. Actual Operation of Equipment	
A. Safe operating procedures.....	10 hours
B. Small hole drilling .....	300 hours
C. Large hole drilling.....	300 hours
D. Casing operation .....	110 hours
E. General operating.....	200 hours
Total.....	1040 hours



# FRONT END LOADER, 3 C.Y. OR LESS – CODE 0369

**MAXIMUM TRAINING TIME: 13 WEEKS OR 520 HOURS**

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 7 weeks or 280 hours: 85% of prevailing wage in area.
- ◆ Wages after successful completion of training program: The prevailing wage in area.

\* \* \*

I. Orientation and Observation	
A. Safety procedures .....	10 hours
B. Observation of machine in operation.....	20 hours
C. Starting and manipulating controls for moving equipment and attachments .....	15 hours
II. Care and Maintenance	
A. Safety procedures .....	10 hours
B. Routine fueling, lubricating and servicing .....	35 hours
III. Actual Operation of Equipment	
A. Safe operating procedures.....	10 hours
B. Loading materials .....	235 hours
C. Excavation .....	150 hours
D. Special applications .....	35 hours
Total.....	520 hours

# FRONT END LOADER, OVER 3 C.Y. – CODE 0372

**MAXIMUM** TRAINING TIME: 26 WEEKS OR 1040 HOURS

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area.
- ◆ Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.
- ◆ Wages after successful completion of training program: The prevailing wage in area.

\* \* \*

I. Orientation and Observation	
A. Safety procedures .....	10 hours
B. Observation of machine in operation.....	20 hours
C. Starting and manipulating controls for moving equipment and attachments .....	15 hours
II. Care and Maintenance	
A. Safety procedures .....	10 hours
B. Routine fueling, lubricating and servicing .....	35 hours
III. Actual Operation of Equipment	
A. Safe operating procedures.....	10 hours
B. Loading materials .....	400 hours
C. Excavation .....	250 hours
D. Charge hoppers with materials on asphalt and concrete plants .....	270 hours
E. Special applications .....	20 hours
Total.....	1 040 hours

# MILLING MACHINE OPERATOR – CODE 0380

**MAXIMUM** TRAINING TIME: 26 WEEKS OR 1040 HOURS

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area.
- ◆ Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.
- ◆ Wages after successful completion of training program: The prevailing wage in area.

\* \* \*

## I. Orientation and Observation

- A. Safety procedures.....10 hours
- B. Observation of machine in operation.....35 hours

## II. Care and Maintenance

- A. Safety procedures.....10 hours
- B. Routine fueling, lubricating and servicing.....35 hours

## III. Actual Operation of Equipment

- A. Safe operating procedures.....10 hours
- B. Planing roadbed.....700 hours
- C. Discharging material into hauling unit.....240 hours

Total.....1040 hours

# RECLAIMER/PULVERIZER OPERATOR – CODE 0384

**MAXIMUM** TRAINING TIME: 18 WEEKS OR 720 HOURS

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 9 weeks or 360 hours: 80% of prevailing wage in area.
- ◆ Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.
- ◆ Wages after successful completion of training program: The prevailing wage in area.

\* \* \*

## I. Orientation and Observation

- A. Safety procedures.....10 hours
- B. Observation of machine in operation.....35 hours

## II. Care and Maintenance

- A. Safety procedures.....10 hours
- B. Routine fueling, lubricating and servicing.....35 hours

## III. Actual Operation of Machine

- A. Safe operating procedures.....10 hours
- B. Pulverizing road bed.....520 hours
- C. Mixing materials.....100 hours

Total.....720 hours

# MOTOR GRADER OPERATOR, FINE GRADE\* — CODE 0390

**MAXIMUM** TRAINING TIME: 52 WEEKS OR 2080 HOURS

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 13 weeks or 520 hours: 80% of prevailing wage in area.
- ◆ Minimum wage after 26 weeks or 1040 hours: 90% of prevailing wage in area.
- ◆ Wages after successful completion of training program: The prevailing wage in area.

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I. Orientation and Observation	
A. Safety procedures .....	10 hours
B. Observation of machine in operation.....	100 hours
C. Starting and manipulating controls for moving equipment and attachments .....	95 hours
II. Care and Maintenance	
A. Safety procedures .....	10 hours
B. Routine fueling, lubricating and servicing .....	35 hours
III. Actual Operation of Equipment	
A. Safe operating procedures.....	10 hours
B. Scraping and leveling dirt on roadway .....	305 hours
C. Spreading and mixing materials on roadway .....	295 hours
D. Shaping and blading subgrades .....	275 hours
E. Balancing and rough shaping base course materials.....	275 hours
F. Fine grading and dressing of shoulders and slopes.....	670 hours
Total.....	2080 hours

# MOTOR GRADER OPERATOR, ROUGH – CODE 0393

**MAXIMUM** TRAINING TIME: 26 WEEKS OR 1040 HOURS

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area.
- ◆ Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.
- ◆ Wages after successful completion of training program: The prevailing wage in area.

\* \* \*

I. Orientation and Observation	
A. Safety procedures .....	10 hours
B. Observation of machine in operation.....	100 hours
C. Starting and manipulating controls for moving equipment and attachments .....	95 hours
II. Care and Maintenance	
A. Safety procedures .....	10 hours
B. Routine fueling, lubricating and servicing .....	35 hours
III. Actual Operation of Equipment	
A. Safe operating procedures.....	10 hours
B. Scraping and leveling dirt on roadway .....	220 hours
C. Spreading and mixing materials on roadway .....	200 hours
D. Shaping and blading subgrades .....	180 hours
E. Balancing and rough shaping base course materials.....	180 hours
Total.....	1040 hours

# PAVEMENT MARKING MACHINE OPERATOR – CODE 0396

**MAXIMUM** TRAINING TIME: 18 WEEKS OR 720 HOURS

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 9 weeks or 360 hours: 80% of prevailing wage in area.
- ◆ Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.
- ◆ Wages after successful completion of training program: The prevailing wage in area.

\* \* \*

## I. Orientation and Observation

- A. Safety procedures.....10 hours
- B. Observation of machine in operation.....35 hours

## II. Care and Maintenance

- A. Safety procedures.....10 hours
- B. Routine fueling, lubricating and servicing.....35 hours

## III. Actual Operation of Machine

- A. Safe operating procedures.....10 hours
- B. Laying stripes and markers.....520 hours
- C. Loading machine with appropriate materials.....100 hours

Total.....720 hours

# CONCRETE/GUNITE PUMP OPERATOR – CODE 0399

**MAXIMUM** TRAINING TIME: 18 WEEKS OR 720 HOURS

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 9 weeks or 360 hours: 80% of prevailing wage in area.
- ◆ Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.
- ◆ Wages after successful completion of training program: The prevailing wage in area.

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## I. Orientation and Observation

- A. Safety procedures.....10 hours
- B. Observation of machine in operation.....35 hours
- C. Introduction to pumping fresh concrete, gunite and grout.....100 hours

## II. Care and Maintenance

- A. Safety procedures.....10 hours
- B. Routine fueling, lubricating and servicing.....35 hours

## III. Actual Operation of Machine

- A. Safe operating procedures.....10 hours
- B. Operation of pumping machine.....520 hours

Total.....720 hours



# ROLLER OPERATOR, ASPHALT - CODE 0402

**MAXIMUM** TRAINING TIME: 26 WEEKS OR 1040 HOURS

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area.
- ◆ Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.
- ◆ Wages after successful completion of training program: The prevailing wage in area.

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I. Orientation and Observation	
A. Safety procedures .....	10 hours
B. Observation of machine in operation.....	35 hours
II. Care and Maintenance	
A. Safety procedures .....	10 hours
B. Routine fueling, lubricating and servicing .....	35 hours
III. Actual Operation of Equipment	
A. Safe operating procedures.....	10 hours
B. Roll base course to desired compaction.....	440 hours
C. Roll asphalt surfaces to desired compaction and smoothness and assure proper sealing of joints .....	500 hours
Total.....	1 040 hours

# ROLLER OPERATOR, OTHER – CODE 0405

**MAXIMUM TRAINING TIME: 13 WEEKS OR 520 HOURS**

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 7 weeks or 280 hours: 85% of prevailing wage in area.
- ◆ Wages after successful completion of training program: The prevailing wage in area.

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I. Orientation and Observation	
A. Safety procedures .....	10 hours
B. Observation of machine in operation.....	35 hours
II. Care and Maintenance	
A. Safety procedures .....	10 hours
B. Routine fueling, lubricating and servicing .....	35 hours
III. Actual Operation of Equipment	
A. Safe operating procedures.....	10 hours
B. Roll base course to desired compaction .....	210 hours
C. Roll embankment to desired compaction.....	210 hours
Total.....	520 hours

# SCRAPER OPERATOR – CODE 0411

**MAXIMUM TRAINING TIME: 13 WEEKS OR 520 HOURS**

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 7 weeks or 280 hours: 85% of prevailing wage in area.
- ◆ Wages after successful completion of training program: The prevailing wage in area.

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I. Orientation and Observation	
A. Safety procedures .....	10 hours
B. Observation of machine in operation.....	20 hours
C. Starting and manipulating controls for moving equipment and attachments .....	15 hours
II. Care and Maintenance	
A. Safety procedures .....	10 hours
B. Routine fueling, lubricating and servicing .....	35 hours
III. Actual Operation of Equipment	
A. Safe operating procedures.....	10 hours
B. Loading and transporting materials .....	150 hours
C. Spreading material .....	150 hours
D. Rough roadway grading .....	70 hours
E. Compaction of embankment .....	50 hours
Total.....	520 hours

# OFF ROAD HAULER – CODE 0413

**MAXIMUM TRAINING TIME: 13 WEEKS OR 520 HOURS**

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 7 weeks or 280 hours: 85% of prevailing wage in area.
- ◆ Wages after successful completion of training program: The prevailing wage in area.

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I. Orientation and Observation	
A. Safety procedures .....	10 hours
B. Observation of machine in operation.....	35 hours
II. Care and Maintenance	
A. Safety procedures .....	10 hours
B. Routine fueling, lubricating and servicing .....	35 hours
III. Actual Operation of Equipment	
A. Safe operating procedures.....	10 hours
B. Loading and transporting materials .....	350 hours
C. Operation of off-road water tanker.....	70 hours
Total.....	520 hours

# SELF-PROPELLED HAMMER OPERATOR – CODE 0417

**MAXIMUM TRAINING TIME: 13 WEEKS OR 520 HOURS**

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 7 weeks or 280 hours: 85% of prevailing wage in area.
- ◆ Wages after successful completion of training program: The prevailing wage in area.

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I. Orientation and Observation	
A. Safety procedures .....	10 hours
B. Observation of machine in operation.....	35 hours
II. Care and Maintenance	
A. Safety procedures .....	10 hours
B. Routine fueling, lubricating and servicing .....	35 hours
III. Actual Operation of Equipment	
A. Safe operating procedures.....	10 hours
B. Breaking concrete, asphalt and other materials .....	350 hours
C. Other related tasks.....	70 hours
Total.....	520 hours

# AGRICULTURAL TRACTOR OPERATOR – CODE 0428

**MAXIMUM TRAINING TIME: 13 WEEKS OR 520 HOURS**

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 7 weeks or 280 hours: 85% of prevailing wage in area.
- ◆ Wages after successful completion of training program: The prevailing wage in area.

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I. Orientation and Observation	
A. Safety procedures .....	10 hours
B. Observation of machine in operation.....	30 hours
C. Starting and manipulating controls for moving equipment and attachments .....	25 hours
II. Care and Maintenance	
A. Safety procedures .....	10 hours
B. Routine fueling, lubricating and servicing .....	35 hours
III. Actual Operation of Equipment	
A. Safe operating procedures.....	10 hours
B. Pulling compaction implements .....	200 hours
C. Pull graders for dressing operations.....	200 hours
Total.....	520 hours

# TRENCHING MACHINE OPERATOR, LIGHT – CODE 0437

**MAXIMUM TRAINING TIME: 13 WEEKS OR 520 HOURS**

- ♦ Minimum starting wage: 70% of prevailing wage in area.
- ♦ Minimum wage after 7 weeks or 280 hours: 85% of prevailing wage in area.
- ♦ Wages after successful completion of training program: The prevailing wage in area.

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I. Orientation and Observation	
A. Safety procedures .....	10 hours
B. Observation of machine in operation.....	30 hours
C. Starting and manipulating controls for moving equipment and attachments .....	25 hours
II. Care and Maintenance	
A. Safety procedures .....	10 hours
B. Routine fueling, lubricating and servicing .....	35 hours
III. Actual Operation of Equipment	
A. Safe operating procedures.....	10 hours
B. Excavation for footing and removal of unsuitable materials .....	100 hours
C. Trenching for pipe, etc .....	300 hours
Total.....	520 hours

# TRENCHING MACHINE OPERATOR, HEAVY – CODE 0440

**MAXIMUM** TRAINING TIME: 26 WEEKS OR 1040 HOURS

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area.
- ◆ Minimum wage after 13 weeks or 520 hours; 90% of prevailing wage in area.
- ◆ Wages after successful completion of training program: The prevailing wage in area.

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I. Orientation and Observation	
A. Safety procedures .....	10 hours
B. Observation of machine in operation.....	30 hours
C. Starting and manipulating controls for moving equipment and attachments .....	25 hours
II. Care and Maintenance	
A. Safety procedures .....	10 hours
B. Routine fueling, lubricating and servicing .....	35 hours
III. Actual Operation of Equipment	
A. Safe operating procedures.....	10 hours
B. Excavation for footing and removal of unsuitable materials .....	320 hours
C. Trenching for pipe, etc .....	600 hours
Total.....	1 040 hours



# TUNNELING MACHINE OPERATOR, HEAVY – CODE 0441

**MAXIMUM** TRAINING TIME: 39 WEEKS OR 1560 HOURS

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 13 weeks or 520 hours: 80% of prevailing wage in area.
- ◆ Minimum wage after 18 weeks or 720 hours: 85% of prevailing wage in area.
- ◆ Minimum wage after 26 weeks or 1040 hours: 90% of prevailing wage in area.
- ◆ Wages after successful completion of training program: The prevailing wage in area.

\* \* \*

I. Orientation and Observation	
A. Safety procedures .....	10 hours
B. Elementary surveying of tunnel alignment and grade... ..	60 hours
C. General tunneling procedures and operation .....	200 hours
II. Care and Maintenance	
A. Safety procedures .....	10 hours
B. Routine lubricating and servicing .....	35 hours
C. Electrical connections, motors, and switches... ..	40 hours
D. Hydraulic components, use and maintenance... ..	40 hours
E. Spoil haulage equipment and track installation, use and maintenance.....	40 hours
III. Actual Operation of Equipment	
A. Safe operating procedures.....	10 hours
B. Soft Ground tunneling .....	225 hours
C. Ground Stabilization .....	150 Hours
D. Rock tunneling .....	240 hours
E. Direct Pipe Jacking .....	240 hours
F. Two pass tunneling .....	240 hours
G. Grouting.....	20 hours
Total.....	1560 hours

# TUNNELING MACHINE OPERATOR, LIGHT – CODE 0442

**MAXIMUM TRAINING TIME: 18 WEEKS OR 720 HOURS**

- ♦ Minimum starting wage: 70% of prevailing wage in area.
- ♦ Minimum wage after 9 weeks or 360 hours: 80% of prevailing wage in area.
- ♦ Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.
- ♦ Wages after successful completion of training program: The prevailing wage in area.

\* \* \*

I. Orientation and Observation	
A. Safety procedures .....	10 hours
B. Elementary surveying of tunnel alignment and grade .....	40 hours
C. General boring procedures and operation .....	150 hours
II. Care and Maintenance	
A. Safety procedures .....	10 hours
B. Routine lubricating and servicing .....	35 hours
C. Hydraulic components, use and maintenance .....	40 hours
III. Actual Operation of Equipment	
A. Safe operating procedures.....	10 hours
B. Soft Ground tunneling .....	225 hours
C. Rock tunneling .....	200 hours
Total.....	720 hours

# PERCUSSION OR ROTARY DRILL OPERATOR – CODE 0443

**MAXIMUM TRAINING TIME: 13 WEEKS OR 520 HOURS**

- ♦ Minimum starting wage: 70% of prevailing wage in area.
- ♦ Minimum wage after 7 weeks or 280 hours: 85% of prevailing wage in area.
- ♦ Wages after successful completion of training program: The prevailing wage in area.

\* \* \*

I. Orientation and Observation	
A. Safety Procedures.....	10 hours
B. General drilling procedures and operation.....	65 hours
II. Care and Maintenance	
A. Safety procedures .....	10 hours
B. Routine fueling, lubricating and servicing .....	35 hours
III. Actual Operation of Equipment	
A. Safe operating procedures.....	10 hours
B. Small hole drilling .....	195 hours
C. Large hole drilling.....	195 hours
Total.....	520 hours

# BORING MACHINE OPERATOR – CODE 0444

**MAXIMUM TRAINING TIME: 18 WEEKS OR 720 HOURS**

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 9 weeks or 360 hours: 80% of prevailing wage in area.
- ◆ Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.
- ◆ Wages after successful completion of training program: The prevailing wage in area.

\* \* \*

I. Orientation and Observation	
A. Safety Procedures .....	10 hours
B. Elementary surveying of tunnel alignment and grade .....	40 hours
C. General boring procedures and operation .....	150 hours
II. Care and Maintenance	
A. Safety procedures .....	10 hours
B. Routine lubricating and servicing .....	35 hours
C. Hydraulic components, use and maintenance .....	40 hours
III. Actual Operation of Equipment	
A. Safe operating procedures.....	10 hours
B. Soft Ground tunneling .....	225 hours
C. Rock tunneling .....	200 hours
Total.....	720 hours

# DIRECTIONAL DRILLING OPERATOR – CODE 0445

**MAXIMUM** TRAINING TIME: 26 WEEKS OR 1040 HOURS

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 9 weeks or 360 hours: 80% of prevailing wage in area.
- ◆ Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.
- ◆ Wages after successful completion of training program: The prevailing wage in area.

\* \* \*

## I. Orientation and Observation

- A. Safety procedures ..... 10 hours
- B. General drilling procedures and operation.....65 hours
- C. Identification of steering head tools.....65 hours
- D. Controlling drill speed and direction.....65 hours
- E. Pullback of pipe .....65 hours

## II. Care and Maintenance

- A. Safety procedures ..... 10 hours
- B. Drilling fluid characteristics .....65 hours
- C. Routine fueling, lubricating and servicing .....35 hours

## III. Actual Operation of Equipment

- A. Safe operating procedures..... 10 hours
- D. B. Operation of directional drilling machine ..... 650 hours

Total..... 1040 hours

# DIRECTIONAL DRILLING LOCATOR – CODE 0446

**MAXIMUM TRAINING TIME: 18 WEEKS OR 720 HOURS**

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 9 weeks or 360 hours: 80% of prevailing wage in area.
- ◆ Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.
- ◆ Wages after successful completion of training program: The prevailing wage in area.

\* \* \*

I. Orientation and Observation	
A. Safety Procedures.....	10 hours
B. General locating equipment operation .....	55 hours
II. Care and Maintenance	
A. Safety procedures .....	10 hours
B. Routine fueling, lubricating and servicing .....	35 hours
III. Actual Operation of Equipment	
A. Safe operating procedures.....	10 hours
B. Machine Setup .....	200 hours
C. Operation of Locating Equipment .....	400 hours
Total.....	720 hours

# REINFORCING STEEL WORKER – CODE 0500

**MAXIMUM TRAINING TIME: 18 WEEKS OR 720 HOURS**

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 9 weeks or 360 hours: 80% of prevailing wage in area.
- ◆ Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.
- ◆ Wages after successful completion of training program: The prevailing wage in area.

\* \* \*

I. Orientation and Observation	
A. Safety procedures .....	10 hours
B. Observation of steel being set and welding of rods .....	15 hours
II. Care and Maintenance	
A. Safety procedures .....	10 hours
B. Steel bar placement .....	50 hours
III. Actual Steel Setting	
A. Safety procedures .....	10 hours
B. Rod placement and fastening .....	300 hours
C. Rod cutting and welding .....	175 hours
D. Fabrication of reinforcement assembly .....	150 hours
Total .....	720 hours

# STRUCTURAL STEEL WORKER – CODE 0509

**MAXIMUM** TRAINING TIME: 26 WEEKS OR 1040 HOURS

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area.
- ◆ Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.
- ◆ Wages after successful completion of training program: The prevailing wage in area.

\* \* \*

I. Orientation and Observation	
A. Safety procedures .....	10 hours
B. Observation of steel worker .....	20 hours
II. Care and Maintenance	
A. Safety procedures .....	10 hours
B. Tool review .....	10 hours
III. Operating with Steel Workers	
A. Safety procedures .....	10 hours
B. Raise and place fabricated structural steel .....	150 hours
C. Emphasis on girders, plates and columns.....	100 hours
D. Fasten steel members together by welding or bolting .....	400 hours
E. Signal erection crane, rig equipment .....	330 hours
Total.....	1040 hours



# SIGN ERECTOR – CODE 0513

**MAXIMUM** TRAINING TIME: 26 WEEKS OR 1040 HOURS

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area.
- ◆ Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.
- ◆ Wages after successful completion of training program: The prevailing wage in area.

\* \* \*

I. Orientation and Safe Use of Tools and Equipment	
A. Safety procedures .....	10 hours
B. Power and hand tools .....	20 hours
C. Special fittings and hardware .....	10 hours
D. Specifications or design for concrete mixer .....	20 hours
II. Basic Design Familiarity	
A. Blueprint or Construction Plans Reading .....	50 hours
III. Applied Techniques of Sign Erection	
A. Safety procedures .....	10 hours
B. Preparation of layout for signs .....	30 hours
C. Cuts, ties and sets reinforcing steel for footings .....	25 hours
D. Sets forms for, places concrete and sets anchor bolts .....	300 hours
E. Erects wood or metal structures .....	250 hours
F. Places clamps, brackets or other required hardware on structures .....	250 hours
G. Stripping and Salvage of Forms for Re-use .....	65 hours
Total .....	1 040 hours

# SPREADER BOX OPERATOR – CODE 0515

**MAXIMUM TRAINING TIME: 13 WEEKS OR 520 HOURS**

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 7 weeks or 280 hours: 85% of prevailing wage in area.
- ◆ Wages after successful completion of training program: The prevailing wage in area.

\* \* \*

I. Orientation and Observation	
A. Safety procedures .....	10 hours
B. Observation of machine in operation.....	25 hours
C. Starting, stopping and manipulating controls for moving equipment and attachments .....	20 hours
II. Care and Maintenance	
A. Safety procedures .....	10 hours
B. Routine fueling, lubricating and servicing .....	35 hours
III. Actual Operation of Equipment	
A. Safety procedures .....	10 hours
B. Selection and loading of materials.....	40 hours
C. Spreading of stone or other granular materials.....	370 hours
Total.....	520 hours

# WORK ZONE BARRICADE SERVICER – CODE 0520

**MAXIMUM TRAINING TIME: 18 WEEKS OR 720 HOURS**

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 9 weeks or 360 hours: 80% of prevailing wage in area.
- ◆ Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.
- ◆ Wages after successful completion of training program: The prevailing wage in area.

\* \* \*

## I. Orientation and Observation

- A. Safety procedures ..... 10 hours
- B. Operation of traffic control truck..... 15 hours
- C. Traffic control device orientation ..... 25 hours

## II. Care and Maintenance

- A. Safety procedures ..... 10 hours
- B. Care and storage of equipment and materials ..... 35 hours

## III. Traffic Control Operation

- A. Safety procedures ..... 10 hours
- B. Fabrication of traffic control devices ..... 140 hours
- C. Erection and Maintenance of traffic control devices..... 395 hours
- D. Operation of traffic control truck ..... 80 hours

Total..... 720 hours

# TRUCK DRIVER, SINGLE AXLE – CODE 0600

**MAXIMUM TRAINING TIME: 13 WEEKS OR 520 HOURS**

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 7 weeks or 280 hours: 85% of prevailing wage in area.
- ◆ Wages after successful completion of training program ***and may require CDL license for driving on highway***: The prevailing wage in area.

\* \* \*

## I. Orientation and Observation

- A. Safety procedures ..... 10 hours
- B. Observation (as a passenger) of vehicle in operation.....50 hours
- C. Starting and manipulating vehicle.....40 hours

## II. Care and Maintenance

- A. Safety procedures ..... 10 hours
- B. Routine fueling, lubricating and servicing .....35hours

## III. Actual Operation of Equipment

- A. Safe operating procedures..... 10 hours
- B. Loading and unloading materials and operation of vehicle ..... 365 hours

Total..... 520 hours

# TRUCK DRIVER, SINGLE OR TANDEM AXLE DUMP TRUCK – CODE 0606

**MAXIMUM TRAINING TIME: 18 WEEKS OR 720 HOURS**

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 9 weeks or 360 hours: 80% of prevailing wage in area.
- ◆ Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.
- ◆ Wages after successful completion of training program **and may require CDL license for driving on highway**: The prevailing wage in area.

\* \* \*

I. Orientation and Observation	
A. Safety procedures .....	10 hours
B. Observation (as a passenger) of vehicle in operation.....	50 hours
C. Starting and manipulating vehicle .....	40 hours
II. Care and Maintenance	
A. Safety procedures .....	10 hours
B. Routine fueling, lubricating and servicing .....	35 hours
III. Actual Operation of Equipment	
A. Safe operating procedures.....	10 hours
B. Loading and unloading materials and operation of vehicle .....	565 hours
Total.....	720 hours

# TRUCK DRIVER, TANDEM AXLE TRACTOR WITH SEMI TRAILER – CODE 0607

**MAXIMUM** TRAINING TIME: 26 WEEKS OR 1040 HOURS

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area.
- ◆ Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.
- ◆ Wages after successful completion of training program **and may require CDL license for driving on highway**: The prevailing wage in area.

\* \* \*

I. Orientation and Observation	
A. Safety procedures .....	10 hours
B. Observation (as a passenger) of vehicle in operation.....	50 hours
C. Starting and manipulating vehicle.....	40 hours
II. Care and Maintenance	
A. Safety procedures .....	10 hours
B. Routine fueling, lubricating and servicing .....	35 hours
III. Actual Operation of Equipment	
A. Safe operating procedures.....	10 hours
B. Loading and unloading materials and operation of vehicle .....	885 hours
Total.....	1040 hours

# TRUCK DRIVER LOWBOY- FLOAT – CODE 0609

**MAXIMUM** TRAINING TIME: 26 WEEKS OR 1040 HOURS

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area.
- ◆ Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.
- ◆ Wages after successful completion of training program **and may require CDL license for on- highway use:** The prevailing wage in area.

\* \* \*

I. Orientation and Observation	
A. Safety procedures .....	10 hours
B. Observation (as a passenger) of vehicle in operation.....	50 hours
C. Starting and manipulating vehicle.....	40 hours
II. Care and Maintenance	
A. Safety procedures .....	10 hours
B. Routine fueling, lubricating and servicing .....	35 hours
III. Actual Operation of Equipment	
A. Safe operating procedures.....	10 hours
B. Loading and unloading materials and operation of vehicle .....	500 hours
C. Loading and unloading equipment... ..	385 hours
Total.....	1040 hours

# TRUCK DRIVER TRANSIT-MIX – CODE 0612

**MAXIMUM** TRAINING TIME: 26 WEEKS OR 1040 HOURS

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area.
- ◆ Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.
- ◆ Wages after successful completion of training program **and may require CDL license for on- highway use:** The prevailing wage in area.

\* \* \*

## I. Orientation and Observation

- A. Safety procedures ..... 10 hours
- B. Observation (as a passenger) of vehicle in operation.....50 hours
- C. Starting and manipulating vehicle..... . 40 hours

## II. Care and Maintenance

- A. Safety procedures ..... 10 hours
- B. Routine fueling, lubricating and servicing .....35 hours

## III. Actual Operation of Equipment

- A. Safe operating procedures..... 10 hours
- B. Mixing materials.....20 hours
- C. Loading materials at plant..... 115 hours
- D. Operation of vehicle... .. 600 hours
- E. Discharging materials... .. 150 hours

Total.....1040 hours



# BOOM TRUCK OPERATOR – CODE 0615

**MAXIMUM** TRAINING TIME: 26 WEEKS OR 1040 HOURS

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area.
- ◆ Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.
- ◆ Wages after successful completion of training program **and may require CDL license for on- highway use:** The prevailing wage in area.

\* \* \*

I. Orientation and Observation	
A. Safety procedures .....	10 hours
B. Observation (as a passenger) of vehicle in operation.....	50 hours
C. Starting and manipulating vehicle.....	40 hours
II. Care and Maintenance	
A. Safety procedures .....	10 hours
B. Routine fueling, lubricating and servicing .....	35 hours
III. Actual Operation of Equipment	
A. Safe operating procedures.....	10 hours
B. Loading and unloading materials .....	410 hours
C. Hoisting materials.....	475 hours
Total.....	1040 hours

# STRUCTURAL STEEL WELDER\* – CODE 0705

**MAXIMUM TRAINING TIME: 52 WEEKS OR 2080 HOURS**

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 13 weeks or 520 hours: 80% of prevailing wage in area.
- ◆ Minimum wage after 26 weeks or 1040 hours: 85% of prevailing wage in area.
- ◆ Minimum wage after 39 weeks or 1560 hours: 90% of prevailing wage in area.
- ◆ Wages after successful completion of training program **and certification by the American Welding Society**: The prevailing wage in area.

\* \* \*

## I. Orientation and Observation

- A. Safety procedures ..... 10 hours
- B. Welding equipment ..... 20 hours
- C. Materials selection ..... 20 hours
- D. Observation of welder ..... 20 hours
- E. Observation of welding of permanent metal deck forms ..... 40 hours

## II. Applied Techniques of Welding

- A. Safety procedures ..... 10 hours
- B. Acetylene-cutting, brazing and welding ..... 300 hours
- C. Electric-cutting and welding ..... 300 hours

## III. Actual Welding Operations

- A. Safety procedures ..... 10 hours
- B. Cut, lay out, fit and weld ..... 700 hours
- C. Structural steel welding ..... 650 hours

Total.....2080 hours

# WELDER – CODE 0706

**MAXIMUM** TRAINING TIME: 26 WEEKS OR 1040 HOURS

- ◆ Minimum starting wage: 70% of prevailing wage in area.
- ◆ Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area.
- ◆ Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.
- ◆ Wages after successful completion of training program: The prevailing wage in area.

\* \* \*

## I. Orientation and Observation

- A. Safety procedures ..... 10 hours
- B. Welding equipment ..... 20 hours
- C. Materials selection ..... 20 hours
- D. Observation of welder ..... 20 hours

## II. Applied Techniques of Welding

- A. Safety procedures ..... 10 hours
- B. Acetylene-cutting, brazing and welding ..... 300 hours
- C. Electric-cutting and welding ..... 300 hours

## III. Actual Welding Operations

- A. Safety procedures ..... 10 hours
- B. Cut, lay out, fit and weld sheet metal, cast  
iron and other metal parts ..... 350 hours

Total ..... 1040 hours

# SLURRY SEAL OR MICRO-SURFACING MACHINE OPERATOR – CODE 0708

**MAXIMUM** TRAINING TIME: 26 WEEKS OR 1040 HOURS

- ♦ Minimum starting wage: 70% of prevailing wage in area.
- ♦ Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area.
- ♦ Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.
- ♦ Wages after successful completion of training program: The prevailing wage in area.

\* \* \*

I. Orientation and Observation	
A. Safety procedures .....	10 hours
B. Observation of machine in operation.....	35 hours
C. Starting and manipulating controls for moving equipment and attachments .....	30 hours
II. Care and Maintenance	
A. Safety procedures .....	10 hours
B. Routine fueling, lubricating and servicing .....	35 hours
III. Actual Operation of Equipment	
A. Safe operating procedures.....	10 hours
B. Screed regulation indoctrination and operation.....	120 hours
C. Operation of machine and leveling of materials.....	790 hours
Total.....	1040 hours

# **APPENDIX C**

## **REPORTING FORMS**

## Texas Department of Transportation Contractor On-the-Job Training Plan

The training and upgrading of minorities and women toward journeyworker status is a primary objective of the training provision. Accordingly, the contractor shall make every effort to enroll minority trainees and women trainees to the extent such persons are available within a reasonable area of recruitment. Contractors are encouraged to make systematic and direct recruitment efforts through public and private sources that are likely to yield minorities and females available for training under this contract. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether members of a minority group or not.

For questions, contact the Texas Department of Transportation's (TxDOT) Office of Civil Rights at (512) 416-4750. Forward a signed copy to [OCR\\_TxDOT-OJT-Program@txdot.gov](mailto:OCR_TxDOT-OJT-Program@txdot.gov).

### I. CONTRACTOR INFORMATION

Contractor		Federal Goal	Year
Address		City, State ZIP	
Contractor Representative	E-mail address	Phone Number	

### II. TRAINING INFORMATION

Training Classification	Projected Number of Trainees	Approximate Training Start Date

### III. CONTRACTOR ACKNOWLEDGEMENT STATEMENT

I understand and will comply fully with the plans and specifications under which this training is being performed.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

### IV. TxDOT USE ONLY

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Title

<input type="checkbox"/> Approved	<input type="checkbox"/> Disapproved
Comments:	

**AGC OF TEXAS  
FEDERAL ON-THE-JOB TRAINING PROGRAM  
ENROLLMENT FORM**

(Rev. 01/12)  
Page 1 of 1

<b>TRAINEE INFORMATION</b>			
Last name:	First name:	MI:	SSN (last 4 digits):
Address:			
City:	State:	Zip code:	Phone:
Gender:		If other, please specify:	
Race/Ethnicity:			
New Hire or Upgrade:	If upgrade, current job classification:		Current wage:
The candidate expressed interest in the OJT Program by responding to:			
If upgrade:		If new hire:	
If other, please specify:			
How did the candidate demonstrate the commitment and capability to complete the program?			

<b>TRAINING INFORMATION</b>		
Proposed trainee job classification:	Training start wage:	Planned training start date:
Starting Federal-aid project CSJ:	Is the OJT Special Provision included in the contract? <input type="checkbox"/> Yes <input type="checkbox"/> No If no, a change order must be generated.	
Area Engineer:	District:	County:

<b>CONTRACTOR INFORMATION</b>	
Contractor:	
Contact person:	Phone:
Address:	City, State, Zip:
E-mail:	

Trainee Signature	Contractor Representative Signature
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Print Name	Print Name
------------	------------

Submit this form within 7 days to AGC at [ojt@agctx.org](mailto:ojt@agctx.org). In addition, a hard copy signed by both the trainee and the contractor representative must be mailed to P.O. Box 2185/Austin, TX 78768. Upon receipt of this form and if appropriate, AGC will furnish an enrollment confirmation letter to the contractor, the Area Engineer, and the District Director of Construction.

THIS IS AN EQUAL OPPORTUNITY PROGRAM







## LABOR STANDARDS REVIEW

Form 2220  
(Rev. 10/11)  
Page 1 of 2

Project CSJ: \_\_\_\_\_ County: \_\_\_\_\_ Date: \_\_\_\_\_

Employer: \_\_\_\_\_

---

### **Employee Interview**

Employee Name: \_\_\_\_\_

Job Classification: \_\_\_\_\_ Wage Rate: \_\_\_\_\_

Describe your work duties and tools used:

\_\_\_\_\_

Work being performed (observed): \_\_\_\_\_

\*Do you work over \_\_\_\_\_ Overtime \_\_\_\_\_ How paid?  
40 hours per week? ☐ Yes ☐ No Wage Rate: \_\_\_\_\_ (cash or check) \_\_\_\_\_

\*Work on all projects (private, municipal, state or county) is counted for overtime.

Is any money deducted from your pay besides income and social security taxes?

☐ Yes ☐ No If yes, explain:

\_\_\_\_\_

Has employee seen posting of \_\_\_\_\_ Are you paid \_\_\_\_\_ If not, how  
minimum wage rates? ☐ Yes ☐ No weekly? ☐ Yes ☐ No often? \_\_\_\_\_

Are you currently enrolled in an apprenticeship or training program? ☐ Yes ☐ No

If so, has copy of training program been provided? ☐ Yes ☐ No

Interviewed by: \_\_\_\_\_

---

### **On-the-Job Training** (if applicable)

When did you begin working for this company? Approximate Month/Year: \_\_\_\_\_

Job classification at hire: \_\_\_\_\_

List previous job classification/craft with this company or other companies:

\_\_\_\_\_

In which classification/craft training are you enrolled? \_\_\_\_\_

What is the name and title of your trainer? \_\_\_\_\_

## **LABOR STANDARDS REVIEW**

Form 2220  
(Rev. 10/11)  
Page 2 of 2

### **On-the-Job Training** (continued)

Please explain the training you are receiving:

---

---

Have you received a copy of the *Contractor OJT Enrollment Request Form* that you signed?

☐ Yes ☐ No

Have you received a copy of the *OJT Program* curriculum? ☐ Yes ☐ No

\_\_\_\_\_  
Interviewer (Signature and Title)

\_\_\_\_\_  
Date

---

### **Payroll Review**

Payroll Period: \_\_\_\_\_ Classification: \_\_\_\_\_

Minimum Hourly Rate: \_\_\_\_\_ Rate Paid: \_\_\_\_\_

\*OJT Current Training Period (if applicable):

☐ First Half @ min. 60% ☐ Third Quarter @ min. 75% ☐ Last Quarter @ min. 90%

\*Trainee's current training quarter. Minimum percentage of prevailing wage rate to be paid for the corresponding quarter.

If employee interview or payroll review indicates non-compliance, describe actions taken:

---

---

Supplemental Payrolls Submitted? ☐ Yes ☐ No

\_\_\_\_\_  
Reviewer (Signature and Title)

\_\_\_\_\_  
Date

**Texas Department of Transportation  
Federal OJT Program Annual Report Form**

**Reporting Period:** \_\_\_\_  
**Number of contractors selected for OJT:** \_\_\_\_  
**Number of contractors providing OJT:** \_\_\_\_  
**OJT trainee goal for the year:** \_\_\_\_  
**Number of OJT participants:** \_\_\_\_

<b>Enrollments</b>			
<b>Race/Ethnicity</b>	<b>Male</b>	<b>Female</b>	<b>Total</b>
White			
Black			
Hispanic			
Asian or Pacific Islander			
American Indian			
Other			
<b>Totals:</b>			

<b>Active</b>			
<b>Race/Ethnicity</b>	<b>Male</b>	<b>Female</b>	<b>Total</b>
White			
Black			
Hispanic			
Asian or Pacific Islander			
American Indian			
Other			
<b>Totals:</b>			

<b>Graduations</b>			
<b>Race/Ethnicity</b>	<b>Male</b>	<b>Female</b>	<b>Total</b>
White			
Black			
Hispanic			
Asian or Pacific Islander			
American Indian			
Other			
<b>Totals:</b>			

<b>Terminations</b>			
<b>Race/Ethnicity</b>	<b>Male</b>	<b>Female</b>	<b>Total</b>
White			
Black			
Hispanic			
Asian or Pacific Islander			
American Indian			
Other			
<b>Totals:</b>			

# **APPENDIX D**

**FEDERAL REGULATION 23CFR PART 230**

**§ 230.111 Implementation of special requirements for the provision of on-the-job training.**

(a) The State highway agency shall determine which Federal-aid highway construction contracts shall include the "Training Special Provisions" (appendix B) and the minimum number of trainees to be specified therein after giving appropriate consideration to the guidelines set forth in § 230.111(c). The "Training Special Provisions" shall supersede section 7(b) of the Special Provisions (appendix A) entitled "Specific Equal Employment Opportunity Responsibilities." Minor wording revisions will be required to the "Training Special Provisions" in areas having "Hometown" or "Imposed Plan" requirements.

(b) The Washington Headquarters shall establish and publish annually suggested minimum training goals. These goals will be based on the Federal-aid apportioned amounts and the minority population. A State will have achieved its goal if the total number of training slots on selected federally aided highway construction contracts which have been awarded during each 12-month period equals or exceeds the State's suggested minimum annual goal. In the event a State highway agency does not attain its goal during a calendar year, the State highway agency at the end of the calendar year shall inform the Administrator of the reasons for its inability to meet the suggested minimum number of training slots and the steps to be taken to achieve the goal during the next calendar year. The information is to be submitted not later than 30 days from the end of the calendar year and should be factual, and should not only indicate the situations occurring during the year but show the project conditions at least through the coming year. The final determination will be made on what training goals are considered to be realistic based on the information submitted by a State.

(c) The following guidelines shall be utilized by the State highway agency in selecting projects and determining the number of trainees to be provided training therein:

(1) Availability of minorities, women, and disadvantaged for training.

(2) The potential for effective training.

(3) Duration of the contract.

(4) Dollar value of the contract.

(5) Total normal work force that the average bidder could be expected to use.

(6) Geographic location.

(7) Type of work.

(8) The need for additional journeymen in the area.

(9) Recognition of the suggested minimum goal for the State.

(10) A satisfactory ratio of trainees to journeymen expected to be on the contractor's work force during normal operations (considered to fall between 1:10 and 1:4).

(d) Training programs which are established shall be approved only if they meet the standards set forth in appendix B with regard to:

(1) The primary objectives of training and upgrading minority group workers, women and disadvantaged persons.

(2) The development of full journeymen.

(3) The minimum length and type of training.

(4) The minimum wages of trainees.

(5) Trainees certifications.

(6) Keeping records and furnishing reports.

(e)(1) Training programs considered by a State highway agency to meet the standards under this directive shall be submitted to the FHWA division Administrator with a recommendation for approval.

(2) Employment pursuant to training programs approved by the FHWA division Administrator will be exempt from the minimum wage rate provisions of section 113 of title 23 U.S.C. Approval, however, shall not be given to training programs which provide for employment of trainees at wages less than those required by the Special Training Provisions. (Appendix B.)

(f)(1) Apprenticeship programs approved by the U.S. Department of Labor as of the date of proposed use by a Federal-aid highway contractor or subcontractor need not be formally approved by the State highway agency or the FHWA division Administrator. Such programs, including their minimum wage provisions, are acceptable for use, provided they are administered

## § 230.113

in a manner reasonably calculated to meet the equal employment opportunity obligations of the contractor.

(2) Other training programs approved by the U.S. Department of Labor as of the date of proposed use by a Federal-aid highway contractor or subcontractor are also acceptable for use without the formal approval of the State highway agency or the division Administrator provided:

(i) The U.S. Department of Labor has clearly approved the program aspects relating to equal employment opportunity and the payment of trainee wage rates in lieu of prevailing wage rates.

(ii) They are reasonably calculated to qualify the average trainees for journeyman status in the classification concerned by the end of the training period.

(iii) They are administered in a manner calculated to meet the equal employment obligations of the contractors.

(g) The State highway agencies have the option of permitting Federal-aid highway construction contractors to bid on training to be given under this directive. The following procedures are to be utilized by those State highway agencies that elect to provide a bid item for training:

(1) The number of training positions shall continue to be specified in the Special Training Provisions. Furthermore, this number should be converted into an estimated number of hours of training which is to be used in arriving at the total bid price for the training item. Increases and decreases from the estimated amounts would be handled as overruns or underruns;

(2) A section concerning the method of payment should be included in the Special Training Provisions. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a substantial part of the overall training. Furthermore, the trainee must be concurrently employed on a federally aided highway construction project subject to the Special Training Provisions attached to this directive. Reimbursement for offsite training may only be made to the contractor where he does one or more of

the following: Contributes to the cost of the training, provides the instruction to the trainee, or pays the trainee's wages during the offsite training period;

(3) A State highway agency may modify the special provisions to specify the numbers to be trained in specific job classifications;

(4) A State highway agency can specify training standards provided any prospective bidder can use them, the training standards are made known in the advertised specifications, and such standards are found acceptable by FHWA.

[40 FR 28053, July 3, 1975; 40 FR 57358, Dec. 9, 1975, as amended at 41 FR 3080, Jan. 21, 1976]

### § 230.113 Implementation of supportive services.

(a) The State highway agency shall establish procedures, subject to the availability of funds under 23 U.S.C. 140(b), for the provision of supportive services in support of training programs approved under this directive. Funds made available to implement this paragraph shall not be used to finance the training of State highway agency employees or to provide services in support of such training. State highway agencies are not required to match funds allocated to them under this section.

(b) In determining the types of supportive services to be provided which will increase the effectiveness of approved training programs. State highway agencies shall give preference to the following types of services in the order listed:

(1) Services related to recruiting, counseling, transportation, physical examinations, remedial training, with special emphasis upon increasing training opportunities for members of minority groups and women;

(2) Services in connection with the administration of on-the-job training programs being sponsored by individual or groups of contractors and/or minority groups and women's groups;

(3) Services designed to develop the capabilities of prospective trainees for undertaking on-the-job training;

(4) Services in connection with providing a continuation of training during periods of seasonal shutdown;

(5) Followup services to ascertain outcome of training being provided.

(c) State highway agencies which desire to provide or obtain supportive services other than those listed above shall submit their proposals to the Federal Highway Administration for approval. The proposal, together with recommendations of the division and regional offices shall be submitted to the Administrator for appropriate action.

(d) When the State highway agency provides supportive services by contract, formal advertising is not required by the FHWA, however, the State highway agency shall solicit proposals from such qualified sources as will assure the competitive nature of the procurement. The evaluation of proposals by the State highway agency must include consideration of the proposer's ability to effect a productive relationship with contractors, unions (if appropriate), minority and women groups, minority and women trainees, and other persons or organizations whose cooperation and assistance will contribute to the successful performance of the contract work.

(e) In the selection of contractors to provide supportive services, State highway agencies shall make conscientious efforts to search out and utilize the services of qualified minority or women organizations, or minority or women business enterprises.

(f) As a minimum, State highway agency contracts to obtain supportive services shall include the following provisions:

(1) A statement that a primary purpose of the supportive services is to increase the effectiveness of approved on-the-job training programs, particularly their effectiveness in providing meaningful training opportunities for minorities, women, and the disadvantaged on Federal-aid highway projects;

(2) A clear and complete statement of the services to be provided under the contract, such as services to construction contractors, subcontractors, and trainees, for recruiting, counseling, remedial educational training, assistance in the acquisition of tools, special equipment and transportation, followup procedures, etc.;

(3) The nondiscrimination provisions required by Title VI of the Civil Rights Act of 1964 as set forth in FHWA Form PR-1273, and a statement of non-discrimination in employment because of race, color, religion, national origin or sex;

(4) The establishment of a definite period of contract performance together with, if appropriate, a schedule stating when specific supportive services are to be provided;

(5) Reporting requirements pursuant to which the State highway agency will receive monthly or quarterly reports containing sufficient statistical data and narrative content to enable evaluation of both progress and problems;

(6) A requirement that the contractor keep track of trainees receiving training on Federal-aid highway construction projects for up to 6 months during periods when their training is interrupted. Such contracts shall also require the contractor to conduct a 6 month followup review of the employment status of each graduate who completes an on-the-job training program on a Federal-aid highway construction project subsequent to the effective date of the contract for supportive services.

(7) The basis of payment;

(8) An estimated schedule for expenditures;

(9) The right of access to contractor and subcontractor records and the right to audit shall be granted to authorize State highway agency and FHWA officials;

(10) Noncollusion certification;

(11) A requirement that the contractor provide all information necessary to support progress payments if such are provided for in the contract;

(12) A termination clause.

(g) The State highway agency is to furnish copies of the reports received under paragraph (b)(5) of this section, to the division office.

[40 FR 28053, July 3, 1975, as amended at 41 FR 3080, Jan. 21, 1976]

**§ 230.115 Special contract requirements for "Hometown" or "Imposed" Plan areas.**

Direct Federal and Federal-aid contracts to be performed in "Hometown"



## § 230.117

or “Imposed” Plan areas will incorporate the special provision set forth in appendix G.

### **§ 230.117 Reimbursement procedures (Federal-aid highway construction projects only).**

(a) *On-the-job special training provisions.* State highway agencies will be reimbursed on the same pro-rata basis as the construction costs of the Federal-aid project.

(b) *Supportive services.* (1) The State highway agency must keep a separate account of supportive services funds since they cannot be interchanged with regular Federal-aid funds. In addition, these funds may not be expended in a manner that would provide for duplicate payment of Federal or Federal-aid funds for the same service.

(2) Where a State highway agency does not obligate all its funds within the time specified in the particular year's allocation directive, the funds shall revert to the FHWA Headquarters Office to be made available for use by other State highway agencies, taking into consideration each State's need for and ability to use such funds.

### **§ 230.119 Monitoring of supportive services.**

Supportive services procured by a State highway agency shall be monitored by both the State highway agency and the division office.

### **§ 230.121 Reports.**

(a) Employment reports on Federal-aid highway construction contracts not subject to “Hometown” or “Imposed” plan requirements.

(1) Paragraph 10c of the special provisions (appendix A) sets forth specific reporting requirements. FHWA Form PR-1391, Federal-Aid Highway Construction Contractors Annual EEO Report, (appendix C) and FHWA Form PR 1392, Federal-Aid Highway Construction Summary of Employment Data (including minority breakdown) for all Federal-Aid Highway Projects for month ending July 31st, 19—, (appendix D) are to be used to fulfill these reporting requirements.

(2) Form PR 1391 is to be completed by each contractor and each subcontractor subject to this part for every

month of July during which work is performed, and submitted to the State highway agency. A separate report is to be completed for each covered contract or subcontract. The employment data entered should reflect the work force on board during all or any part of the last payroll period preceding the end of the month. The State highway agency is to forward a single copy of each report to the FHWA division office.

(3) Form PR 1392 is to be completed by the State highway agencies, summarizing the reports on PR 1391 for the month of July received from all active contractors and subcontractors. Three (3) copies of completed Forms PR 1392 are to be forwarded to the division office.

(b) Employment reports on direct Federal highway construction contracts not subject to “Hometown” or “Imposed” plan requirements. Forms PR 1391 (appendix C) and PR 1392 (appendix D) shall be used for reporting purposes as prescribed in § 230.121(a).

(c) Employment reports on direct Federal and Federal-aid highway construction contracts subject to “Hometown” or “Imposed” plan requirements.

(1) Reporting requirements for direct Federal and Federal-aid highway construction projects located in areas where “Hometown” or “Imposed” plans are in effect shall be in accordance with those issued by the U.S. Department of Labor, Office of Federal Contract Compliance.

(2) In order that we may comply with the U.S. Senate Committee on Public Works' request that the Federal Highway Administration submit a report annually on the status of the equal employment opportunity program, Form PR 1391 is to be completed annually by each contractor and each subcontractor holding contracts or subcontracts exceeding \$10,000 except as otherwise provided for under 23 U.S.C. 117. The employment data entered should reflect the work force on board during all or any part of the last payroll period preceding the end of the month of July.

(d) [Reserved]

(e) Reports on supportive services contracts. The State highway agency is



to furnish copies of the reports received from supportive services contractors to the FHWA division office which will furnish a copy to the regional office.

[40 FR 28053, July 3, 1975, as amended at 43 FR 19386, May 5, 1978; 61 FR 14616, Apr. 3, 1996]

## APPENDIX A TO SUBPART A OF PART 230—SPECIAL PROVISIONS

### SPECIFIC EQUAL EMPLOYMENT OPPORTUNITY RESPONSIBILITIES

1. *General.* a. Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity as required by Executive Order 11246 and Executive Order 11375 are set forth in Required Contract, Provisions (Form PR-1273 or 1316, as appropriate) and these Special Provisions which are imposed pursuant to section 140 of title 23 U.S.C., as established by section 22 of the Federal-Aid Highway Act of 1968. The requirements set forth in these Special Provisions shall constitute the specific affirmative action requirements for project activities under this contract and supplement the equal employment opportunity requirements set forth in the Required Contract Provisions.

b. The contractor will work with the State highway agencies and the Federal Government in carrying out equal employment opportunity obligations and in their review of his/her activities under the contract.

c. The contractor and all his/her subcontractors holding subcontracts not including material suppliers, of \$10,000 or more, will comply with the following minimum specific requirement activities of equal employment opportunity: (The equal employment opportunity requirements of Executive Order 11246, as set forth in volume 6, chapter 4, section 1, subsection 1 of the Federal-Aid Highway Program Manual, are applicable to material suppliers as well as contractors and subcontractors.) The contractor will include these requirements in every subcontract of \$10,000 or more with such modification of language as is necessary to make them binding on the subcontractor.

2. *Equal Employment Opportunity Policy.* The contractor will accept as his operating policy the following statement which is designed to further the provision of equal employment opportunity to all persons without regard to their race, color, religion, sex, or national origin, and to promote the full realization of equal employment opportunity through a positive continuing program:

It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment,

without regard to their race, religion, sex, color, or national origin. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, preapprenticeship, and/or on-the-job training.

3. *Equal Employment Opportunity Officer.* The contractor will designate and make known to the State highway agency contracting officers and equal employment opportunity officer (hereinafter referred to as the EEO Officer) who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of equal employment opportunity and who must be assigned adequate authority and responsibility to do so.

4. *Dissemination of Policy.* a. All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's equal employment opportunity policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

(1) Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's equal employment opportunity policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

(2) All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official, covering all major aspects of the contractor's equal employment opportunity obligations within thirty days following their reporting for duty with the contractor.

(3) All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer or appropriate company official in the contractor's procedures for locating and hiring minority group employees.

b. In order to make the contractor's equal employment opportunity policy known to all employees, prospective employees and potential sources of employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the contractor will take the following actions:

(1) Notices and posters setting forth the contractor's equal employment opportunity

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policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

(2) The contractor's equal employment opportunity policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

5. Recruitment. a. When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be published in newspapers or other publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

b. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, the contractor will, through his EEO Officer, identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with equal employment opportunity contract provisions. (The U.S. Department of Labor has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)

c. The contractor will encourage his present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring minority group applicants will be discussed with employees.

6. *Personnel Actions.* Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, or national origin. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities

do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

7. *Training and Promotion.* a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, *i.e.*, apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event the Training Special Provision is provided under this contract, this subparagraph will be superseded as indicated in Attachment 2.

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

8. *Unions.* If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

b. The contractor will use best efforts to incorporate an equal employment opportunity clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, or national origin.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the State highway department and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, or national origin; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The U.S. Department of Labor has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the State highway agency.

9. *Subcontracting.* a. The contractor will use his best efforts to solicit bids from and to utilize minority group subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of minority-owned construction firms from State highway agency personnel.

b. The contractor will use his best efforts to ensure subcontractor compliance with their equal employment opportunity obligations.

10. *Records and Reports.* a. The contractor will keep such records as are necessary to determine compliance with the contractor's equal employment opportunity obligations. The records kept by the contractor will be designed to indicate:

(1) The number of minority and non-minority group members and women em-

ployed in each work classification on the project.

(2) The progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women (applicable only to contractors who rely in whole or in part on unions as a source of their work force),

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees, and

(4) The progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority and female representation among their employees.

b. All such records must be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the State highway agency and the Federal Highway Administration.

c. The contractors will submit an annual report to the State highway agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form PR 1391. If on-the-job training is being required by "Training Special Provision", the contractor will be required to furnish Form FHWA 1409.

[40 FR 28053, July 3, 1975, as amended at 43 FR 19386, May 5, 1978. Correctly redesignated at 46 FR 21156, Apr. 9, 1981]

#### APPENDIX B TO SUBPART A OF PART 230—TRAINING SPECIAL PROVISIONS

This Training Special Provision supersedes subparagraph 7b of the Special Provision entitled "Specific Equal Employment Opportunity Responsibilities," (Attachment 1), and is in implementation of 23 U.S.C. 140(a).

As part of the contractor's equal employment opportunity affirmative action program training shall be provided as follows:

The contractor shall provide on-the-job training aimed at developing full journeymen in the type of trade or job classification involved.

The number of trainees to be trained under the special provisions will be \_\_\_\_\_ (amount to be filled in by State highway department).

In the event that a contractor subcontracts a portion of the contract work, he shall determine how many, if any, of the trainees are to be trained by the subcontractor, provided, however, that the contractor shall retain the primary responsibility for meeting the training requirements imposed by this special provision. The contractor shall also insure that this training



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special provision is made applicable to such subcontract. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training.

The number of trainees shall be distributed among the work classifications on the basis of the contractor's needs and the availability of journeymen in the various classifications within a reasonable area of recruitment. Prior to commencing construction, the contractor shall submit to the State highway agency for approval the number of trainees to be trained in each selected classification and training program to be used. Furthermore, the contractor shall specify the starting time for training in each of the classifications. The contractor will be credited for each trainee employed by him on the contract work who is currently enrolled or becomes enrolled in an approved program and will be reimbursed for such trainees as provided hereinafter.

Training and upgrading of minorities and women toward journeymen status is a primary objective of this Training Special Provision. Accordingly, the contractor shall make every effort to enroll minority trainees and women (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent that such persons are available within a reasonable area of recruitment. The contractor will be responsible for demonstrating the steps that he has taken in pursuance thereof, prior to a determination as to whether the contractor is in compliance with this Training Special Provision. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not.

No employee shall be employed as a trainee in any classification in which he has successfully completed a training course leading to journeyman status or in which he has been employed as a journeyman. The contractor should satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used the contractor's records should document the findings in each case.

The minimum length and type of training for each classification will be as established in the training program selected by the contractor and approved by the State highway agency and the Federal Highway Administration. The State highway agency and the Federal Highway Administration shall approve a program if it is reasonably calculated to meet the equal employment opportunity obligations of the contractor and to qualify the average trainee for journeyman status in the classification concerned by the end of the training period. Further-

more, apprenticeship programs registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau and training programs approved but not necessarily sponsored by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training shall also be considered acceptable provided it is being administered in a manner consistent with the equal employment obligations of Federal-aid highway construction contracts. Approval or acceptance of a training program shall be obtained from the State prior to commencing work on the classification covered by the program. It is the intention of these provisions that training is to be provided in the construction crafts rather than clerk-typists or secretarial-type positions. Training is permissible in lower level management positions such as office engineers, estimators, timekeepers, etc., where the training is oriented toward construction applications. Training in the laborer classification may be permitted provided that significant and meaningful training is provided and approved by the division office. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

Except as otherwise noted below, the contractor will be reimbursed 80 cents per hour of training given an employee on this contract in accordance with an approved training program. As approved by the engineer, reimbursement will be made for training persons in excess of the number specified herein. This reimbursement will be made even though the contractor receives additional training program funds from other sources, provided such other does not specifically prohibit the contractor from receiving other reimbursement. Reimbursement for offsite training indicated above may only be made to the contractor where he does one or more of the following and the trainees are concurrently employed on a Federal-aid project; contributes to the cost of the training, provides the instruction to the trainee or pays the trainee's wages during the offsite training period.

No payment shall be made to the contractor if either the failure to provide the required training, or the failure to hire the trainee as a journeyman, is caused by the contractor and evidences a lack of good faith on the part of the contractor in meeting the requirements of this Training Special Provision. It is normally expected that a trainee will begin his training on the project as soon as feasible after start of work utilizing the skill involved and remain on the project as long as training opportunities exist in his work classification or until he has completed his training program. It is not required that all trainees be on board for the entire length

of the contract. A contractor will have fulfilled his responsibilities under this Training Special Provision if he has provided acceptable training to the number of trainees specified. The number trained shall be determined on the basis of the total number enrolled on the contract for a significant period.

Trainees will be paid at least 60 percent of the appropriate minimum journeyman's rate specified in the contract for the first half of the training period, 75 percent for the third quarter of the training period, and 90 percent for the last quarter of the training period, unless apprentices or trainees in an approved existing program are enrolled as trainees on this project. In that case, the appropriate rates approved by the Departments of Labor

or Transportation in connection with the existing program shall apply to all trainees being trained for the same classification who are covered by this Training Special Provision.

The contractor shall furnish the trainee a copy of the program he will follow in providing the training. The contractor shall provide each trainee with a certification showing the type and length of training satisfactorily completed.

The contractor will provide for the maintenance of records and furnish periodic reports documenting his performance under this Training Special Provision.

[40 FR 28053, July 3, 1975. Correctly redesignated at 46 FR 21156, Apr. 9, 1981]

# CONTACT INFORMATION

Send all Reporting Forms to:

[ojt@agctx.org](mailto:ojt@agctx.org)

To Find an Area Engineer by CSJ:

[http://www.dot.state.tx.us/local\\_information/](http://www.dot.state.tx.us/local_information/)

Forms or Goal Status Concerns:

Danielle Kraus at [dkraus@agctx.org](mailto:dkraus@agctx.org)

Policy Matters:

Kristen Ogden at [kogden@agctx.org](mailto:kogden@agctx.org)

TxDOT Civil Rights Contract Compliance Division:

512.416.4750, or [OCR\\_TxDOT-OJT-Program@dot.state.tx.us](mailto:OCR_TxDOT-OJT-Program@dot.state.tx.us)

# Notes

# Notes



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# Notes

# Appendix 4 – Standard Professional Services Agreement

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**CONTRACT FOR DESIGN-BUILD ASSISTANCE BETWEEN  
WILLIAMS BROTHERS CONSTRUCTION COMPANY, INC.  
AND**

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## ARTICLE 1

### AGREEMENT

This Agreement is made this \_\_\_\_ Day of \_\_\_\_\_ in the year 2013 by and between

**WILLIAMS BROTHERS CONSTRUCTION COMPANY, INC.** ("Williams Brothers" or "Design-Builder")  
PO Box 66428  
Houston, Texas 77266

and

\_\_\_\_ ("Engineer")  
\_\_\_\_\_  
\_\_\_\_\_

for services in connection with the Project:

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

whose OWNER is:

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

Notice to the Parties shall be given at the above addresses.

## ARTICLE 2

### GENERAL PROVISIONS

Williams Brothers and the Owner have signed a Design Build Agreement (DBA), which is attached as Exhibit "A". In accordance with the DBA, Williams Brothers shall procure the services of licensed design professionals to provide the engineering services required to design the Project in accordance with Owner's requirements. Through this Agreement, Williams Brothers intends to contract with Engineer to provide the design and engineering services as set forth herein (the "Services").

#### 2.1 STANDARDS OF PERFORMANCE/TEAM RELATIONSHIP.

2.1.1. Engineer represents that it possesses the requisite skill, expertise, and licensing to perform the required Services in accordance with Engineer's Standard of Care, as defined in Section 3.2.1. Williams Brothers and Engineer agree to work together and shall take actions reasonably necessary to enable each other to perform this Agreement in a timely, efficient and economical manner.

2.2 CONTRACT DOCUMENTS. The contract documents for this Agreement shall be comprised of the following:

2.2.1. The Design Build Agreement Between Williams Brothers and Owner (Exhibit "A");

2.2.2. The Technical Provisions for the Project (Exhibit "F");

2.2.3. The Required DBA Provisions (Exhibit "G"), which are comprised of the following:

- 2.2.3.1. Federal Requirements in all Contracts,
- 2.2.3.2. TxDot's Disadvantaged Business Enterprise (DBE) Special Provisions,
- 2.2.3.3. Job Training/Small Business Opportunity Plan, and

2.2.4. This Agreement and its Exhibits.

Engineer shall make sure all of the provisions set forth in Section 2.5.3 are incorporated into any subcontract or consultant agreements.

2.3 WILLIAMS BROTHERS AND ENGINEER SHALL PERFORM THEIR OBLIGATIONS WITH INTEGRITY, INCLUDING BUT NOT LIMITED TO:

2.3.1. Conflicts of interest shall be avoided or disclosed promptly to the other Party; and

2.3.2. Engineer and Williams Brothers warrant that they have not and shall not pay nor receive any contingent fees or gratuities to or from the other Party, including their agents, officers and employees, subconsultants or others for whom they may be liable, to secure preferential treatment.

## 2.4 DEFINITIONS

2.4.1. **Engineer** is the person or entity identified as such in Article 1 and includes the Engineer's Representative as identified in this Agreement.

2.4.2. **Agreement** means this Agreement, including the Contract Documents set forth in 2.2, and exhibits set forth in Article 11, any written amendments to this Agreement as agreed to by the Parties, and the documents identified in Section 2.2. This Agreement governs the relationship between Williams Brothers and Engineer for the Project. In the event of a conflict between the terms of the DBA and this Agreement, the terms of this Design-Build Assistance Contract shall control.

2.4.3. **Basic Configuration** shall mean the following elements defining the Project as set forth in the Schematic Plan and as included in Exhibit "B":

2.4.3.1. the mainline horizontal and mainline vertical alignments,

2.4.3.2. number of lanes, excluding auxiliary lanes,

2.4.3.3. the general location of ramps,

2.4.3.4. the general location of interchanges and the type of interchanges, if any, and

2.4.3.5. the approved and conditionally approved Alternative Technical Concepts (ATCs).

2.4.4. **Construction Quality Assurance Plan or "CQAP"** shall mean the Owner's plan indicating times, locations and other conditions under which monitoring of construction activities are to be performed to maintain and ensure compliance with the DBA.

2.4.5. **Construction Quality Management Plan or "CQMP"** shall mean the Contractor's plan of policies, procedures, detailed responsibilities and systematic actions necessary to provide confidence in the quality management program and ensure the results meet the requirements of the DBA related to the final Project construction. The plan includes Contractor's internal quality control, an independent quality assurance and material testing and the Owner's CQAP and DQAP.

2.4.6. **Day** shall mean calendar day unless otherwise specifically designated.

2.4.7. **Design-Build Agreement ("DBA")** means the Design-Build Agreement between Williams Brothers and Owner together with its associated exhibits that define the Owner's Program for the Project.

2.4.8. **Design Quality Assurance Plan or "DQAP"** shall mean the Owner's plan indicating times, locations and other conditions under which monitoring of design activities are to be performed to maintain and ensure compliance with the DBA.

2.4.9. **Existing Design Plans** shall mean the plan set and files included in Technical Provisions of the DBA, as set forth in Exhibit "F".

2.4.10. **Governmental Approval** shall mean any permit, license, consent, authorization, waiver, variance or other approval, guidance, mitigation agreement, or memoranda of agreement/understanding, and any amendment or modification of any of them provided by Governmental Entities including State or federal regulatory agencies, agents, or employees, which authorize the Work, but excluding any such approvals given by or required from any Governmental Entity in its capacity as a utility owner or railroad owner.

2.4.11. **Governmental Entity** shall mean any federal, State or local government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity.

2.4.12. **Law or Laws** shall mean any statute, law, regulation, ordinance, rule, judgment, order, decree, permit, concession, grant, franchise, license, agreement, directive, guideline, policy requirement or other governmental restriction or any similar form of decision of or determination by, or any interpretation or administration of any of the foregoing by, any Governmental Entity, which is applicable to the Project, the Final Right of Way ("ROW"), and/or the Work, whether now or hereafter in effect, including Environmental Laws.

2.4.13. **Project** shall mean that certain improvement as identified in Article 1 and described in further detail in Technical Provisions of the DBA, as set forth in Exhibit "F".

2.4.14. **Schematic Plan** shall mean the roadway schematic plan for the design of the Project set forth in the Technical Provisions of the DBA.

2.4.15. **Services** shall mean the Scope of Services to be provided by Engineer to Williams Brothers as more particularly described in Paragraph 3.3.

2.4.16. **Williams Brothers' Work** or the **Work** shall mean the design and construction services required of Williams Brothers pursuant to the DBA with Owner. Engineer's Services are a portion of the Work.

2.4.17. **Worksite** or the **Site** means the geographical area of the Project at the location mentioned in Article 1.

2.5 EXTENT OF AGREEMENT. This Agreement represents the entire agreement between Williams Brothers and Engineer and supersedes all prior negotiations, representations and agreements, either written or oral.

## ARTICLE 3

### ENGINEER RESPONSIBILITIES

3.1 **OBLIGATIONS DERIVATIVE.** Williams Brothers and Engineer are mutually bound by the terms of this Agreement. To the extent that the terms of the DBA apply to the performance of Engineer's Services, then Williams Brothers assumes toward Engineer all the obligations, rights, duties, and remedies that the Owner assumes toward Williams Brothers. In an identical way, Engineer assumes toward Williams Brothers all the same obligations, rights, duties, and remedies that Williams Brothers assumes toward the Owner. In the event of an inconsistency among the documents, the specific terms of this Agreement shall govern.

#### 3.2 STANDARDS OF PERFORMANCE.

3.2.1. **Standard of Care.** Engineer covenants with Williams Brothers that the Engineer shall perform its Services consistent with the professional skill and care ordinarily provided by engineers practicing in the same or similar locality under the same or similar circumstances. The Engineer shall perform its Services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. Engineer shall and represents that (i) it will perform its Services in a good and workmanlike manner and in the most expeditious and economical manner consistent with the interests of Williams Brothers and the Owner, shall utilize its best skill, efforts and judgment in furthering the interests of the Owner, and shall furnish efficient business administration and supervision, and (ii) all such Services shall be in accordance with the prevailing standards of professional care for engineers regularly engaged in the design of similar structures, practicing under similar circumstances at the same time and in the same locality (collectively, the "Standard of Care").

3.2.2. **Technical Accuracy.** Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's Services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.

3.2.3. **Consultants.** Subject to Article 10, Engineer may employ such consultants as Engineer deems necessary to assist in the performance or furnishing of the Services, subject to reasonable, timely, and substantive objections by Williams Brothers. No agreement with any Engineer Consultant shall be effective unless and until Williams Brothers has approved it in writing. The Williams Brothers shall be deemed to be a third-party beneficiary of all agreements between the Engineer and any consultant that is engaged for the Project, and Williams Brothers may exercise the Engineer's rights against any such consultant to recover directly any damages resulting from the consultant's errors, omissions, negligent acts, or breaches of contract. Engineer shall bind its consultants in the same manner as Engineer is bound to Williams Brothers under this Agreement.

#### 3.2.4. **Compliance with Laws and Regulations, and Policies and Procedures.**

3.2.4.1. Engineer shall comply with applicable Laws and Regulations.

3.2.4.2. This Agreement is based on Laws and regulations as of the Effective Date. Changes after the Effective Date to these Laws and regulations may be the basis for modifications to Williams Brothers' responsibilities or to Engineer's Scope of Services, times of performance, or compensation provided that Engineer provides Williams Brothers with written notice within fourteen (14) days of the occurrence of the event giving rise to the potential claim and the Parties execute a written amendment to this Agreement granting the extension or increase in services or scope.

3.2.5. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Williams Brothers' and Owner's safety programs.



3.3 SCOPE OF SERVICES. Engineer shall perform the necessary design and engineering Services required by Williams Brothers for the Project, including coordination of design services of subcontractors who may be procured by Williams Brothers to provide services for certain Project elements. The Services to be provided by Engineer are more particularly described in the Scope of Services attached as Exhibit "C" to this Agreement. Exhibit "C" addresses design/engineering services for the Project as described in the Technical Provisions of the DBA, including modifications of those segments described in Williams Brothers' Technical Proposal to the Owner.

**3.3.1. Drawings and Approvals.**

3.3.1.1. Engineer shall design the Project in conformity with the Schematic Plan and the Basic Configuration (except for such changes approved by Owner), as set forth in the Technical Provisions of the DBA, in accordance with Engineer's Standard of Care and in accordance with the terms and conditions set forth herein, as required by applicable Laws, and pursuant to all Governmental Approvals. All of Engineer's Services shall be performed in accordance with the budgetary guidelines provided by Williams Brothers. Engineer shall not make any material change in the Basic Configuration except as approved by Williams Brothers, the Owner, with concurrence by Federal Highway Administration ("FHWA"), and authorized by a Change Order.

3.3.1.2. Owner will supply information related to Engineer and its Scope of Services under this Agreement, in support of requests from the Engineer through Williams Brothers.

**3.3.2. Shop Drawings.**

3.3.2.1. Engineer shall timely review and approve or otherwise respond to Williams Brothers' submittals, including shop drawings, product data and samples. Submittals shall be checked for conformance with the design and scope of the Project and for compliance with the Construction Documents.

3.3.2.2. Engineer shall deliver design submittals in accordance with the Scope of Services and the DBA Technical Provisions. [Engineer shall deliver to Williams Brothers a written certification by the Design Quality Assurance Manager of the Final Design Plans for the Project in accordance with DBA.]

3.3.2.3. Engineer has independently determined that the Schematic Plan represents a feasible concept for the design of the Project which can and shall be used as the basis for the Project Design to be furnished by Engineer, and agrees that it shall have no right to seek additional compensation or a time extension as a result of errors, omissions, inadequacies or inaccuracies in the Schematic Plan or the Existing Design Plans. Engineer acknowledges and agrees that it is capable of conducting and is obligated to conduct any and all studies, analyses and investigations as it deems advisable to verify or supplement the Schematic Plan and/or Existing Design Plans and that any use of said information is entirely at Engineer's own risk and at its own discretion.

3.3.2.4. The Schematic Plan is hereby incorporated by reference herein to the extent, and only to the extent, that it sets forth the Basic Configuration of the design of the Project. Accordingly, in general, Engineer may deviate from the Schematic Plan as it deems advisable, provided that it must obtain prior written approval by the Owner (with the concurrence of FHWA) and/or a Change Order hereunder with respect to any material deviation by Engineer from the Basic Configuration. Furthermore, Engineer's right to deviate from the Schematic Plan and the Basic Configuration is subject to Engineer's compliance with all applicable requirements of the DBA.

3.3.2.5. Engineer shall assist Williams Brothers to obtain all Governmental and Owner Approvals. Engineer shall undertake and assist Williams Brothers to properly perform all actions required by, and all actions necessary to maintain in full force and effect, all Governmental and

Owner Approvals, including providing performance criteria of all environmental mitigation and compliance measures required by the Contract Documents, Governmental Approvals and applicable Laws.

3.3.2.6. Approval by Williams Brothers or Owner shall not be deemed to be an assumption of responsibility by Williams Brothers or Owner for any error, inconsistency or omission in the drawings and specifications or other documents prepared by Engineer, its employees, subcontractors, agents or consultants, who shall be responsible for any such error, inconsistency or omission.

**3.3.3. Construction Phase.**

3.3.3.1. Owner and Williams Brothers shall have reasonable access to the Worksite at all times.

3.3.3.2. Engineer shall communicate with the Owner and Williams Brothers' subcontractors and suppliers only through Williams Brothers.

3.3.3.3. Engineer shall visit the Worksite at appropriate intervals pursuant to such schedule as the Parties may establish by attachment to this Agreement, to become generally familiar with the quality of the construction and to determine in general if the construction is proceeding in accordance with the Construction Documents. On the basis of these on-site observations, Engineer shall endeavor to guard Williams Brothers against defects or deficiencies in the construction; provided however that Engineer shall have no liability for such defects or for the failure to detect any such defects. After each Worksite visit, Engineer shall promptly provide Williams Brothers with copies of all notes and field reports. If Engineer becomes aware of any such defects, deficiencies or violations, it shall give prompt written notice to Williams Brothers. Engineer shall not be responsible for construction means, methods, techniques, sequences and procedures, unless they are specified by Engineer, or for ensuring that the Work is in accordance with the Construction Documents.

3.3.3.4. Engineer is not responsible for safety precautions and programs. However, if Engineer becomes aware of safety violations, Engineer shall give prompt written notice to Williams Brothers. Provided however, that Engineer shall have no liability for any such safety violations.

3.3.3.5. Engineer shall assist Williams Brothers and Owner with obtaining permits or other authorizations by preparing documents resulting from Engineer's Scope of Services.

3.3.3.6. Engineer shall not be responsible for the acts or omissions of Williams Brothers or any of its subcontractors, or their agents or employees, or any other persons performing Work on the Project who are not under the direct control or authority of Engineer.

3.3.3.7. Engineer shall attend meetings in the San Antonio, Austin, and Houston metropolitan areas with the Owner and Williams Brothers upon request of Williams Brothers or Owner.

3.3.3.8. All direction with respect to the Project shall be provided by Williams Brothers, provided that nothing in this provision shall limit the authority of Engineer to give direction or to take such action which, in the opinion of Engineer, is necessary to remove an immediate and present threat to the safety of life or property.

3.3.3.9. All of the Services to be provided by Engineer shall be rendered in accordance with the Schedule in Exhibit "D" so as not to delay Williams Brothers.

3.4 ADDITIONAL SERVICES. Services not explicitly included within the Scope of Services set forth in Paragraph 3.3 or in Exhibit "C" are considered Additional Services. Compensation for Additional Services will be negotiated between Williams Brothers and Engineer before Williams Brothers issues authorization to proceed with the Additional Services. Under no circumstances shall Engineer proceed with Additional Services unless or until an authorization to do so is issued by Williams Brothers. Additional Services include but are not limited to:

3.4.1. Development of the Owner's Program, Project budgeting, investigating sources of financing, general business planning and other information and documentation as may be required to establish the feasibility of the Project.

3.4.2. Consultations, negotiations, and documentation supporting the procurement of Project financing.

3.4.3. Appraisals of existing equipment, existing properties, new equipment and developed properties.

3.4.4. Consultations and representations before Governmental Entities or others having jurisdiction over the Project other than normal assistance in securing permits.

3.4.5. Artistic renderings, models and mockups of the Project or any part of the Project.

3.4.6. Making revisions to plans and reports after they have been approved by the Williams Brothers and Owner, and which are due to causes beyond the control of Engineer.

3.4.7. Design, coordination, management, expediting and other services supporting the procurement of materials to be obtained, or Work to be performed, by the \_\_\_\_\_ including but not limited to telephone systems, computer wiring networks, sound systems, alarms, security systems and other specialty systems which are not a part of this Agreement.

3.4.8. Estimates, proposals, appraisals, consultations, negotiations and services in connection with the repair or replacement of an insured loss.

3.4.9. Document reproduction exceeding the Scope of Services (Exhibit "C") of this Agreement.

3.4.10. Out-of-town travel by Engineer in connection with Services except between Engineer's offices, Williams Brothers offices, Owner's offices and the Worksite.

3.4.11. Obtaining service contractors and training maintenance personnel; assisting and consulting in the use of systems and equipment after the initial start up except to the extent required by the warranty provided by Engineer in Subparagraph 3.7.

3.4.12. Services requested by Williams Brothers which are not specified in this Agreement and which are not normally part of generally accepted design and construction practice.

3.4.13. Providing Services relating to Hazardous Material discovered at the Worksite.

3.5 OWNER MEETINGS. Engineer shall be required, without additional charge and not as an Additional Service, to attend and participate in any meetings between Williams Brothers and Owner, upon Owner's request, concerning matters pertaining to Engineer's Services and scope of work, provided that all direction to Engineer shall be provided by Williams Brothers, and provided further that nothing in this Section 3.5 shall limit the authority of Owner to give such direction or take such action which, in its sole opinion, is necessary to remove an immediate and present threat to the safety of life or property.

3.6 QUALIFICATIONS. Engineer warrants and represents that Engineer and its consultants and subcontractors are duly qualified, licensed, registered and authorized by law to perform the Services. Throughout the term of this Agreement, Engineer shall, and shall require its consultants to, maintain all required authority, license status, professional ability, skills and capacity to perform the design and engineering Services hereunder and shall perform them in accordance with the requirements of this Agreement and the DBA.

3.7 ENGINEER'S REPRESENTATIVE. Engineer's representative is

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

3.8 WARRANTIES.

3.8.1. As used herein, "Pre-Tender Services" refers to the preliminary engineering performed to a level of approximately thirty percent (30%) complete, from which Williams Brothers prepared its estimates and its bid to the Owner for the Project. Williams Brothers acknowledges that the Pre-Tender Services reflect a very preliminary design effort which was purposefully limited. Therefore, it is understood that Engineer shall not be liable for any costs or expenses incurred by Williams Brothers as a result of its reliance upon the Pre-Tender Services. Engineer shall not bear any responsibility or liability for design documents issued prior to the Issued For Construction (IFC) version of such documents except as set forth in Subparagraph 3.7.2. Engineer liability arising from the IFC documents is addressed in Subparagraph 3.7.2.

3.8.2. Engineer shall perform its Services in accordance with its Standard of Care. If the Services provided hereunder do not conform to the Engineer's Standard of Care and the same is reported to Engineer by Williams Brothers in writing promptly after recognition thereof and no later than two (2) years after the Owner's acceptance of the Project, Engineer shall, at no cost to Williams Brothers, re-perform the Services as necessary to eliminate the nonconformity as soon as reasonably possible after receipt of such report from Williams Brothers. Any liability for costs related to the repair, replacement, addition or deletion of materials, equipment or facilities as a result of such failure to conform to the above-referenced Standard of Care (which costs shall be deemed costs of the Project whether incurred during performance of the Services or after completion of the Services), shall be borne by the Engineer.

3.8.3. Engineer shall not be responsible for any deficiency which arises due to ordinary wear and tear, corrosion or erosion, operating conditions more severe than those contemplated in the original design, or a defect in a process, design or equipment furnished or specified by Williams Brothers or others.

3.8.4. All representations, warranties and guarantees made by Engineer in connection with its Services are limited to those set forth in this Article. Implied warranties of merchantability and fitness for a particular purpose are specifically excluded.

3.8.5. Engineer shall obtain from all sub-subcontractors and consultants and cause to be extended to Williams Brothers and Owner for periods at least coterminous with the warranties given by Engineer, appropriate representations, warranties, guarantees and obligations with respect to design, materials, workmanship, equipment, tools, supplies and other aspects of the Services and work furnished by such sub-subcontractors and consultants. All representations, warranties, guarantees and obligations (a) shall be written so as to survive all inspections, tests and approvals hereunder, and (b) shall run directly to and be enforceable by Engineer, Williams Brothers and/or their respective successors and assigns. Engineer assigns to Williams Brothers and Owner all of Engineer's rights and interest in all extended warranties for periods exceeding the applicable warranty period which are received by Engineer from any of its sub-subcontractors or subconsultants. To the extent that any Engineer warranty or guaranty would be voided by reason of Engineer's negligence in incorporating material or equipment into the Project, Engineer shall be responsible for correcting such defect.

3.8.6. Engineer has, in accordance with its Standard of Care, reviewed the exploratory geotechnical information, inspected and, to the extent access was made available by Williams Brothers, examined the Site and surrounding locations and undertaken other activities sufficient to familiarize itself with surface conditions and subsurface conditions discernible from the surface affecting the Project to the extent Engineer deems necessary or advisable for performing its obligations under this Agreement. Engineer acknowledges and agrees that it has been afforded the opportunity to review information and documents and, to the extent access was made available by Williams Brothers, to conduct inspections and tests of the Site and surrounding locations as described above. Before commencing any work on a particular portion or aspect of the Project, Engineer shall verify all governing dimensions of the Site and shall examine all adjoining work (including adjacent work) which may have an impact on such work. Engineer shall ensure that the Design Documents and Construction Documents accurately depict all governing and adjoining dimensions.

3.8.7. Engineer acknowledges and agrees that it has familiarized itself with the requirements of any and all applicable Laws and the conditions and schedules contained in all Governmental Approvals prior to entering into this Agreement. Engineer shall comply with the foregoing at its sole cost and expense and without any increase in Compensation for Services or extension of any deadline in the Schedule attached as Exhibit "D".

3.8.8. Engineer shall comply with all requirements of the approved Design QMP and the Construction QMP and all requirements of the CQAP.

3.8.9. All design and engineering work performed by Engineer shall be performed by or under the supervision of persons licensed to practice architecture, engineering or surveying, as applicable, in the State, by personnel who are skilled, experienced and competent in their respective trades or professions, who are professionally qualified to perform the Services in accordance with the Standard of Care, this Agreement, Governmental Approvals and applicable Law and who shall assume professional responsibility for the accuracy and completeness of the documents prepared or reviewed by them.

3.8.10. At all times, including during the course of performance hereunder Engineer shall perform as directed by Williams Brothers, in a diligent manner and without delay, shall abide by Williams Brothers decision or order, and shall comply with all applicable provisions of this Agreement and the DBA.

### 3.9 REPRESENTATIONS

3.9.1. Engineer is duly qualified to do business and is in good standing under the Laws of the State of Texas and will remain in good standing throughout the term of this Agreement and for as long thereafter as any obligations remain outstanding under this Agreement.

3.9.2. Engineer has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to execute and deliver this Agreement and to perform each and all of the obligations of Engineer provided for herein.

3.9.3. Engineer has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under, this Agreement. Each individual executing this Agreement or any other Contract Documents on behalf of Engineer or any of its members has been or will at such time be duly authorized to execute each such document on behalf of such Person.

3.9.4. Neither the execution and delivery of this Agreement by Engineer, nor the compliance by Engineer with any provision herein, nor the consummation of the transactions contemplated herein by Engineer shall violate or conflict with, or result in a breach of, any provisions of the organizational documents of Engineer, any other agreements and instruments to which Engineer is a party or by which any such person is bound, or any Law applicable to Engineer.

3.9.5. No consent or approval of, filing with or notice to any person is required to be obtained or made by in connection with Engineer's execution, delivery and performance of this Agreement, or the consummation of the transactions contemplated herein, which, if not obtained or made, would prevent Engineer from performing its obligations hereunder or thereunder.

3.9.6. In entering into this Agreement, Engineer has not relied on any representation, warranty, promise or statement, express or implied, of Williams Brothers, or anyone acting for or on behalf of Williams Brothers other than as expressly set forth in this Agreement.

### 3.10 PROJECT PERSONNEL.

3.10.1. KEY PERSONNEL. The key project personnel whom Engineer will assign are as set forth in Exhibit "E" of this Agreement. Such personnel shall not be changed without notifying Williams Brothers and ultimately obtaining the approval of the Owner using the replacement process required by the DBA, such approval not to be unreasonably withheld.

3.10.2. PROJECT STAFF. Engineer agrees that during the performance of the Services hereunder, adequate provision shall be made to staff and retain the services of such competent personnel as may be appropriate or necessary for the performance of such Services. Williams Brothers shall have the right to review the personnel assigned by Engineer, and Engineer shall remove any personnel not acceptable to Williams Brothers. Subject to Section 3.10.1, Engineer may remove personnel assigned to the Project without Williams Brothers' prior approval, provided the progress of the Project shall not be impaired.

**3.11 ROYALTIES, PATENTS AND COPYRIGHTS.** Engineer shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods or systems selected by Engineer and incorporated in the Work. **ENGINEER SHALL DEFEND, INDEMNIFY AND HOLD THE OWNER AND WILLIAMS BROTHERS HARMLESS FROM ALL SUITS OR CLAIMS FOR INFRINGEMENT OF ANY PATENT RIGHTS OR COPYRIGHTS ARISING OUT OF SUCH SELECTION. THE OWNER AND WILLIAMS BROTHERS AGREE TO DEFEND, INDEMNIFY AND HOLD ENGINEER HARMLESS FROM ANY SUITS OR CLAIMS OF INFRINGEMENT OF ANY PATENT RIGHTS OR COPYRIGHTS ARISING OUT OF ANY PATENTED OR COPYRIGHTED MATERIALS, METHODS OR SYSTEMS SPECIFIED BY THE OWNER OR WILLIAMS BROTHERS.**

### 3.12 CONFIDENTIALITY.

3.12.1. Except to the extent such information is required to be produced pursuant to Section 21 of the DBA, Williams Brothers and Engineer shall not disclose to any person or persons outside their respective companies or to any person or persons within their companies not having a need to know for the purposes of this Agreement and the pursuit and performance of the Project, any information or data:

3.12.1.1. which is submitted in writing and designated by an appropriate stamp, marking or legend thereon to be of proprietary nature; or

3.12.1.2. which is orally designated to the receiving Party as proprietary, provided that the oral designation is confirmed in writing within five (5) working days of the oral designation; or

3.12.1.3. which is of a financial (i.e., labor rates, indirect rates, etc.), personal, or business nature; or

3.12.1.4. developments, confidential information, know-how, discoveries, production methods, estimating systems and historical and parameter cost data that may be disclosed in connection with the performance of this Agreement.

3.12.2. Both Williams Brothers and Engineer shall take appropriate action to provide for the safekeeping of proprietary information in accordance with Paragraph 3.12 above.

3.12.3. Neither Williams Brothers nor Engineer shall be liable for disclosure of any such proprietary information if the same is disclosed by the receiving party with the prior written approval of the originating party.

3.12.4. Received proprietary information may be used in the performance of any awarded subcontract for this Project only if the disclosing Party is awarded a contract or subcontract for this Project and authorizes in writing the use of such information.

3.12.5. Williams Brothers' and Engineer's obligation to protect previously exchanged proprietary information in accordance with this Agreement shall survive any termination of this Agreement for a period of seven (7) years from the date of this Agreement.

3.12.5.1. The obligations of Paragraph 3.10 do not apply to information which:

3.12.5.1.1. is known to the receiving Party prior to disclosure by the disclosing Party, as demonstrated by competent proof;

3.12.5.1.2. is in the public domain at the time of disclosure or later enters the public domain through no fault of the disclosing Party;

3.12.5.1.3. is disclosed to the receiving Party by a third party under no obligation of confidentiality to the disclosing Party; or

3.12.5.1.4. is independently developed by either Party.

## **ARTICLE 4**

### **WILLIAMS BROTHERS' RESPONSIBILITIES**

#### **4.1 INFORMATION AND SERVICES PROVIDED BY WILLIAMS BROTHERS.**

4.1.1. To the extent Williams Brothers has obtained the information and services identified below from the Owner, Williams Brothers shall provide them to Engineer in a timely manner. Engineer shall be entitled to rely on such information and services to the same extent as Williams Brothers. However, Williams Brothers does not warrant the accuracy or completeness of such information or services. All available information describing the physical characteristics of the Worksite, including surveys, Worksite evaluations, legal descriptions, existing conditions, subsurface and environmental studies, reports and investigations all as set forth in the DBA.

4.1.2. Inspection and testing services during construction as required by Law or as mutually agreed.

4.1.3. Unless otherwise provided in the Contract Documents, necessary approvals, site plan review, rezoning, easements and assessments, fees and charges required for the construction, use, occupancy or renovation of permanent structures, including legal and other required services.

4.1.4. Engineer shall have the right, upon request, to receive from Williams Brothers such information as Williams Brothers has obtained relative to the Owner's financial ability to pay for the Project.

4.2 Williams Brothers shall be responsible for the preparation of budgets, cost estimates and construction schedules.

4.3 Williams Brothers shall be primarily responsible for providing required Project documentation to the Owner pursuant to the DBA.

4.4 Williams Brothers shall have the lead role in permits and approvals.

4.5 Williams Brothers shall promptly report to Engineer errors, inconsistencies and omissions it discovers in the Construction Documents; however, nothing in this Paragraph shall relieve Engineer of responsibility for its own errors, inconsistencies and omissions.

4.6 Williams Brothers shall provide Engineer with a list of all consultants and subcontractors retained by Williams Brothers to perform services for the Project.

4.7 DESIGN-BUILDER'S REPRESENTATIVE. Williams Brothers' representative is:

Leon Wright  
Williams Brothers Construction Co., Inc.  
PO Box 66428  
Houston, Texas 77266-6428  
832-435-3848  
[lwright@wbctx.com](mailto:lwright@wbctx.com)

## ARTICLE 5

### SCHEDULE/DELAYS/DAMAGES

5.1 Engineer shall provide the Services required by this Agreement at such reasonable times as will enable Williams Brothers to complete its Work in accordance with the schedules established by Williams Brothers. The Services shall be undertaken and completed in accordance with the Project Schedule approved by the Owner and Williams Brothers in writing, as revised and updated from time to time.

5.2 DELAYS. If Engineer fails to complete any of the Services within the times required by the Schedule in Exhibit "D" and the Owner assesses liquidated damages against Williams Brothers pursuant to the DBA, Engineer shall be liable for such liquidated damages to the extent that the delay on the part of Engineer directly impacts the critical path of the CPM schedule that Williams Brothers and Owner have mutually agreed upon and that the Owner uses to judge Williams Brothers' progress and assess damages. However, Engineer's liability for such liquidated damages will not exceed \$ \_\_\_\_\_ in the aggregate and Engineer shall have no other liability for any delay damages claimed by Williams Brothers or the Owner. In addition, Engineer shall provide Services at its own cost, including overtime costs required to make up schedule delays plus expenses as are necessary to make up for time lost by Williams Brothers because of such delay. Williams Brothers shall provide prompt written notice to Engineer of such delay after Williams Brothers first recognizes the delay. Nothing contained herein shall restrict or otherwise prohibit the ability of Williams Brothers to pursue all actual and direct damages relating to or arising out of any negligence or professional errors or omissions by Engineer, or its consultants, in the performance of the Services ("Professional Errors").

5.2.1. DELAYS CAUSED SOLELY BY WILLIAMS BROTHERS. If Engineer is delayed in the performance of Services by actions or inactions of Williams Brothers, or by changes ordered by Williams Brothers, which are due to causes beyond Engineer's control and which are **not** related to Force Majeure or the actions or inactions, whether in whole or in part, by Engineer, then the time allotted in Exhibit "D" shall be extended for the period of such delay and/or Williams Brothers may authorize Engineer to work overtime to make up such lost time. If authorized by Williams Brothers, such overtime will be treated as an Additional Service and Engineer shall be entitled to additional compensation. Engineer shall provide prompt written notice of such delay after Engineer first recognizes such delay.

5.2.2. DELAYS BY OWNER. If Owner is delayed in the performance of Services by Williams Brothers due to or as a result of any actions or inactions of Owner in whole or in part, or by changes



ordered by Owner, extensions of time and/or compensation for Additional Services or overtime shall be approved by Williams Brothers for that portion of time and costs of delay incurred by Owner, **but only** to the extent (i) extensions of time and/or additional compensation is awarded to Williams Brothers by Owner as allowed under Sections 14 of the DBA and (ii) the time extensions and costs awarded to Williams Brothers directly relates to the delays incurred by Owner.

5.2.3. DELAYS CAUSED BY FORCE MAJEURE. Any delays in or failure of performance by Engineer shall not constitute a breach or default hereunder if and to the extent such delays or failures of performance are caused by a Force Majeure Event, as that term is defined in the DBA and provided such event(s) are beyond the control of Engineer and/or its consultants and are not due to an act, omission, negligence, recklessness, willful misconduct, breach of contract or Law by Engineer or its consultants and could not have been avoided by the exercise of caution, due diligence or reasonable efforts on the part of Engineer and/or its consultants. In the event a Force Majeure Event occurs, Engineer shall be entitled to a reasonable extension of time for performance of the Services, **but only** if and to the extent said extension of time is afforded Williams Brothers by Owner. Under no circumstances shall Engineer be entitled to an increase in compensation as a result of a Force Majeure Event.

### 5.3 MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES

5.3.1. Williams Brothers and Engineer waive claims against each other for contingent consequential or special damages, whether arising in contract, warranty, tort (including negligence), strict liability or otherwise, including but not limited to losses of use, revenue, profits, business, reputation or financing, operating costs and facility downtime; or other similar business interruption losses, however the same may be caused. Such waiver of damages also includes, but is not limited to claims related to or arising out of Owner's loss of use of the Project, any rental expenses incurred, loss of income, profit or financing related to the Project, as well as to the extent provided in the DBA, damages for loss of business, loss of financing, principal office overhead and expenses, loss of profits not related to this Project, or loss of reputation. Williams Brothers and Engineer further agree to waive damages including but not limited to loss of business, loss of financing, principal office overhead and expenses, loss of profits not related to this Project or loss of reputation. Similarly, Williams Brothers and Engineer shall obtain from its subconsultants mutual waivers of consequential damages that correspond to the waiver of consequential damages in this Agreement. To the extent applicable, this mutual waiver applies to consequential damages due to termination by Williams Brothers or the Owner in accordance with this Agreement or the DBA. Nothing contained in this Subparagraph 5.3.1 shall be deemed to preclude an award of actual, direct, or liquidated damages, when applicable, in accordance with the other provisions of this Agreement.

5.4 LIMITATION OF LIABILITY. Excluding its liability to third parties for bodily injury and property damage, the total aggregate liability of Engineer arising out of the performance or breach of this Agreement shall not exceed the aggregate amount of \_\_\_\_\_.

5.4.1. The limitations and exclusions of liability set forth in this Article shall apply regardless of the fault, breach of contract, tort (including negligence), strict liability or otherwise of Engineer or Williams Brothers or their respective subcontractors. All limitations and exclusions of liability in this Agreement that apply for the benefit of Engineer shall also apply for the benefit of Engineer's parent and affiliated companies, and the employees, officers and directors of each of them, without any increase of the stated limits.

5.4.2. The provisions of this Article shall also apply to the termination of this Agreement and shall survive such termination.

## ARTICLE 6

### ENGINEER'S COMPENSATION AND PAYMENTS

6.1 COMPENSATION FOR SCOPE OF SERVICES.

6.1.1. For Scope of Services as described in Paragraph 3.3, Williams Brothers shall compensate Engineer on the following basis, including applicable sales taxes:

6.1.1.1. Monthly, based on Exhibit "H" – Payment Schedule (not to exceed) in accordance with Paragraph 6.2.

6.1.1.2. Insurance will be compensated with the monthly draw based on presentation of a paid invoice. The total aggregate amount of insurance that is reimbursable will not exceed \$480,000.00 per Exhibit "H".

6.1.2. Engineer shall be compensated for Additional Services as described in Paragraph 3.4 on the following basis:

6.1.2.1. A negotiated lump sum basis for the defined added scope or

6.1.2.2. By the hour per the rate schedule included in Exhibit "H".

6.1.2.3. Engineer's billings for Additional Services for the benefit of Williams Brothers shall include a maximum multiplier of 2.4 (2.4 times direct costs). All other costs such but not limited to indirects, subcontractors, etc. shall not include any multiplier.

## 6.2 PAYMENTS.

### 6.2.1. PROGRESS PAYMENTS.

6.2.1.1. Engineer shall submit to Williams Brothers for its approval monthly applications for payment. Along with each application for payment, Engineer shall provide a Conditional Waiver and Release on Progress Payment from Engineer and each of its consultants covering the period applicable to the submitted pay application. Engineer and its consultants will also provide an Unconditional Waiver and Release on Progress Payment covering previously funded applications for payment.

6.2.1.2. Williams Brothers shall submit approved applications for payment together with its own to the Owner.

6.2.1.3. Payment of all undisputed amounts funded by the Owner shall be made within ten (10) Days of Williams Brothers' receipt of payment from the Owner for the amount approved on Engineer's application.

6.2.2. PAYMENTS TO CONSULTANTS/SUBCONTRACTORS. Engineer shall promptly pay each subcontractor or consultant for Services performed on the Project no later than seven (7) Days after receipt of payment for such Services from Williams Brothers, the amount to which such subcontractor or sub-consultant is entitled, less any retainage provided for in the subcontract, as well as any other offsets and deductions provided in the subcontract or by Law. Engineer further agrees to pay retainage to each subcontractor or sub-consultant within seven (7) Days after the subcontractor's/consultant's work is satisfactorily completed.

### 6.2.3. RIGHT OF OFFSET.

6.2.3.1. Should there be any claim, obligation or lien asserted before or after final payment is made that arises from the performance of the Services, Engineer shall reimburse Williams Brothers for any costs and expenses including deductions to payment due made by Engineer, including attorneys' fees, costs and expenses, incurred by Williams Brothers in satisfying, discharging or defending against any such claim, obligation or lien, including any

action brought or judgment recovered, provided Williams Brothers is making payments or has made payments to Engineer in accordance with the terms of this Agreement.

6.2.3.2. Should Engineer or its consultants or subcontractors cause damage to the Project, or fail to perform or otherwise be in default under the terms of this Agreement, Williams Brothers shall have the right to withhold from any payment due or to become due, or otherwise be reimbursed for, an amount sufficient to protect the Owner and Williams Brothers from any loss that may result. Payment of the amount withheld shall be made when the grounds for the withholding have been removed.

6.2.4. FINAL PAYMENT.

6.2.4.1. Prior to final payment, Engineer shall furnish evidence satisfactory to Williams Brothers that there are no claims, obligations or liens outstanding in connection with the Services provided by Engineer, including, but not limited to, a Conditional Waiver and Release on Final Payment from Engineer and each of its consultants and subcontractors.

6.2.4.2. Acceptance of final payment shall constitute a waiver of all claims by Engineer for compensation for the Services performed.

6.2.5. EXPENSE RECORDS. Expense records of Engineer's personnel, consultants, subcontractors and services shall be maintained in accordance with generally accepted accounting principles and shall be available to Williams Brothers at mutually convenient times.

6.2.6. All invoices shall be submitted to:

Williams Brothers Construction Company  
PO Box 66428  
Houston, Texas 77266  
Attention: Ms. Elizabeth Vincent, CFO

## ARTICLE 7

### INDEMNITY, INSURANCE, AND WAIVER OF SUBROGATION

#### 7.1 INDEMNITY.

7.1.1. **GENERAL.** TO THE FULLEST EXTENT PERMITTED BY LAW, ENGINEER HEREBY INDEMNIFIES AND HOLDS HARMLESS WILLIAMS BROTHERS, ITS SUBCONTRACTORS, OWNER, AND THEIR PARTNERS, AFFILIATED COMPANIES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, REPRESENTATIVES AND PROJECT CONSULTANTS (THE "INDEMNITEES") FROM AND AGAINST ANY AND ALL DAMAGES, LOSSES, COSTS AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES AND COSTS, INCURRED BY INDEMNITEES TO THE EXTENT THEY ARE:

7.1.1.1. DUE TO THE INTENTIONAL OR NEGLIGENT VIOLATION OF ANY ORDINANCE, REGULATION, STATUTE, OR OTHER LEGAL REQUIREMENT BY ENGINEER OR ANY OF ITS CONSULTANTS, SUBCONSULTANTS, OR ANY OF THEIR AGENTS AND EMPLOYEES, AS TO THE PERFORMANCE OF THE AGREEMENT;

7.1.1.2. THE RESULT OF ANY NEGLIGENT ACT OR OMISSION OR ANY INTENTIONAL ACT OR OMISSION IN VIOLATION OF ENGINEER'S STANDARD OF CARE, BY THE ENGINEER, A CONSULTANT, A SUBCONSULTANT OR ANYONE

**DIRECTLY OR INDIRECTLY EMPLOYED BY THE ENGINEER OR ANYONE FOR WHOSE ACTS THE ENGINEER MAY BE LIABLE; OR**

**7.1.1.3. OTHERWISE ARISING OUT OF OR RESULTING FROM NEGLIGENT PERFORMANCE OF THE SERVICES UNDER THIS AGREEMENT, INCLUDING SUCH CLAIMS, DAMAGES, LOSSES OR EXPENSES THAT ARE ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF PROPERTY, INCLUDING LOSS OF USE RESULTING THEREFROM.**

**7.1.1.4. ENGINEER SHALL NOT BE LIABLE TO THE INDEMNITEES FOR ANY LOSSES, EXPENSES, OR COSTS INCURRED BY THE INDEMNITEES TO THE EXTENT OF THE INDEMNITEES' NEGLIGENCE.**

**7.1.2. INDEMNIFICATION FOR EMPLOYEE INJURY CLAIMS. WITHOUT LIMITING THE FOREGOING, AND TO THE FULLEST EXTENT PERMITTED BY LAW, ENGINEER HEREBY AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE INDEMNITEES FROM AND AGAINST ALL DAMAGES, LOSSES, COSTS, AND EXPENSES, INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES, INCURRED BY THE INDEMNITEES IN CONNECTION WITH ANY ACTION AGAINST THE INDEMNITEES FOR BODILY INJURY OR DEATH AT THE PROJECT SITE OF ANY EMPLOYEE OF THE ENGINEER OR ANY OF ENGINEER'S CONSULTANTS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, BROUGHT BY SUCH INJURED EMPLOYEE OR THE EMPLOYEE'S WORKERS COMPENSATION INSURANCE CARRIER (HEREINAFTER REFERRED TO AS AN "EMPLOYEE INJURY CLAIM") TO THE EXTENT SUCH CLAIM ARISES OUT OF THE SERVICES PROVIDED BY, OR IS CAUSED BY, IN WHOLE OR IN PART, ENGINEER OR SOMEONE ACTING ON ENGINEER'S BEHALF. TO THE EXTENT ENGINEER UNDERTAKES A DEFENSE OF AN EMPLOYEE INJURY CLAIM AND AN INDEMNITEE IS LATER FOUND TO HAVE BEEN NEGLIGENT OR AT FAULT, THE INDEMNITEE SHALL BEAR RESPONSIBILITY FOR THE ATTORNEYS' FEES AND RELATED EXPENSES INCURRED BY ENGINEER ON BEHALF OF THE INDEMNITEE EQUAL TO THE PRODUCT OF THE FOLLOWING EQUATION: TOTAL FEES MULTIPLIED BY THE INDEMNITEE'S PERCENTAGE OF NEGLIGENCE OR FAULT.**

**7.1.3. INDEMNIFICATION FOR COPYRIGHT INFRINGEMENT CLAIMS. IN ADDITION TO THE INDEMNIFICATION PROVIDED IN 7.1.1 AND 7.1.2 ABOVE, ENGINEER HEREBY INDEMNIFIES, AND HOLDS HARMLESS the INDEMNITEES FROM AND AGAINST ANY CLAIM, DAMAGE, LOSS, OR EXPENSE (INCLUDING BUT NOT LIMITED TO INDEMNIFIED PARTIES'/PARTY'S ATTORNEYS' FEES) ARISING OUT OF OR RELATING TO ANY INFRINGEMENT OF A PATENT, TRADEMARK, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHT IN CONNECTION WITH THE INSTRUMENTS OF SERVICE FURNISHED BY OR THROUGH ENGINEER OR ITS CONSULTANTS ESTABLISHED AT LAW AS VALID, EXCEPT TO THE EXTENT THE INFRINGEMENT IS CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OF THE INDEMNITEE.**

**7.1.4. Notwithstanding the foregoing, Engineer shall not be liable to Williams Brothers or any Indemnatee for any losses, expenses, or costs incurred by the parties indemnified hereunder to the extent of their negligence or that of their contractors or their subcontractors. Further, in the event that the Williams Brothers or any other Indemnatee is found, by final judgment or arbitration award, to be negligent or at fault in whole or in part, the indemnity and hold harmless obligation of the Engineer with regard to attorney's fees and litigation or arbitration costs and expenses incurred by such Indemnatee in defense of such claim shall be reduced by the percentage of negligence or fault of the Indemnatee and/or their agents or employees.**

**7.1.5. With regard to claims against any party seeking indemnity under this Section which are made by an employee of the Engineer, a consultant, a sub-consultant or anyone directly or indirectly**

employed by the Engineer or anyone for whose acts the Engineer may be liable, the indemnification obligation assumed under this Section shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Engineer or any other employer under worker's compensation acts, disability benefit acts or other similar employee benefit acts.

7.1.6. It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligations under this Section 7.1 or the Additional Insured requirements in this Article 7, such legal limitations are made a part of the contractual obligations and shall operate to amend the obligations to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the obligations shall continue in full force and effect. Should any provision or any part of any provision of this Agreement be held invalid, unenforceable or contrary to public policy, law, statute or ordinance, then the remainder of the provision, paragraph, Section and/or Agreement shall not be affected thereby and shall remain valid and fully enforceable.

7.1.7. **The obligations contained in this Article 7 shall survive the expiration, completion, abandonment and/or termination of the Agreement and final completion of the Work and any other services to be provided pursuant to this Agreement to the extent and for the time periods provided allowed under Texas law.**

## 7.2 INSURANCE.

7.2.1. Before commencing its Services and as a condition of payment, Engineer shall purchase and maintain such insurance as will protect it from the claims arising out of its operations under this Agreement, whether such operations are by Engineer or any of its consultants or subcontractors or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

7.2.2. Engineer shall maintain in effect all insurance coverage required under Subparagraph 7.2.2 with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located and which is reasonably satisfactory to Williams Brothers.

7.2.2.1. **Workers' Compensation and Employers' Liability Insurance.** Engineer shall maintain workers' compensation insurance within the statutory limits required under the applicable Laws; and employer's liability insurance in the amount of \$1,000,000 each employee for bodily injury by accident, \$1,000,000 each employee for bodily injury by disease, and \$1,000,000 per disease aggregate policy limit, or within the statutory limits required under the applicable Laws, whichever is greater. The alternate employer endorsement coverage to all states operation on an "if any" basis shall be attached showing Williams Brothers in the schedule as the alternate employer, and shall insure against liability for the death, bodily injury, illness or disease of all employees of Subcontractor working on or about the Site or otherwise engaged in the Work. Engineer waives all rights against Williams Brothers and the Indemnites (as defined in Section 7.1) for recovery of damages to the extent such damages are covered by the workers' compensation/employer's liability insurance obtained by Engineer hereunder.

7.2.2.2. **Commercial General Liability.** Engineer shall maintain commercial general liability ("CGL") insurance with a limit of not less than \$1,000,000 each occurrence with a \$2,000,000 general aggregate. Coverage shall be provided on ISO occurrence form CG 00 01 or a substitute form providing equivalent coverage. The CGL insurance general aggregate limit shall apply separately to this Project. CGL insurance shall cover liability including, but not limited to, liability arising from premises, operations, independent contractors, products-completed operations, property damage, personal injury, and Contractual Liability specifically in support of, but not limited to, the indemnity section of the Agreement and all other insurable provisions of the Agreement. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs maintained by Williams Brothers. Engineer waives all rights against Williams Brothers and Indemnites for recovery of damages to the extent these damages are covered by the CGL insurance maintained hereunder. Coverage shall be maintained as specified

herein for **at least two (2) years following substantial completion of the Services**. There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from explosion, collapse, underground property damage, or site-related employment practices.

**7.2.2.3. Professional Liability Insurance.** In addition to other insurance required by statute or under the terms of this Agreement, Engineer shall provide professional liability insurance consistent with Section 6 of Exhibit 14 of the DBA, with policy a limit of no less than \$2,000,000 per claim and in the aggregate issued by an insurance carrier approved in advance by the Owner and authorized to do business in the State where the Project is located, for negligent acts, errors, and omissions by Engineer and other consultants and employees, that arise out of this Agreement, including coverage for contingent bodily injury or property damage, with a deductible not to exceed \$ \_\_\_\_\_. Upon execution of this Agreement and at every date of renewal of that policy, the Engineer shall cause a Certificate of Insurance to be issued. Provision of a valid Certificate of Insurance that meets the requirements of this Agreement is a condition precedent to the payment of any amounts due the Engineer by the Owner. The policy shall have a retroactive date no later than the date on which the **RFDP Documents** were issued and shall have a five-year extended reporting period from the date of Final Acceptance with respect to claims or suits which were not made or brought during the term of the policy. **[The policy shall include a Notice of Circumstance provision. The policy shall not contain any exclusion for cost estimates or delay in project completion. Notwithstanding any other provisions of the Contract Documents, the policy shall not be cancellable, except for non-payment of premium, fraud or material misrepresentation.]**

**7.2.2.4. Business Automobile Liability.** Engineer shall maintain business auto liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto, including owned, hired, and non-owned autos. Business auto coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01. Engineer waives all rights against Williams Brothers and the Indemnitees for recovery of damages to the extent these damages are covered by the business auto liability insurance obtained by Engineer hereunder.

**7.2.2.5. Pollution Liability Insurance.** Engineer shall provide Pollution Liability coverage for the Project for claims during the Project period and completed operations period with a minimum limit of \$1,000,000. Engineer's Pollution Liability shall cover a pollution event or release resulting from the Engineer or any consultant's activities under and during the term of this Agreement including the activities of Engineer, any consultants, suppliers and vendors. Engineer's Pollution Liability coverage shall include mold, mold remediation and diminution in value resulting from mold as it pertains to work performed by the Engineer or its consultants. Owner and Contractor shall be included as Additional Insureds on the policy.

**7.2.2.6. Umbrella Insurance.** Engineer shall maintain excess liability insurance with a limit of not less than \$2,000,000. Such insurance shall be excess of the CGL insurance, business auto liability insurance, and employer's liability insurance. Williams Brothers, Owner and the Indemnitees shall be included as additional insureds under this policy. Coverage to be following form excess of the underlying, and is to drop down and apply as primary coverage if the underlying coverage is depleted and shall not contain an exclusion relating to work from heights. Defense costs are to be in addition to policy limits. Engineer waives all rights against Williams Brothers and the Indemnitees for recovery of damages to the extent these damages are covered by the excess liability insurance obtained by Williams Brothers hereunder. Continuing excess coverage, if any, shall include liability coverage for damage to the insured's completed work equivalent to that provided under ISO form CG 00 01. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs maintained by Williams Brothers. Coverage shall be maintained as specified herein for **at least two (2) years following substantial completion of the Services**.

7.2.2.7. **Additional Insured Status.** Williams Brothers and Owner, including their respective members, directors, officials, officers, employees and Project consultants, shall be named as additional insureds utilizing the ISO Additional Insured Endorsements CG 20 10 10 01 "Additional Insured - Owners, Lessees or Contractors - Scheduled Person or Organization" and Form CG 20 37 10 01 "Additional Insured - Owners, Lessees or Contractors - Completed Operations" (or endorsements providing equivalent coverage). For purposes of this additional insured requirement, "equivalent coverage" means coverage for liability arising out of Engineer's services except to the extent of liability attributable to the negligence or fault of an Indemnitee. This additional insured requirement does not apply to coverages required pursuant to Sections 7.2.2.1 (Worker's Compensation/Employer Liability) and 7.2.2.3 (Professional Liability).

7.2.3. **Waiver of Subrogation.** Williams Brothers and Engineer waive all rights against each other and the Owner for loss or damage to the extent covered by property or equipment insurance, except such rights as they may have to the proceeds of such insurance; and provided further that Engineer shall not be entitled to additional compensation or time extension under this Agreement to the extent compensated by any insurance specified herein. Engineer shall cause all subcontractors and consultants to provide similar waivers in writing each in favor of all other parties enumerated above. Each policy, including workers' compensation, shall include a waiver of any right of subrogation against the Indemnites and additional insureds (and their respective members, directors, officers, employees, agents and consultants).

7.2.4. **Evidence of Insurance Requirements.** Upon execution of this Agreement, Engineer shall provide to Williams Brothers a certificate or certificates of insurance that indicate(s) that Engineer has obtained the required insurance under this Agreement. All certificates of insurance required under this Section shall include the following provisions to the extent allowed under applicable Laws:

7.2.4.1. Williams Brothers and Owner (in the case of the certificate required for any Statement of Work only), including their respective directors, officials, officers and employees must be named as additional insureds as provided in Section 7.2.2.7; provided, however, that Williams Brothers and the Indemnites shall not be named as additional insureds for the coverage required pursuant to Sections 7.2.2.1 (Worker's Compensation/Employer Liability) and 7.2.2.3 (Professional Liability).

7.2.4.2. The certificate must indicate that the liability assumed by Engineer has been specifically insured under the contractual liability section of the liability insurance policies.

7.2.4.3. As permitted by applicable Law, the certificate must include an endorsement to give Williams Brothers and Owner (in the case of the certificate required for any Statement of Work only), not less than thirty (30) days prior written notice in the event of cancellation or non-renewal of Engineer's coverage.

7.2.4.4. The liability policy shall be primary without right of contribution from any insurance which is carried by Williams Brothers.

7.2.4.5. In addition to providing certificates of insurance as set forth above, or where applicable Law prohibits the inclusion of certain information in the certificate, Engineer shall, at Williams Brothers' request, provide copies of the policies of insurance and/or copies of riders that provide or exhibit compliance with the requirements set forth herein.

7.2.5. **Insurance Required of Subcontractors.** Insurance similar to that required Engineer pursuant to this Section 7.2.2 above shall be provided by all persons with whom Engineer contracts to provide design/engineering services to the Project with policy limits as approved by Williams Brothers. Commercial General Liability insurance provided by Subcontractors may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by Excess or Umbrella liability policy. Williams Brothers, Owner and Indemnites must be listed as additional insureds on all coverages except Professional Liability and Worker's Compensation. Engineer shall maintain Certificates of Insurance from all Subcontractors it retains enumerating, among other things the

insured status of Williams Brothers as required herein. Engineer shall provide to Williams Brothers a copy of each Certificate of Insurance from each Subcontractor before the Subcontractor is permitted to begin providing professional services in relation to each Project and as coverage renews. The insurance policies shall incorporate a provision or endorsement requiring written notice to the Southwest at least thirty (30) days prior to any cancellation, nonrenewal, or material modification of the policies.

**7.2.6. Failure to Provide Policies.** None of the requirements contained herein as to types, limits or Williams Brothers' approval of insurance coverage to be maintained by Engineer is intended to and shall not in any manner limit, qualify or quantify the liabilities and obligations assumed by Engineer under the Agreement or otherwise provided by law. In the event of any failure by Engineer to comply Williams Brothers may, without in any way compromising or waiving any right or remedy at law or in equity, on written notice to Engineer, purchase such insurance, and deduct the cost of such insurance from Engineer's compensation, provided that Williams Brothers shall have no obligation to do so and if Williams Brothers shall do so, Williams Brothers shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.

**7.2.7. Deductibles.** Insurance deductibles shall be paid by Engineer without reimbursement by Williams Brothers.

## **ARTICLE 8**

### **TERMINATION**

**8.1 TERMINATION BY EITHER PARTY.** Either Party may terminate this Agreement upon seven (7) Days' written notice if the other Party materially breaches its terms through no fault of the initiating Party.

**8.2 TERMINATION BY DESIGN-BUILDER.** This Agreement may be terminated by Williams Brothers for Williams Brothers' convenience at any time. In the case of a termination for convenience, Engineer shall be entitled, as its sole compensation, to all fees earned for Services performed up to the date of termination. Engineer shall not be entitled to any anticipatory or unearned profit on Services or work terminated or partly terminated, or to any payment which constitutes consequential damages on account of the termination or partial termination.

**8.3 TERMINATION FOR CONVENIENCE BY OWNER.** In the event of a termination for convenience by Owner, this Agreement shall be terminated. Engineer shall not be entitled to any anticipatory or unearned profit on Services or work terminated or partly terminated, or to any payment which constitutes consequential damages on account of the termination or partial termination.

**8.4 COMPENSATION IN THE EVENT OF TERMINATION, ENGINEER SHALL BE COMPENSATED TO THE EXTENT THAT THE OWNER PAYS WILLIAMS BROTHERS FOR ENGINEER'S SERVICES.** Provided however, that if Williams Brothers is terminated for cause by the Owner without any fault of Engineer, Williams Brothers shall pay Engineer for all Services completed up to the date of such termination and all expenses reasonably necessary to bring such Services to an orderly cessation.

## **ARTICLE 9**

### **DISPUTE RESOLUTION**

**9.1 CONTINUANCE OF SERVICES AND PAYMENT.** Unless otherwise agreed in writing, Engineer shall continue to perform its Services during any dispute mitigation or resolution proceeding. If Engineer continues to perform, Williams Brothers shall continue to make payments in accordance with this Agreement for amounts not in dispute.

**9.2 DIRECT DISCUSSIONS.** If the Parties cannot reach resolution on a matter relating to or arising out of the Agreement, the Parties shall endeavor to reach resolution through good faith direct discussions between



the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions. If the Parties' representatives are not able to resolve such matter within five (5) Business Days of the date of first discussion, the Parties' representatives shall immediately inform senior executives of the Parties in writing that resolution was not affected. Upon receipt of such notice, the senior executives of the Parties shall meet within five (5) Business Days to endeavor to reach resolution. If the dispute remains unresolved after fifteen (15) Days from the date of first discussion, the Parties shall submit such matter to the dispute mitigation and dispute resolution procedures selected herein.

9.3      **MEDIATION.** If direct discussions pursuant to Paragraph 9.2 do not result in resolution of the matter, Parties shall submit the matter by mediation through the current Construction Industry Mediation Rules of the American Arbitration Association, or the Parties may mutually agree to select another set of mediation rules. The administration of the mediation shall be as mutually agreed by the Parties. The mediation shall be convened within thirty (30) Days of the matter first being discussed and shall conclude within forty-five (45) Days of the matter first being discussed. Either Party may terminate the mediation at any time after the first session, but the decision to terminate shall be delivered in person by the terminating Party to the non-terminating Party and to the mediator. The costs of the mediation shall be shared equally by the Parties. Mediation shall be non-binding. All mediation proceedings and communications shall be governed by TEX. CIV. PRAC. & REM. Code Section 154.073.

9.4      **LITIGATION OF DISPUTES.** If the matter remains unresolved after submission of the matter to direct discussions and/or mediation, the Parties shall submit the matter to litigation in either the state or federal court having competent jurisdiction. Venue of any such litigation matter shall be in Harris County, Texas except to the extent any applicable Law requires it be brought in the county or district in which the Project is located.

9.5      **DISPUTE BETWEEN WILLIAMS BROTHERS AND OWNER/PASS THROUGH CLAIMS.**

9.5.1.    In case of any disputes between Engineer and Williams Brothers, Engineer agrees to be bound by the claims and disputes procedure set forth in Section 19 of the DBA between Owner and Williams Brothers, and by any and all decisions or determinations made as authorized in the DBA.

9.5.2.    Engineer agrees to (i) submit its dispute to Williams Brothers in a proper form in sufficient time to allow processing by Williams Brothers in accordance with Section 19 of the DBA; (ii) be bound by the terms of Section 19 of the DBA to the extent applicable to the dispute; (iii) that completion of all steps required under Section 19 of the DBA shall be a condition precedent to pursuit by Engineer of any other remedies permitted by Law, including institution of a Lawsuit against Williams Brothers; (iv) that any dispute brought against Williams Brothers' surety, that is also actionable against Owner through Williams Brothers, shall be stayed until completion of all steps required under Section 19.4(c) of the DBA; and (v) that the existence of a dispute resolution process for disputes involving Engineer shall not be deemed to create any claim, right or cause of action by Engineer against Owner. Engineer shall at all times have rights and remedies only against Williams Brothers.

9.5.3.    Engineer shall include in all contracts with sub-subcontractors a provision similar to this 9.5, particularly requiring all lower tier subcontractors to fully participate in the dispute resolution procedure set forth in the DBA if requested by either Contractor or Owner.

9.5.4.    In the event the provisions for resolution of disputes between Williams Brothers and the Owner contained in the DBA do not permit consolidation or joinder with disputes of third parties, such as Engineer, resolution of disputes between Owner and Williams Brothers involving in whole or in part disputes between Williams Brothers and the Engineer shall be stayed pending conclusion of any dispute resolution proceeding between Williams Brothers and the Owner. At the conclusion of those proceedings, disputes between Engineer and Williams Brothers shall be governed by the disputes resolution process set forth in Paragraphs 9.2, 9.3, and 9.4.

9.6      **LIEN RIGHTS.** Nothing in this Article 9 shall limit any rights or remedies not expressly waived by Engineer that Engineer may have under lien laws. Engineer acknowledges that under no circumstances shall any liens, claims and/or charges levied by it or any of its consultants attach to any interest of the Owner in the Project or the Final Right of Way.

9.7 Should Williams Brothers employ an attorney to enforce any of the provisions hereof, or to protect its interest in any manner arising under this Agreement, or to collect damages for the breach of this Agreement, Engineer agrees to pay Williams Brothers all reasonable costs, charges, expenses and attorney's fees expended or incurred in connection therewith.

9.8 Pursuant to Section 7.3.6(j) of the DBA, in the event of a dispute resolution proceeding between Williams Brothers and Owner, if participation is requested by Owner or Williams Brothers, Engineer shall give evidence in the dispute resolution proceeding.

## ARTICLE 10

### ASSIGNMENT AND SUBLETTING

10.1 Engineer shall not sublet, assign, pledge, transfer or otherwise alienate or encumber this Subcontract or any part thereof without Williams Brothers' written consent.

10.2 It is specifically understood that the prohibitions contained in this Article shall extend to, but not be limited to, any pledge or assignment of any monies which may be due or may become due to Engineer in accordance with the provisions of this Agreement. Unless the Engineer shall have obtained the Williams Brothers' prior written consent, any subletting, assignment, pledge, transfer or other alienation or encumbrance of this Agreement or any part hereof or of any monies which may be due or may become due to Engineer shall be null and void and of no effect whatsoever against Williams Brothers, its surety or the Owner.

10.3 Engineer shall be required to submit to Williams Brothers copies of any and all agreements or other documents which will be executed in connection with any sublease, assignment, pledge, transfer or other alienation or encumbrance of this Agreement or any part hereof or of any monies which may be due or which will become due to Engineer under the provisions of this Agreement prior to requesting Williams Brothers' written consent in accordance with Section 10.1 above. If Williams Brothers gives its written consent, Engineer shall furnish Williams Brothers fully executed and completed copies of any agreements or other documents evidencing any such sublease, assignment, pledge, transfer or other alienation or encumbrance of this Agreement or any part hereof or of any monies which may be due or which may become due to Engineer under the provisions of this Agreement within seven (7) calendar days of the date of execution of such agreements or other documents.

10.4 Pursuant to Section 7.3.6(c) of the DBA, all rights of Williams Brothers under this Agreement as freely assignable to Owner (and Owner's permitted assigns) contingent upon written request by Owner or its successors or assigns following default of Williams Brothers or termination or expiration of the DBA. Under this assignment the Owner or its successor, assign or designee shall assume the benefit of Williams Brothers' rights with liability only for those remaining obligations of Williams Brothers accruing after the date of the assumption. The assignment shall include the benefit all Engineer warranties, indemnities, guarantees, and personal responsibility. Owner may accept said assignment at any time during the course of the Project prior to Final Completion. The acceptance of such an assignment by the Owner or its successor, assign or designee shall not operate to make the assignee responsible for any breach of this Agreement by Williams Brothers or for any amounts due and owing under this Agreement for work or Services rendered prior to the assumption. Engineer covenants and attorns to Owner upon receipt of written notice from Owner that it has exercised its right of assignment under the DBA, without necessity for consent or approval from Williams Brothers or to determine whether Owner validly exercised its rights, and Williams Brothers' covenant to waive and release any claim or cause of action against Engineer arising out of or relating to its recognition and attornment in reliance on any such written notice.

10.5 **[Use only for Major Subcontracts, as defined in the DBA].** Engineer covenants that it will promptly executed and deliver to Owner a new contract between Engineer and Owner on the same terms and conditions as this Agreement in the event (i) this Agreement is rejected by Williams Brothers in bankruptcy or otherwise wrongfully terminated by Williams Brothers and (ii) Owner delivers a written request for the new contract following the termination or expiration of the DBA. Engineer's covenants contained in this Section shall survive termination of this Agreement.

## ARTICLE 11

### MISCELLANEOUS PROVISIONS

11.1 OWNERSHIP OF TANGIBLE DOCUMENTS. Subject to payment of amounts due for Services performed, all Instruments of Service prepared by Engineer, its consultants or independent contractors in furtherance of the Services, together with all copyrights therein, are and shall remain Williams Brothers' property upon creation. To this end, Engineer agrees that it has been hired to create all such Instruments of Service (and to the extent applicable under copyright as "works made for hire") and Engineer will and hereby does sell, assign, convey, and transfer to Williams Brothers, and Williams Brothers accepts, all right, title and interest in and to any copyrights to the Instruments of Service, including all derivative works, whether works for hire or otherwise, which includes, without limitation, the exclusive rights to make, sell, publish, distribute, modify, prepare derivative works, display, reproduce, transmit, perform, adapt or otherwise make use of the copyrighted works; the right to file in Williams Brothers' name copyright registration, and to sue and recover for damages or past, present and future infringements; all causes of action for infringement and the right to enforce copyright, the right to income, royalties, damages and payments due or payable; and all present and future rights in all media (whether now known or subsequently developed). This conveyance is made for the benefit of the Williams Brothers and its successors and assigns and may be transferred without the consent of Engineer. Engineer represents and warrants that it has the authority to convey ownership of the Instruments of Service as provided in this paragraph.

11.1.1. OWNER'S RIGHTS. It is understood that the Owner shall receive from Williams Brothers the same ownership of rights of the Design-Build Documents, as Williams Brothers receives from Engineer, in accordance with Section 21.6 of the DBA. If required pursuant to the DBA, Owner shall receive ownership of the property rights of such Design-Build Documents.

11.1.2. USE OF DOCUMENTS IN EVENT OF TERMINATION. In the event of a termination for cause of this Agreement pursuant to Article 8, Williams Brothers shall have the right to use, to reproduce, and to make derivative works of the Design-Build Documents to complete the Project, regardless of whether there has been a transfer of copyright under Subparagraph 11.1.1 provided payment has been made pursuant to Paragraph 11.1.

11.1.3. DESIGN-BUILDER'S AND OWNER'S USE OF DOCUMENTS AFTER COMPLETION OF PROJECT. After completion of the Project, Williams Brothers or Owner may reuse, reproduce or make derivative works from the Design-Build Documents solely for the purposes of maintaining, renovating, remodeling or expanding the Project at the Worksite. Williams Brothers' or Owner's use of the Design-Build Documents without Engineer involvement on other projects is at Williams Brothers' or Owner's sole risk, except for Engineer's indemnification obligations pursuant to Paragraph 3.11 and Subparagraph 7.1.1 herein, and Williams Brothers shall defend, indemnify and hold harmless Engineer and its consultants, and the agents, officers, directors and employees of each of them, from and against any and all claims, damages, losses, costs and expenses, including reasonable attorneys' fees and costs, arising out of or resulting from such any prohibited use.

11.1.4. ENGINEER USE OF DOCUMENTS. Where Engineer has transferred its copyright interest in the Design-Build Documents under Subparagraph 11.1.1, Engineer may reuse Documents prepared by it pursuant to this Agreement in its practice, but only in their separate constituent parts and not as a whole.

11.1.5. Engineer shall obtain from its consultants rights and rights of use that correspond to the rights given by Engineer to Williams Brothers in this Agreement and Engineer shall provide evidence that such rights have been secured.

11.2 ELECTRONIC DOCUMENTS. If the Owner requires that the Engineer, Owner and Williams Brothers exchange documents and data in electronic or digital form, prior to any such exchange, the Engineer, Owner and Williams Brothers shall agree on a written protocol governing all exchanges, which, at a minimum, shall specify: (1) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally; (2) management and coordination responsibilities; (3) necessary equipment, software and

services; (4) acceptable formats, transmission methods and verification procedures; (5) methods for maintaining version control; (6) privacy and security requirements; and (7) storage and retrieval requirements. Except as otherwise agreed to by the Parties in writing, the Parties shall each bear their own costs as identified in the protocol. In the absence of a written protocol, use of documents and data in electronic or digital form shall be at the sole risk of the recipient.

### 11.3 AUDITS.

11.3.1. Engineer shall, throughout the term of this Agreement maintain usual and customary books and records for the type and scope of operations of business in which it is engaged and will permit audit thereof by Williams Brothers or Owner upon reasonable notice. Engineer shall maintain at its Project administration office a complete set of all books and records prepared or employed by Engineer in its management, scheduling, cost accounting and other activities related to the Services and the Project. Engineer shall grant to Williams Brothers and Owner such audit rights and shall allow Williams Brothers and Owner such access to and the right to copy such books and records as Williams Brothers and Owner may request in connection with the issuance of Change Orders, the resolution of Disputes, and such other matters as Williams Brothers and Owner may reasonably deem necessary for purposes of verifying compliance with this Agreement and applicable Law.

11.3.1.1. At a minimum, the auditors shall have the following documents available to them: daily time sheets and supervisors daily reports; union agreements; insurance, welfare and benefits records; payroll registers; earnings records; payroll tax forms; material invoices and requisitions; material cost distribution worksheet; equipment records (list of company equipment, rates, etc.); sub-subcontractors' and consultants' (including suppliers) invoices; sub-subcontractors', consultants' and agents' payment certificates; cancelled checks (payroll and suppliers); job cost report; job payroll ledger; general ledger; cash disbursement ledger; project schedules; all documents that relate to each and every claim or dispute together with all documents that support the amount of damages as to each claim or dispute; worksheets used to prepare the claim or dispute establishing the cost components for items of the claim or dispute, including labor, benefits, insurance, materials, equipment, subcontractors, all documents that establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals.

11.3.1.2. Engineer shall warrant to TxDot and Williams Brothers the completeness and accuracy of all information provided with respect to an audit under this Agreement.

11.3.2. The provisions of Section 21.4 of the DBA shall apply to all audits.

11.3.3. Nothing in the DBA or this Agreement shall in any way limit the constitutional and statutory powers, duties and rights of elected State officials, including the independent rights of the State auditor, in carrying out his or her legal authority. Engineer understands and acknowledges that (a) the State auditor may conduct an audit of any person receiving funds from the State directly under the DBA or indirectly through a Engineer; (b) acceptance of fund paid under the DBA, including funds paid indirectly through a subcontract acts as acceptance of the authority of the State auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds; and (c) a person that is the subject of an audit or investigation must provide the State auditor with access to any information the State auditor considers relevant to the investigation or the audit.

11.4 Engineer shall ensure that any uniforms, badges, logos and other identification worn by personnel of Engineer shall bear colors, lettering, design or other features to assure clear differentiation from those of the Owner and its employees.

11.5 GOVERNING LAW AND VENUE. The rights and obligations of the Parties under this Agreement shall be interpreted and governed in all respects by the laws of the State of Texas. The venue for any dispute resolution proceeding shall be Harris County, Texas except to the extent any applicable Law requires it be brought in the county or district in which the Project is located.

11.6 SEVERABILITY. The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

11.7 NO WAIVER OF PERFORMANCE. The failure of either Party to insist, in any one or more instances, on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right with respect to further performance.

11.8 TITLES. The title given to the Articles of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose.

11.9 JOINT DRAFTING. The Parties to this Agreement expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

11.10 TERM. Except as provided herein, this Agreement will expire upon (1) completion and acceptance of the Project and (2) the expiration of any warranty and maintenance periods.

## ARTICLE 12

### SCHEDULE OF EXHIBITS

The Exhibits below are attached and are part of this Agreement:

EXHIBIT A	Design Build Agreement between the Texas Department of Transportation ("TxDot") and Williams Brothers Construction Company, including associated Exhibits 1 through 20
EXHIBIT B	Preliminary engineering plans prepared by _____ dated _____ as part of the response to the Request for Detailed Proposal
EXHIBIT C	Engineer Scope of Services
EXHIBIT D	Project Milestone Schedule
EXHIBIT E	Key Project Personnel
EXHIBIT F	Technical Provisions for the Contract
EXHIBIT G	Required DBA Provisions
EXHIBIT H	Payment Schedule

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officer as of the date first written:

**WILLIAMS BROTHERS CONSTRUCTION CO., INC.**

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

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

DRAFT

# Appendix 5 – Standard Subcontract

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FOR INTERNAL USE ONLY

- ☐ DBE SUBCONTRACT  
☐ DBE Requirements N/A

Payment & Performance Bond Required  
☐ Yes ☐ No

SUBCONTRACT NO. \_\_\_\_\_

## SUBCONTRACT

THIS AGREEMENT IS EFFECTIVE AS OF THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_, BY AND BETWEEN:

**WILLIAMS BROTHERS CONSTRUCTION COMPANY, INC. (the "Contractor")**

Mailing Address:

P.O. BOX 66428

Houston, Texas 77266-6428

Telephone: 713.522.9821

Facsimile: 713.520.5247

Email:

Physical Address:

3800 Milam

HOUSTON, TEXAS 77006

**AND**

\_\_\_\_\_  
**(the "Subcontractor")**

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Email Address: \_\_\_\_\_

Federal ID #: \_\_\_\_\_

**FOR**

Project #: \_\_\_\_\_

Control #: \_\_\_\_\_

Highway: \_\_\_\_\_

County: \_\_\_\_\_

WB Job #: \_\_\_\_\_

Owner: \_\_\_\_\_

**("the Project")**

**("the Owner")**



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In consideration of their mutual promises, Contractor and Subcontractor agree as follows:

## ARTICLE I

### CONTRACT DOCUMENTS

1.1 The Contract Documents for the Subcontract consist of this Subcontract Agreement (the "Subcontract" or "Agreement"), any Appendices and Schedules attached hereto, any subsequent Change Orders and Schedule Changes, and the Prime Contract between Owner and the Contractor attached hereto, including the Prime Contract Documents. Appendices made a part of this Agreement are:

**Appendix A:** Prime Contract Required Subcontract Provisions

**Appendix B:** Scope of Work

**Appendix C:** The Prime Contract

**Appendix D:** Applicable Technical Specifications

1.2 Subcontractor acknowledges that the Work under this Subcontract will be financed in whole or in part with Federal funds. All Laws promulgated by the Federal Government and applicable to work financed in whole or in part with Federal funds will apply to the Work. The Required Contract Provisions Federal-Aid Construction Contracts, Form FHWA 1273 are therefore included in Subcontract Provisions at Appendix "A" and made a part hereof. Where the Required Contract Provisions refer to "Contractor" "Subcontractor" shall be substituted. Subcontractor shall be required to perform the Subcontract Work in strict accordance with the requirements set forth in Appendix "A."

1.3 By executing this Agreement, the Subcontractor acknowledges that it has independently assured itself that the Contract Documents are or have been made available for inspection by Subcontractor and the Subcontractor confirms that it has examined all such documents. The Subcontractor agrees that all such documents which are subsequently modified or changed by Owner or the Contractor in accordance with this Subcontract and duly made available to the Subcontractor shall likewise be considered a part of this Agreement.

1.4 Where a discrepancy exists between the Prime Contract Documents and this Agreement, this Agreement shall govern.

1.5 Definitions: The Definitions for many common phrases, definitions, and acronyms that are used in conjunction with this Agreement are defined below. Additional definitions are located in the Prime Contract Documents:

A. **Agreement or Subcontract** shall mean this agreement between Subcontractor and Contractor for the performance of the Work as herein provided and included all Exhibits attached hereto or referenced herein.

B. **Calendar Day** shall mean every day shown on the calendar.

C. **Construction Quality Assurance Plan or "CQAP"** shall mean the Owner's plan indicating times, locations and other conditions under which monitoring of construction activities are to be performed to maintain and ensure compliance with the Prime Contract Documents.

D. **Construction Quality Management Plan or "CQMP"** shall mean the Contractor's plan of policies, procedures, detailed responsibilities and systematic actions necessary to provide confidence in the quality management program and ensure the results meet the requirements of the Prime Contract Documents related to the final Project construction. The plan includes Contractor's internal quality control, an independent quality assurance and material testing and the Owner's CQAP.

E. **Contract Documents** shall mean and include those documents set forth in Section 1.1 above.

F. **Contractor** shall mean the **Williams Brothers Construction Company, Inc.**, its agents, employees and designated representatives.

G. **Final Acceptance** shall have the meaning as set forth in Section 9.2

H. **Final ROW** shall mean Final Right of Way for the Project.

I. **FHWA** shall mean the Federal Highway Administration.

J. **Force Majeure Event** shall mean any of the events listed in subsections (1) through (8) which materially and adversely affect Subcontractor's obligations, provided such events are beyond control of the Subcontractor and are not due to an act, omission, negligence, recklessness, willful misconduct, or breach of contract by Subcontractor, its agents, employees, representatives, sub-subcontractors or anyone over whom Subcontractor exercises control, and further provided that such events (or the effects of such events) could not have been avoided by the exercise of caution, due diligence, or reasonable efforts by Subcontractor:

(1) Any earthquake, tornado, hurricane or other natural disaster in the vicinity of and directly affecting the Project;

(2) Any epidemic, blockade, rebellion, war, riot, act of sabotage or civil commotion in the vicinity of and directly affecting the Project;

(3) The discovery at, near or on the Final ROW of any archaeological, paleontological or cultural resources provided that the existence of such resources or substances was not disclosed in, or ascertainable from, the Prime Contract Documents, was not otherwise known to Subcontractor before contracting and would not have become known to Subcontractor by undertaking reasonable investigation prior to the Contract Date;

(4) The discovery at, near or on the Final Right of Way ("ROW") of any species listed as threatened or endangered under the federal or State endangered species act (regardless of whether the species is listed as threatened or endangered as of the Contract Date);

(5) Any change in Law, which results in an increase in Subcontractor's costs of at least \$150,000 as a result of (1) a material modification of the Project design, (2) State or federal environmental approval not previously required for the Project which has a material impact on Subcontractor's Work, or (3) a law that specifically targets the Project or Subcontractor;

(6) Issuance of a temporary restraining order or other form of injunction by a court that prohibits the performance of a material portion of the Work, except to the extent arising out of, related to or caused by, the delay, act, omission, negligence, willful misconduct, recklessness or breach of contract by Subcontractor, its agents, employees, representatives, sub-subcontractors or anyone over whom Subcontractor exercises control;

(7) The suspension, termination, interruption, denial or failure to obtain or non-renewal of any Owner approval, except to the extent that such suspension, termination, interruption, denial or failure to obtain or non-renewal arises from the delay, act, omission, negligence, willful misconduct, recklessness or breach of contract by Subcontractor, its agents, employees, representatives, sub-subcontractors or anyone over whom Subcontractor exercises control;

(8) Imposition of temporary no-work restrictions resulting from the discovery within the Project site of any karst features requiring investigation under the Technical Provisions, excluding any risks of delays arising from such discovery allocated to Subcontractor as set forth in this Agreement.

K. **Governmental Approval** shall mean any permit, license, consent, authorization, waiver, variance or other approval, guidance, mitigation agreement, or memoranda of agreement/understanding,

and any amendment or modification of any of them provided by Governmental Entities including State or federal regulatory agencies, agents, or employees, which authorize Development Work, but excluding any such approvals given by or required from any Governmental Entity in its capacity as a Utility Owner or railroad owner.

L. **Governmental Entity** shall mean any federal, State or local government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity.

M. **Law or Laws** shall mean any statute, law, regulation, ordinance, rule, judgment, order, decree, permit, concession, grant, franchise, license, agreement, directive, guideline, policy requirement or other governmental restriction or any similar form of decision of or determination by, or any interpretation or administration of any of the foregoing by, any Governmental Entity, which is applicable to the Project, the Final ROW, and/or the Work, whether now or hereafter in effect, including any Environmental Law as such is defined in the Prime Contract Documents.

N. **Owner** shall mean the Texas Department of Transportation or TxDOT, and any entity succeeding to its powers, authorities and responsibilities invoked by or under the Prime Contract Documents.

O. **Prime Contract or DBA** shall mean the Design-Build Agreement between Owner and Contractor dated \_\_\_\_\_.

P. **Prime Contract Documents** shall mean the Prime Contract and all Plans, Standard Specifications and Technical Provision incorporated by reference, Exhibits, Special Provisions, Special Specifications and Supplemental Agreements, and all Addenda and clarifications issued prior to execution of the Prime Contract, all modifications issued subsequent thereto, and all other documents forming or by reference made a part of the Prime Contract.

Q. **Project** shall mean that certain work defined on the initial page of the Agreement under the reference "Project".

R. **Project Schedule** shall mean the Contractor's schedule for the completion of the entire Project in compliance with the terms of the Prime Contract.

S. **Subcontractor** shall mean the entity described above as "Subcontractor", its employees, agents and designated representatives.

T. **Subcontract Amount** shall mean the total amount paid to Subcontractor by Contractor for the quantities of Work performed on a unit price basis as defined in Article 2 of this Agreement.

U. **Subcontract Time** shall mean that certain time amount of time specified in Section 3.2 herein by which Subcontractor shall complete the Work.

V. **Subcontractor's Schedule** shall mean the resource loaded schedule submitted to the Contractor that demonstrates how the Subcontractor will complete the Work in the time allotted in Section 3.2. The Subcontractor's Schedule must be developed and submitted in scheduling software compatible with Primavera P6 and contain logic ties using the Critical Path Method of scheduling.

W. **Substantial Completion** shall mean the date certified by the Owner when (i) Subcontractor has completed the Work, except for Punch List items, final cleanup and other items included in the requirements for final acceptance of the Project; (ii) Subcontractor has ensured that all Work relating to the Project has been performed in accordance with the requirements of the Contract Documents, the Governmental Approvals and applicable Law; (iii) the Work may be fully utilized without damage to the Project, the Final ROW or any other property adjacent or nearby the Final ROW, and without injury to any Person and all safety devices, if part of the Work, are fully installed and operational; and (v) all remaining Punch List work for the Project can be completed with no impact to traffic. In general, the only remaining Work shall be minor in nature so that the Owner could occupy the Work, it can

be accepted as final by Owner within thirty (30) days following the date of Substantial Completion, and the completion of the remaining Work by Contractor would not materially interfere with or hamper the Owner's normal use of the Work.

X. **Technical Provisions** shall mean those provisions of the Prime Contract that describe particular aspects of the Work and their performance, as prescribed in Appendix "D" hereto.

Y. **Time Impact Schedule** shall mean a revision of the Subcontractor's Schedule that incorporates a delay event with associated logic ties that clearly illustrates the impact to the Subcontractor's completion date as the result of the delay.

Z. **Work** shall mean all actions which the Subcontractor is contractually required to do as specified, indicated, shown, contemplated, or implied in this Agreement in Section 2.1 and Appendix B, including all alterations, amendments, or extensions made by Change Order or other written orders or directives of the Contractor. Unless specified otherwise in this Agreement, the Work includes furnishing all materials, supplies, equipment, tools, labor, transportation, supervision, and all incidentals necessary to complete the Work.

AA. **Working Day** shall mean a calendar day unless defined otherwise in the Prime Contract.

## ARTICLE II

### THE WORK, SUBCONTRACT AMOUNT

2.1 **The Work.** Subcontractor shall pay for all labor, equipment, supervision, materials, supplies, insurance and any other incidental items necessary to complete the items of work listed in Appendix B on a turnkey basis unless indicated otherwise in this Section and in complete accordance with the Contract Documents.

2.2 **Subcontract Amount.** Subcontractor will receive from Contractor as compensation for said Work payment for the field verified quantities actually installed and approved by Contractor based upon the unit prices listed in Appendix B. All of the quantities shown in Appendix B are approximate. Subcontractor agrees to accept and be bound to the unit prices as stated in Appendix B.

A. Subcontractor shall prepare a schedule of the Work to be performed under this Agreement. After performance of an item of Work, Subcontractor shall notify Contractor and request an inspection of same. Contractor shall field verify the Work in place and the quantities billed by Subcontractor. It is understood that Contractor shall only be obligated to pay Subcontractor for the quantities that are approved by Contractor, regardless of the quantities billed by Subcontractor.

B. Prices are firm for the duration of the Project unless noted otherwise.

C. Price is for turnkey performance of all item(s) listed in Appendix B and incorporated into this Article II unless noted otherwise.

## ARTICLE III

### SUBCONTRACT TIME

3.1 The Subcontractor agrees to commence Work in five (5) calendar days from receipt of Contractor's notice to proceed. Time will be assessed by the Working Day as defined in the Prime Contract.

3.2 **Subcontract Time.** The Subcontractor has \_\_\_\_\_ Working Days to obtain Substantial Completion of the Work. The Subcontractor agrees to commence Work as stated in Section 3.1 above, and to thereafter diligently and continuously prosecute said Work in a good workmanlike manner in full compliance with this Subcontract and the Contract Documents. All Work shall be undertaken and completed in accordance with the Project Schedule approved by the Contractor, as revised and updated from time to time. From Substantial Completion the Subcontractor has \_\_\_\_\_ Working Days to accomplish Final Acceptance of its Work.

A. Working Days allowed for this Subcontract may or may not be consecutively charged based on the number of construction phases.

B. Multiple move-ins may be required. Move-ins are included in the Subcontract Amount and no additional compensation will be paid unless authorized in writing by the Contractor.

### 3.3 Time is of the essence in performing the Work required under this Subcontract.

A. Subcontractor shall be liable for any and all damages for delay sustained by Contractor and caused directly or indirectly by Subcontractor; including, but not limited to, liquidated or actual damages for which Contractor is responsible to Owner. Any such damages shall be deducted from payments due Subcontractor, and, if such damages exceed the amount of payments due, Subcontractor shall pay Contractor upon demand such excess damages due.

B. The Subcontractor acknowledges and agrees that if the Subcontractor fails to reach Substantial Completion of the Work within the Subcontract Time (subject to adjustments as provided in the Contract Documents), the Contractor will sustain damages and loss as a result of such failure. The exact amount of such damages will be difficult to ascertain. The Contractor and the Subcontractor, therefore, agree that if the Subcontractor fails to achieve Substantial Completion of the Work by the deadlines established in Section 3.2, the Contractor shall be entitled to retain or recover from the Subcontractor, as liquidated damages and not as a penalty, the sum of \_\_\_\_\_ (\$ \_\_\_\_\_ .00) **per Working Day**, commencing the next Calendar Day after the expiration of the Subcontract Time, as set forth in Section 3.2 and continuing until the date of actual Substantial Completion of the Work. Such liquidated damages are hereby agreed to be a reasonable pre-estimate of damages the Contractor will incur as a result of delayed completion of the Work. The Contractor may deduct liquidated damages described in this Section from any unpaid amounts then or thereafter due to the Subcontractor under this Agreement.

### 3.4 Schedules.

A. **Proposed Schedule.** The Subcontractor shall furnish to the Contractor a proposed progress schedule (the "Proposed Schedule") setting forth the Subcontractor's Work, including planned labor, equipment and material requirements. The Contractor will provide guidance on format and level of detail required for the Proposed Schedule. The Proposed Schedule shall be submitted to the Contractor for review and comment within fifteen (15) working days after award of this Subcontract.

B. **Subcontractor's Schedule.** Within (ten) 10 Working Days from commencing Work, based on the Proposed Schedule, the Subcontractor shall provide to the Contractor a construction schedule that provides the number of crews and production rates planned to complete the Work within the Subcontract Time (the "Subcontractor's Schedule"). Once approved, the Subcontractor's Schedule will be incorporated into the Contractor's overall Project Schedule. If the Subcontractor's Schedule is deemed insufficient, in the sole judgment of the Contractor, to allow for the timely completion of the overall Project, it will be rejected and returned to the Subcontractor for revision. The overall Project Schedule will be available for Subcontractor's review upon request.

C. The Contractor shall have the right to modify the Subcontractor's Schedule, to suspend, delay or accelerate, in whole or in part, the commencement or execution of the Subcontractor's Work or varies the sequence thereof, without additional compensation to the Subcontractor. In the event such delay or suspension extends the overall time of performance of the Prime Contract, the time for the Subcontractor to complete its Work shall likewise be extended, but only insofar as extensions of time are approved by Owner through a Change Order.

D. **Recovery Schedule.** If the Subcontractor falls behind schedule, in the sole discretion of the Contractor, the Contractor may order the Subcontractor to submit within three (3) Working Days, a recovery schedule that will demonstrate how the Subcontractor will make up time and get back on schedule. Any costs associated with the preparation and implementation of a recovery schedule is non-reimbursable. If a recovery schedule is required, Subcontractor shall have no right to receive progress payments until such time as Subcontractor has prepared and provided the Contractor such recovery schedule in writing. If Subcontractor fails to implement the Recovery Schedule within three (3) Working

Days' notice from Contractor, then Contractor may supplement Subcontractor's work force, as provided in Section 12.2 or declare the Subcontractor in default, as provided in Section 12.1 herein.

## **ARTICLE IV**

### **PERFORMANCE AND COMPLETION OF THE WORK**

4.1 This Subcontract is contingent upon and shall be null and void without:

- A. The receipt of an executed Prime Contract from the Owner by the Contractor;
  - B. The receipt of a Work Order and/or Notice to Proceed from the Owner by the Contractor;
- and
- C. The approval of the Subcontractor by the Owner.

4.2 Subcontractor shall perform the Work in strict accordance with the Contract Documents, all professional construction practices generally accepted in the State of Texas as the standard in the industry, in a good and workmanlike manner, and free from defects. Subcontractor shall comply with the requirements of the Contract Documents, the Project Schedule, all Governmental Approvals, the approved CQMP, the CQAP, the approved Safety and Health Plan, and applicable Laws, and shall take into account the boundaries and other physical constraints affecting the Project.

4.3 Subcontractor shall be responsible for coordinating its construction and other activities with Contractor and any railroad and Utility Owners and other contractors involved with the Project, and/or projects or properties adjacent to the Project as designated by Contractor.

4.4 All materials, equipment, labor, and efforts necessary to achieve completion of Subcontractor's Work on or before the expiration of the Subcontract Time shall be Subcontractor's sole responsibility. The Subcontractor will furnish all barricades, warning signs, lights, flagmen, policemen and any other traffic control items necessary to adequately protect the traveling public in the performance of this Subcontract unless noted otherwise in Section 2.1 or Appendix B.

4.5 Subcontractor acknowledges that it shall maintain and repair the Work until Final Acceptance of the Project, including repair of damage caused by accidents or vandalism. Cost of maintenance services for the Project prior to Final Acceptance are incorporated into the Subcontract Amount.

4.6 If Subcontractor deems that work to which the Subcontract Work is to be applied or affixed is unsatisfactory or unsuitable, written notification of said condition shall be given to Contractor before proceeding or taking remedial action; otherwise Subcontractor shall be fully and solely responsible and liable for any and all expense, loss, or damages resulting from said condition and Contractor shall be relieved of all liability in connection therewith.

4.7 The Subcontractor expressly agrees to fully comply with and be bound by all decisions of Owner and, as applicable, of Governmental Entity(ies), concerning the interpretation of the Prime Contract Documents. Subcontractor acknowledges that the Work is subject to inspection and approval by Owner and all other Governmental Entities. Subcontractor shall cooperate with the Contractor and Owner in connection with conducting inspections during the construction of the Project. All construction inspection, material sampling and testing shall be performed in accordance with the Contract Documents and the approved CQMP and CQAP.

4.8 The Subcontractor will take whatever measures are necessary to maintain a good relationship with the local property owners along the Project and with the Owner and their representatives on this Project. To this end, the Subcontractor will:

- A. Repair any damages to any private or public property, equipment, or materials caused or contributed to by Subcontractor or its sub-subcontractors during the performance of this Subcontract.

B. Maintain all rights-of-way, city streets, county or parish roads, private travelways, and state highways occasioned by their operation in a condition free from mud and clods.

C. Repair damage caused by the performance of this Subcontract to rights-of-way, city streets, county or parish roads, private travelways and state highways to the satisfaction of those respective owner entities.

D. Clean and repair, if necessary, any drainage systems on the Project if silt, dirt or foreign materials are deposited in them by Subcontractor's operations.

E. Clean all fixtures and equipment under Subcontractor's control.

F. Clean-up shall be performed in accordance with the Prime Contract Documents. The Subcontractor shall be responsible for removal and clean-up of all debris directly or indirectly attributable to the performance of this Subcontract. Should the Subcontractor not commence and diligently complete clean-up as directed, the Subcontractor will be charged for the costs of said clean-up.

4.9 The Subcontractor shall not represent itself as an agent of the Owner or any other Governmental Entity while communicating with any of the local property owners along the path of the Project or at any other time in connection with performing the Work described herein.

4.10 Contractor assumes no responsibility for underground or overhead conditions or obstructions. Topography mapping, utility characteristics (including ownership, types, sizes and locations) and the exploratory geotechnical investigations presented in the Contract Documents may or may not represent the actual subsurface conditions along the present alignment of the Project. Subcontractor acknowledges and agrees that the existing surface conditions, including utility characteristics as specified above, may have changed or may be different from the surface conditions depicted in the Contract Documents. Contractor accepts no responsibility for the accuracy of any depiction of surface conditions, the topographical mapping, utility information or geotechnical information provided, or for information concerning the location or extent of Hazardous Materials, archaeological features, karst features, endangered species or vegetation, or Subcontractor's interpretation of any information provided.

4.11 The Subcontractor's attention is directed to the fact that other contractors and subcontractors will be working on this Project simultaneously with the performance of this Subcontract and the Subcontractor will be required to plan and prosecute its Work in a cooperative manner so as not to interfere or hinder the completion of work of others or delay the completion of the Project.

4.12 All of the Work shall be performed in accordance with all Contract Documents according to their true intent and meaning and as usually performed or furnished in connection with such work regardless whether the Work hereby subcontracted is referred to under one or more headings in the Specifications or in various Plans. It is the intent of the parties that the Subcontractor shall perform all the work usually performed by the trades covered by the Subcontract. In the event that any of the Work is not sufficiently detailed or explained in the Contract Documents, the Subcontractor shall submit a written request to the Contractor for such other and additional plans or explanations as may be necessary, and the Subcontractor shall conform to the same as part of this Subcontract Agreement without additional compensation. Subcontractor shall provide the request for written clarification in such a manner as to not delay the Project Schedule.

4.13 The Subcontractor shall be responsible for furnishing, securing and maintaining its temporary yard facilities. Should the Contractor, at its sole option, make a site available for the Subcontractor's use, the Subcontractor shall indemnify and hold harmless the Contractor for any loss or damages incurred by the Subcontractor while occupying the provided site. The Subcontractor shall be responsible for the cost of providing temporary utilities, including, but not limited to, electric power, water, sewer, etc. in excess of that available pursuant to the Contract Documents.

4.14 The Contractor is a participant in government sponsored opportunity programs such as minority, women, disadvantaged, or small business programs. Participants in these programs are referred to as minority, women, disadvantaged, or small business enterprises (generally and collectively, these enterprises shall be referred to as "DBEs").



A. This Subcontract \_\_\_\_\_ IS \_\_\_\_\_ IS NOT (check one) a DBE Subcontract.

B. To the extent this Subcontract is a DBE Subcontract, Subcontractor acknowledges that it shall be subject to TxDOT's Disadvantaged Business Enterprise (DBE) Special Provision 000-461 and TxDOT's Disadvantaged Business Enterprise Program adopted pursuant to 49 CFR 26, which are included in Exhibit 6 to the Prime Contract and incorporated into this Agreement. Subcontractor shall comply with all requirements set forth in (i) TxDOT's DBE Special Provision, (ii) TxDOT's Disadvantaged Business Enterprise Program, and (iii) Contractor's FHWA-approved DBE Performance Plan, incorporated into and made a part of this Subcontract in Appendix A and by reference and all of the appropriate rules, regulations and special provisions that apply thereto.

C. To the extent this Subcontract is a DBE Subcontract, Subcontractor shall incorporate this Section 4.13 into all contracts with its subcontractors and suppliers, binding the same to the requirements set forth in 4.13(B).

4.15 In the performance of the Work hereunder, the Subcontractor is and shall be, an independent Contractor with the full right to supervise, manage and control the performance of the details of said Work. The Subcontractor shall continuously and diligently supply sufficient quantities of materials, equipment and qualified workmen to prosecute said Work efficiently and promptly. The Subcontractor shall furnish to the Contractor, all documentation to fully perform the Subcontract work, including but not limited to: payroll reports, affidavits, FHWA 1931's, DBE documentation/reports, compliance reports, quality control reports and the like, as requested by Contractor. Failure of Subcontractor to maintain the required DBE documentation is a material breach of contract. At its option, upon seven (7) Working Days written notice, Contractor may either, in its sole discretion, (i) terminate this Agreement, or (ii) withhold progress pay estimates as a remedy should the Subcontractor fall in arrears regarding administrative submittals required by the Contract Documents unless Subcontract cures the breach within the notice period.

4.16 The Subcontractor shall attend scheduled job meetings and furnish written progress reports or any other reports required by the Prime Contract regarding the Work, as requested by the Contractor, including information on the status of the materials and equipment under this Subcontract. Subcontractor shall participate in meetings between Owner and Contractor, upon the Owner's request, concerning matters pertaining to the Subcontract or the Work, provided that all direction to such Subcontractor shall be provided by Contractor, and provided further that nothing in this Section shall limit the authority of the Owner to give such direction or take such action which, in its opinion, is necessary to remove an immediate and present threat to the safety of life or property. All reports or other actions shall be undertaken and completed with reasonable promptness and, in any event, within sufficient time for Contractor to provide similar reports or materials to Owner within the time periods required under the Prime Contract.

4.17 Subcontractor shall ensure that any uniforms, badges, logos and other identification worn by personnel of Subcontractor shall bear colors, lettering, design or other features to assure clear differentiation from those of the Owner and its employees.

## ARTICLE V

### SUBCONTRACTOR RESPONSIBILITIES

5.1 Subcontractor represents that it has the requisite power and all required licenses to carry on its present and proposed activities under this Subcontract, and has full power, right and authority to execute and deliver this Agreement and to perform each and all of the obligations of Subcontractor provided for herein. Subcontractor represents that it has not been debarred or suspended from submitting bids by any agency of the State of Texas and that it is in good standing with the State of Texas.

#### 5.2 Compliance with the Contract Documents.

A. The Subcontractor has read and is thoroughly familiar with the Contract Documents and agrees to be bound to the Contractor by the terms of the Contract Documents insofar as they relate to any part of or in any way to the Work undertaken herein and to assume toward the Contractor, in connection

with Work covered by this Subcontract, all of the obligations and responsibilities which the Contractor by the Contract Documents assumes toward the Owner or anyone else.

B. The Subcontractor acknowledges that special attention has been directed to the special, general and amended conditions constituting the Contract Documents, and that it is familiar with all of same, as well as all of the provisions of this Subcontract. It is understood that this Subcontract and its Exhibits constitute the only agreement between the parties hereto relating to the Work to be done hereunder and contains all agreements and provisions between the parties in connection therewith and further that the provisions hereof and the agreements between the Contractor and the Subcontractor shall not be changed, modified, abrogated or superseded unless it be in writing and executed by an authorized officer of the Contractor and the Subcontractor.

C. The Subcontractor warrants that all materials and equipment furnished and incorporated by it into the Project shall be new unless otherwise specified and that all work performed under this Subcontract shall be of good quality, free from faults and defects, and in conformance with the Contract Documents. All work not conforming to these standards may be considered defective. The Subcontractor guarantees any and all Work performed by it on this Project against defective workmanship and materials for the period called for in the Contract Documents. Manufacturers' and equipment warranties and guarantees shall be in accordance with the requirements of applicable sections of the Contract Documents. The warranty provided in this Section shall be in addition to and not in limitation of any other warranty or remedy provided by law or required by the Contract Documents.

D. The Work included in this Subcontract shall be performed under the direction of the Contractor for the Owner's behalf. The Contractor's decisions as to the true construction and meaning of the Contract Documents shall be final. The Subcontractor shall conform to and abide by any additional specifications, drawings or explanations furnished by the Contractor in detail and to illustrate the Work to be done.

E. The Subcontractor shall timely prepare and submit technical submittals, shop drawings, fabrication details, or working drawings as required by the Plans and Specifications of the Contract Documents. Submittal procedures outlined in the Contract Documents shall be followed. It shall be the responsibility of the Subcontractor to review the working drawings for all requirements so as to comply with the Contract Documents. If required by the Contract Documents, the working drawings shall be signed, sealed and dated by a Registered Professional Engineer. Review and approval of the working drawings by the Contractor and/or Owner shall not relieve the Subcontractor of its responsibility to furnish all items of material, equipment or construction as required by the Contract Documents.

F. The Subcontractor shall be responsible for all dimensions, quantities, discrepancies and any unauthorized deviations from the Contract Documents for the category of construction covered by this Subcontract.

G. In addition, if required by the Contract Documents, the Subcontractor shall comply with all requirements regarding the furnishing of information for sources of supply and quality of materials.

### **5.3 Compliance with Laws.**

A. The Subcontractor shall comply with all Laws applicable to the Work.

B. Subcontractor shall pay all fees, licenses, taxes, including sales and use taxes, and expenses required by the applicable Laws, including, but not limited to, taxes and contributions imposed or required by any law for any employment insurance, pensions, old age retirement funds or similar purposes, in respect to the Work under this Subcontract and the employees of the Subcontractor in the performance of said Work. The Subcontractor shall have the status of an employer as defined by the applicable state unemployment compensation act and all similar federal laws and all social security laws. The Subcontractor accepts exclusive liability for all taxes and contributions required of the Contractor or the Subcontractor by the Federal Social Security Act and the Unemployment Compensation Law or any similar law of any state, with respect to the employees of the Subcontractor used in the performance of Work.

C. The Subcontractor shall comply with minimum wages required by federal and/or state law and as stipulated in the Prime Contract. The Subcontractor shall submit certified labor payrolls to the Contractor as required by the Contract Documents or requested by the Contractor. The Contractor reserves the right to deduct from any payments due the Subcontractor any amounts that may be withheld by Owner unless or until the Subcontractor's responsibilities under this provision are satisfied.

D. The Subcontractor is responsible for maintaining its own compliance with immigration laws, rules, and regulations regarding eligibility to work in the United States.

5.4 Subcontractor shall supervise, direct and be responsible for the actions, omissions, negligence, willful misconduct, or breach of applicable Law or contract by any employee, agent, representative or sub-subcontractor, or anyone for whom Subcontractor is responsible.

5.5 The Subcontractor represents that it has carefully examined the location of the Work to be done together with the physical conditions anticipated to be encountered therein and that it is thoroughly familiar with all of same.

5.6 The Subcontractor is responsible for obtaining the approval and acceptance of its Work by the Owner.

5.7 Subcontractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, procedures and safety and for coordinating all portions of its Work under this Subcontract, subject, however, to all requirements contained in the Contract Documents. The Subcontractor is obligated to safeguard the Work (in progress or completed) until accepted by the Owner.

5.8 The Subcontractor shall pay for all materials, equipment and labor used in connection with the performance of this Subcontract through the period covered by previous payments received from the Contractor, and shall furnish satisfactory evidence, when requested by the Contractor, to verify compliance with the above requirements.

5.9 Subcontractor shall use commercially reasonable efforts to cause all of its activities and the activities of its employees, agents, officers and sub-subcontractors and all other Persons for whom Subcontractor may be legally or contractually responsible to be undertaken in a manner that will minimize the effect on surrounding property and the public.

5.10 In the event Subcontractor, or any of its sub-subcontractors, employees, representatives or anyone over whom Subcontractor exercises control, damages or destroys work performed by Contractor or other subcontractors on the Project site, Subcontractor shall be responsible for the costs associated therein. Contractor shall provide Subcontractor three (3) Working Days' notice of a claim for damage or destruction to said work performed. If Subcontractor does not cure or take reasonable steps to cure the breach, Contractor shall be entitled to repair the damaged or destroyed work and offset the associated costs from any amounts due to Subcontractor under this Agreement.

**5.11 Safety.**

A. The Contractor considers safety an important part of its business and the Work to be performed pursuant to the Prime Contract. Subcontractor acknowledges responsibility for implementing, maintaining and coordinating its safety plan with the approved Safety and Health Plan during the performance of its Work. Subcontractor shall take all reasonable precautions and be solely responsible for the safety of, and shall provide protection to prevent damage, injury or loss to: (i) all employees of Subcontractor performing the Work and other persons who are on the Site or would reasonably be expected to be affected by Subcontractor's Work; (ii) the Work and materials and equipment to be incorporated therein; and (iii) all other property within or adjacent to the Site; provided, that Subcontractor's responsibilities under this Section are limited to those risks associated directly or indirectly with the Work under this Subcontract. In furtherance of its safety obligations, Subcontractor acknowledges:

(1) Prevention of accidents in connection with Work is the responsibility of the Subcontractor. Neither the establishment nor absence of a safety program by the Contractor shall relieve the Subcontractor of safety responsibilities.

(2) The Subcontractor shall establish its own safety program implementing safety measures, policies and standards conforming to those required or recommended by governmental and quasigovernmental authorities having jurisdiction and by the Contractor and Owner, including, but not limited to, requirements imposed by the Contract Documents.

(3) If the Subcontractor does not have its own safety program, the Subcontractor is encouraged to utilize the Contractor's Safety Manual to develop its own. Should the Subcontractor elect to mimic or otherwise utilize the Contractor's safety program, the Subcontractor shall indemnify and hold harmless the Contractor pursuant to Section 8.2.

(4) The Subcontractor must not allow any employee onto the jobsite that is under the influence of drugs or alcohol.

(5) The Subcontractor is urged to have his jobsite personnel attend the Contractor's Safety Meetings.

(6) The Subcontractor's personnel will be required to wear the following personal protective equipment (PPE) to access the jobsite: (1) OSHA approved hard hat, (2) steel toed safety boots, and (3) a reflective vest that meets current ANSI/OSHA requirements. The Subcontractor is responsible for providing all OSHA required PPE to its employees for the prosecution of the work covered in this Subcontract.

(7) The Subcontractor shall stop any part of the Work which the Contractor or Owner deem unsafe until corrective measures satisfactory to the Contractor shall have been taken. The Contractor's failure to stop the Subcontractor's unsafe practices shall not relieve the Subcontractor of its responsibility for safety.

(8) The Subcontractor shall notify the Contractor immediately following an accident and promptly confirm the notice in writing. A detailed written report shall be furnished if requested.

(9) **THE SUBCONTRACTOR SHALL FULLY AND COMPLETELY INDEMNIFY, DEFEND AND HOLD HARMLESS THE CONTRACTOR FROM AND AGAINST ANY AND ALL FINES OR PENALTIES IMPOSED ON CONTRACTOR AS A RESULT OF SAFETY VIOLATIONS CAUSED IN WHOLE OR IN PART BY THE SUBCONTRACTOR'S (OR THOSE FOR WHOM IT IS RESPONSIBLE) FAILURE TO COMPLY WITH APPLICABLE SAFETY REQUIREMENTS.**

(10) The following conditions apply to this Subcontract pursuant to OSHA Regulation 1926.59 - Hazard Communication for Construction:

(a) Material Safety Data Sheets (MSDS) must accompany all hazardous materials that are delivered to the Contractor jobsites. MSDS must also be sent to the Contractor's home office along with the signed copies of the purchase order or Subcontract agreement.

(b) All containers of hazardous material must be labeled prior to delivery to the Contractor jobsites. One (1) label must be provided for each five (5) gallon quantity of material. Unlabeled deliveries will not be accepted at the Contractor's jobsite.

(c) If a determination is made that materials are not covered by OSHA Regulation 1926.59, a written statement to this effect must be prepared by supplier or the

Subcontractor and delivered to the Contractor's home office along with the signed copies of the Subcontractor prior to any delivery of materials to the jobsite.

B. Breach of any of the safety provisions of this Agreement is a material breach of this Agreement. If Contractor notifies Subcontractor that it is in violation of the safety provisions of the Contract Documents, Subcontractor shall have forty-eight (48) hours to correct the deficiency or take reasonable steps to do so, except in the case of a life/safety emergency, and in that instance, Contractor may secure the Site, cure the violation and charge the reasonable costs thereof to Subcontractor. If Subcontractor fails to cure or take reasonable steps to cure the safety violation within the time provided herein, then Contractor may, in its sole discretion, (i) terminate this Agreement for cause; (ii) suspend Subcontractor's Work until the violation is cured; or (iii) take reasonable steps to cure the violation and charge the costs thereof to Subcontractor.

#### **5.12 Inspection and Testing.**

A. Subcontractor shall perform all inspection, sampling and testing necessary to comply with its obligations under the Contract Documents, in accordance with its approved CQMP and the CQAP. At all points in performance of the Work at which specific inspections or approvals by the Contractor are required by the Contract Documents, Subcontractor shall not proceed beyond that point until the Contractor has completed such inspection or approval or waived its right to inspect or approve, which waiver shall be in writing. Inspections shall be performed in accordance with the time limits specified in the CQMP and the CQAP.

B. As part of the CQAP, all materials and each part or detail of the Work shall also be subject to inspection and testing by the Contractor. When any Governmental Entity, Utility Owner or railroad is to accept or pay for a portion of the cost of the Work, its respective representatives have the right to inspect the work. Such inspection does not make such Person a party to this Agreement nor will it change the rights of the parties hereto. Subcontractor hereby consents to such inspection and testing. Inspections shall be performed in accordance with the time limits specified in the CQMP and the CQAP.

#### **5.13 Environmental.**

A. Protection of the Environment is a priority for the Contractor and the Owner. The Subcontractor shall:

- (1) Abide by all of the environmental commitments included in the Contract Documents.
- (2) Conduct its operations in accordance with the Project permits.
- (3) Perform its Work in accordance with all environmental Laws, rules and regulations and the Contract Documents.
- (4) Observe good housekeeping practices by collecting and properly disposing of all litter and debris associated with the Subcontractor's Work.
- (5) When directed to remedy an environmental problem, respond and remedy within 24 hours or in an otherwise agreed upon timeframe.
- (6) Perform all environmental mitigation measures and comply with conditions and requirements of the Contract Documents and environmental and Governmental Approvals.

B. Subcontractor shall be solely responsible for: (a) compliance with all Laws applicable to Hazardous Materials brought onto the Site by Subcontractor; (b) use, containment, storage, management, transport and disposal of all Hazardous Materials in accordance with this Agreement and all applicable Laws and Environmental Approvals; and (c) payment of all penalties, expenses (including attorneys' fees and costs), costs, suits, judgments, claims, actions, damages (including damages to natural resources,

property or Persons), delays and liability associated with, arising out of or related to such Hazardous Materials, including any of the foregoing incurred or suffered by the Contractor.

#### **5.14 Use of Contractor's Equipment.**

A. The Subcontractor, its agents, employees, subcontractors or suppliers shall not use the Contractor's equipment, except in the case of emergency, without the express written permission Contractor. For the purpose of this Section, an emergency is defined as any event or occurrence where the safety of the site personnel or the traveling public is at risk or if there is an imminent risk to the Work. In an emergency, the Contractor will provide the operator for the piece of equipment. In such instances, the indemnity provisions of Section 8.2 shall apply.

B. The Subcontractor will not be permitted to lease equipment from the Contractor without an approved amendment to this Subcontract. For DBE Subcontractors such an amendment must be approved by the Owner prior to implementation. If approved and implemented, the indemnity provisions of Section 8.2 shall apply.

### **ARTICLE VI**

#### **CHANGES**

##### **6.1 Changes in Scope.**

A. Subcontractor shall not perform any changes in the Work without the written authorization of Contractor. Should Contractor, at any time during the progress of the Work, request any changes in the scope of the Work, Subcontractor shall within seven (7) working days thereafter submit an itemized estimate, in a format acceptable to Contractor, reflecting any cost associated with the requested change. Adjustments to the Subcontract Amount, for any change, shall be in the amount of the Subcontractor's unit prices as noted in Appendix B. Subcontractor's cost shall be determined as prescribed in the Contract Documents, or in the absence thereof, by written direction of Contractor.

B. If Contractor accepts Subcontractor's written proposal the parties shall execute a Change Order which shall set forth any changes in the Contract Time or Contract Sum and will be signed by both parties. Subcontractor acknowledges and agrees that a signed Change Order represents the entire compensation owed to Subcontractor on account of the proposed change and Subcontractor waives any claims for addition time or compensation as result of the change.

C. In the event the parties cannot agree on the terms of a written Change Order, Contractor may direct Subcontractor, in writing, to proceed with a change to the Subcontract Work, and Subcontractor shall immediately proceed with such change. Subcontractor shall be entitled to receive compensation for all additional work, as substantiated by daily written reports provided to Contractor, approved by Contractor at the rates listed in Appendix B.

D. Subcontractor shall be solely responsible for all costs and expenses associated with or arising out of any Subcontractor-initiated substitution, deviation or change in the Work performed without a written Change Order or written Change Directive by Owner.

**6.2 Owner Directed Change.** Subject to the provisions of Section 6.1, in the event the Owner directs a change in the scope of the Project and Subcontractor determines that the change will result in additional time or cost to Subcontractor's Work, then Subcontractor shall make any requests for extensions of time or for additional compensation in the same manner as prescribed in the Prime Contract for like requests of the Contractor upon Owner and in accordance with this Article VI, and in such time as will enable the Contractor to present such requests to Owner for payment or recognition. Contractor shall not be liable to the Subcontractor on any request not timely or properly presented. Under no circumstances shall Contractor be required to grant any extension of time or request for payment of additional costs unless or until Owner has approved a request by Contractor that includes Subcontractor's request. Subcontractor shall be entitled to an extension of time for performing and completing the Work only upon the same terms and conditions and only to the extent actually allowed to the Contractor by Owner. If the work for which the Subcontractor claims extra compensation to be due is determined by the Owner to be such

that the Contractor is not entitled to additional compensation for such work from the Owner, the Subcontractor waives its right to extra compensation for such work and releases the Contractor for any liability of payment therefor. **APPROVAL BY OWNER OF A CHANGE ORDER FOR AN EXTENSION OF TIME OR ADDITIONAL COST THAT INCLUDES SUBCONTRACTOR'S SPECIFIC REQUEST FOR SAME IS AN EXPRESS CONDITION PRECEDENT TO APPROVAL OF ADDITIONAL TIME AND/OR COSTS TO SUBCONTRACTOR.** The decision by the Owner is final.

### 6.3 Delays and Extensions of Time.

A. Excusable Delay. In the event Subcontractor's performance of the Subcontract Work is delayed or interfered with, for any reason or period of time, by acts or omissions of the Owner or the Contractor ("Excusable Delay"), Subcontractor may request an extension of time for performance of the Work or an adjustment to the Subcontract price for damages or additional compensation as a consequence of such delay. Any determination of a delay and the amount of an extension of time shall be made by Contractor in its sole discretion.

B. Force Majeure Delays. In the event Subcontractor's performance of the Subcontract Work is delayed or interfered with, for any reason or period of time, by acts or omissions of by a Force Majeure Event, Subcontractor may request an extension of time for performance of the Work in accordance with this Section but shall not be entitled to any increase in the Subcontract price or to damages or additional compensation as a consequence of such Force Majeure Event. Subcontractor is not entitled to terminate this Agreement if a Force Majeure Event occurs.

C. Notice. In the event of a Force Majeure Delay or an Excusable Delay, Subcontractor must deliver written notice of such delay within ten (10) Working Days from the beginning of the delay. Any failure on the part of the Subcontractor to provide adequate and timely notice in accordance with the timeframes established in this Section shall be deemed by the Contractor and the Subcontractor as a waiver of any and all claims as to time and compensation.

D. Supporting Documentation. In order to receive a time extension, in addition to the Notice required above, Subcontractor must provide the following information substantiating the delay:

(1) A Time Impact Schedule that compares the Subcontractor's Schedule and demonstrates the duration of the impact from the delay. The Time Impact Schedule must contain logic ties that demonstrate that the delays are attributable to the Excusable Delay or the Force Majeure Delay. The Time Impact Schedule must be submitted to the Contractor within ten (10) days of the notice provided in Section 6.3.C.

(2) Certified documentation of the costs of said delays. The format of the submission shall be in accordance with the procedures outlined in the Contract Documents.

(3) Additional Documentation required for Force Majeure Delay: An affidavit from Subcontractor, together with additional written documentation, establishing that a Force Majeure condition exists and an explanation as to why the Force Majeure Event prevents performance under this Subcontract.

E. Subcontractor shall mitigate delay, and damages due to delay, with respect to the Project in all circumstances, at no cost to the Contractor except as otherwise specified herein, to the extent reasonably possible, including by re-sequencing, reallocating or redeploying its forces to other work, and obtaining additional personnel, equipment and materials, as necessary.

F. Limitation on Time Extensions. Extensions of time shall not be given for delay to the extent that it (a) was due to the delay, breach, default, fault, act, omission, negligence, recklessness, gross negligence or willful misconduct of Subcontractor or anyone over whom Subcontractor exercises control; or (b) could reasonably have been avoided by Subcontractor or anyone over whom Subcontractor exercises control, including by re-sequencing, reallocating or redeploying its forces to other portions of the Work.

## ARTICLE VII

### WARRANTIES AND CORRECTION OF WORK

7.1 **Uncovering Work.** At all times prior to Final Payment to Subcontractor, Subcontractor shall remove or uncover such portions of the finished Work as directed by the Contractor. After examination by the Contractor, Subcontractor shall restore the Work to the standard required by the Contract Documents. If the Work exposed or examined is not in conformance with the requirements of the Contract Documents, then the cost of uncovering, removing and restoring the Work and of recovery of any delay to any Critical Path occasioned thereby shall be at Subcontractor's expense. Any Work done or materials used without adequate notice to and opportunity for prior inspection by the Contractor may be ordered uncovered, removed or restored at Subcontractor's expense, even if the Work proves acceptable and in conformance after uncovering. Except with respect to Work done or materials used as described in the preceding sentence, if Work exposed or examined under this Section is in conformance with the requirements of the Contract Documents, then any delay in any Critical Path from uncovering, removing and restoring Work shall be considered a Contractor caused delay, and Subcontractor shall be entitled to a Change Order for recovery of any delay to the Project Schedule occasioned thereby.

7.2 **Correction of Nonconforming Work.**

A. Rejected Nonconforming Work shall be removed and replaced so as to be in accordance with the Contract Documents and acceptable to the Contractor and/or the Owner, at Subcontractor's expense; and Subcontractor shall promptly take all action necessary to prevent similar deficiencies from occurring in the future. If Subcontractor fails to correct any Nonconforming Work, or fails to provide an acceptable schedule to complete such Nonconforming Work and then begins such work, within five (5) Days of receipt of notice from the Contractor requesting correction, then the Contractor may cause the Nonconforming Work to be remedied or removed and replaced and may deduct the cost of doing so from any moneys due or to become due Subcontractor and/or obtain reimbursement from Subcontractor for such cost (plus interest thereon at the maximum rate allowable under applicable Law).

B. The Contractor may, but shall not be obligated to, accept any Nonconforming Work without requiring it to be fully corrected. In such event, the Contractor and/or the Owner shall be entitled to reimbursement of a portion of the Subcontract Amount equal to the greater of (a) the diminution in value of the Project attributable to the Nonconforming Work, including the present value of future maintenance and repair costs that the Contractor anticipates may be required as a result of the nonconformity, and (b) the difference between the cost of performing the Work in question in accordance with the Contract Documents and the actual cost of performing the Nonconforming Work. The Contractor shall deduct the amount owed from any sum owed by the Contractor to Subcontractor pursuant to this Agreement. Where applicable, the Contractor shall apply TxDOT Standard Specifications criteria in determining the amount of reduction in Subcontract Amount related to the nonconforming Work.

7.3 **Warranties.** All warranty and/or guaranty periods set forth in the Contract Documents are hereby incorporated into this Subcontract as if fully set forth herein. In particular, Subcontractor agrees that it shall, at its own expense, replace or repair any faulty or defective material or workmanship for such period of time as Owner may require of Contractor in the Prime Contract which shall not be less than those set forth in the Technical Provisions attached as Appendix "D" or Section 11 of the Prime Contract as set forth in Appendix "C". In addition, Subcontractor shall be responsible and pay for replacement or repair of adjacent materials or work which may be damaged due to the failure of Subcontractor's material or Work and/or damaged as a result of the replacement or repairs thereof.

A. The procedures, processes, tests, inspections, materials, equipment, machinery, personnel and other actions and items utilized or required under this Agreement with respect to the Work shall apply equally to any repaired, replaced or corrected Work.

B. The Warranties shall apply to all Work repaired, replaced or corrected pursuant to the terms of this Agreement. The Warranties for repaired, replaced or corrected Work shall extend beyond the original warranty period if necessary to provide at least the warranty period specified for such Work in the Technical Provision following acceptance by the Contractor of the repair, replaced or corrected Work.



C. The Warranties are in addition to all rights and remedies available under the Contract Documents or applicable Law or in equity, and shall not limit Subcontractor's liability or responsibility imposed by the Contract Documents or applicable Law or in equity with respect to the Work, including liability for design defects, latent construction defects, strict liability, breach, negligence, willful misconduct or fraud.

D. If Subcontractor fails or refuses to satisfy its obligations with respect to the Warranties, then, in addition to the Contractor's other rights and remedies hereunder, at Law or in equity, Subcontractor shall be liable for the cost of performance of such obligation, with interest thereon at the lesser of (i) 12% per annum or (ii) the maximum rate allowable by applicable Law.

E. Without in any way derogating the Warranties and Subcontractor's other obligations with respect to the Work, Subcontractor shall obtain from all sub-subcontractors and cause to be extended to the Contractor, and Owner for periods at least coterminous with the Warranties given by Subcontractor, appropriate representations, warranties, guarantees and obligations with respect to design, materials, workmanship, equipment, tools, supplies and other aspects of the Work furnished by such sub-subcontractors. All representations, warranties, guarantees and obligations (a) shall be written so as to survive all inspections, tests and approvals hereunder, and (b) shall run directly to and be enforceable by Subcontractor, the Contractor and/or their respective successors and assigns. Subcontractor assigns to the Contractor and Owner all of Subcontractor's rights and interest in all extended warranties for periods exceeding the applicable Warranty period which are received by Subcontractor from any of its sub-subcontractors. To the extent that any Subcontractor warranty or guaranty would be voided by reason of Subcontractor's negligence in incorporating material or equipment into the Work, Subcontractor shall be responsible for correcting such defect.

**7.4 Warranty Beneficiaries.** In addition to benefiting the Contractor, and its successors and assigns, the Subcontractor's warranties provided under this Section shall inure to the benefit of and shall be directly enforceable by Owner, local agencies and Utility Owners, with respect to their facilities. All warranties provided by Subcontractor herein shall inure to the benefit of Owner and shall be assigned to Owner upon Contractor's request.

**7.5 Transfer of Warranties to Owner.** Subcontractor acknowledges that, pursuant to the Contract Documents, ownership of the Project, together with all rights of the Contractor with respect to the enforcement of the Warranties described in this Section and in the Prime Contract, including the Technical Provisions, will be transferred by the Contractor to Owner following Final Acceptance of the Project. Subcontractor hereby consents to such transfer of Warranties and agrees that it shall be obligated to comply with all Warranty provisions under the Contract Documents, upon the terms and for the time periods specified herein, and that Owner shall be entitled to all rights of the Contractor hereunder to enforce such Warranties.

**7.6 Enforcement.** All warranties shall survive all Owner and/or Contractor inspections, tests or approvals. Upon receipt of a notice of failure of any of the Work to satisfy any Subcontractor warranty, representation, guarantee or obligation, Subcontractor shall enforce or perform such representation, warranty, guarantee or obligation, in addition to Subcontractor's other obligations hereunder. Owner and/or Contractor's rights of enforcement shall commence at the time such representation, warranty, guarantee or obligation is furnished and shall continue until expiration of the relevant warranty term. Until such expiration, the cost of any equipment, material, labor (including re-engineering) or shipping shall be for the account of Subcontractor if such costs is covered by a representation, warranty, guarantee or obligation and Subcontractor shall be required to replace or repair defective equipment, material or workmanship furnished by it or its sub-subcontractors.

**7.7 Effect of Owner Activities on Warranties.** Subcontractor acknowledges and agrees that Owner and its agents may perform certain maintenance work during the period in which the warranties are in effect and agrees that the warranties shall apply notwithstanding such activities; provided, however that Subcontractor does not waive any rights, claims or remedies which it may be entitled as a result of such activities.

**7.8 No Limitation on Liability.** The warranties under this Article VII are in addition to all rights and remedies available under this Agreement, the Prime Contract, or applicable Law or in equity, and shall not limit Subcontractor's liability or responsibility imposed by this Agreement, the Prime Contract or the applicable Law or in equity with respect to Work, including liability for design defects, latent construction defects, strict liability, breach negligence, intentional misconduct or fraud.

## ARTICLE VIII

### BONDS, INDEMNIFICATION AND INSURANCE

8.1 Prior to commencing work under this Subcontract, the Subcontractor \_\_\_\_\_ is \_\_\_\_\_ is not required to furnish the Contractor with a payment and a performance bond with a Surety acceptable to the Contractor securing its obligations under this Subcontract.

#### 8.2 Indemnification.

A. **INDEMNITY – GENERAL.** TO THE FULLEST EXTENT PERMITTED BY LAW, AND EXCEPT AS SET OUT IN §8.2.B AND §8.2.C BELOW, SUBCONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND CONTRACTOR, OWNER, AND ALL OF THEIR OFFICERS, DIRECTORS, AGENTS AND/OR EMPLOYEES (COLLECTIVELY, THE "INDEMNITEES" AND SINGULARLY THE "INDEMNITEE") FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES, ARISING OUT OF OR RESULTING FROM (1) THE VIOLATION OF ANY ORDINANCE, REGULATION, STATUTE OR OTHER APPLICABLE LAW BY SUBCONTRACTOR OR ANY SUB-SUBCONTRACTOR (OR ANY OF THEIR EMPLOYEES) OF ANY TIER; AND/OR (2) ANY LIEN OR BOND CLAIM ASSERTED BY ANY SUB-SUBCONTRACTOR OR SUPPLIER OF ANY TIER FOR WORK OR MATERIALS PROVIDED TO THE PROJECT; AND/OR (3) BODILY INJURY OR DEATH OF ANY PERSON, OR PROPERTY DAMAGE, INCLUDING LOSS OF USE OF PROPERTY, ANY OF WHICH ARISE OR ARE ALLEGED TO ARISE OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR SUBCONTRACTOR'S PERFORMANCE OF THE WORK OR OTHER ACTIVITIES OF SUBCONTRACTOR OR ANY SUB-SUBCONTRACTOR, BUT ONLY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT OR OMISSION OF SUBCONTRACTOR OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY SUBCONTRACTOR OR ANYONE FOR WHOSE ACTS SUBCONTRACTOR MAY BE LIABLE.

B. **INDEMNITY – EMPLOYEE INJURY CLAIMS.** IN ADDITION TO THE INDEMNIFICATION PROVIDED IN § 8.2.A AND TO THE FULLEST EXTENT PROVIDED BY LAW, SUBCONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS, CONTRACTOR, OWNER AND INDEMNITEES FROM AND AGAINST ANY CLAIM, DAMAGE, LOSS, OR EXPENSE (INCLUDING BUT NOT LIMITED TO THE OWNER'S AND THE INDEMNITEES' ATTORNEYS' FEES AND COSTS AND EXPENSES OF ANY DISPUTE RESOLUTION PROCEEDING) ARISING OUT OF, RESULTING FROM OR ATTRIBUTABLE TO ANY CLAIM OF BODILY INJURY, SICKNESS, DISEASE OR DEATH OF ANY EMPLOYEE OF SUBCONTRACTOR, ANY SUB-SUBCONTRACTOR, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY EITHER, BROUGHT BY SUCH INJURED EMPLOYEE OR THE EMPLOYEE'S WORKERS COMPENSATION INSURANCE CARRIER (HEREINAFTER REFERRED TO AS AN "EMPLOYEE INJURY CLAIM"), EVEN TO THE EXTENT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS CAUSED OR ALLEGED TO BE CAUSED, IN WHOLE OR IN PART, BY THE SOLE OR CONCURRENT NEGLIGENCE OF THE CONTRACTOR, OWNER AND/OR THE INDEMNITEES. SUBCONTRACTOR SHALL PROCURE LIABILITY INSURANCE COVERING ITS OBLIGATIONS UNDER THIS PARAGRAPH.

C. **INDEMNITY – COPYRIGHT INFRINGEMENT CLAIMS.** IN ADDITION TO THE INDEMNIFICATION PROVIDED IN §8.2.A AND/OR §8.2.B ABOVE, SUBCONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS CONTRACTOR, OWNER AND/OR THE INDEMNITEES FROM AND AGAINST ANY CLAIM, DAMAGE, LOSS, OR EXPENSE (INCLUDING BUT NOT LIMITED TO THE OWNER'S AND/OR THE INDEMNITEES' ATTORNEYS' FEES AND COSTS AND EXPENSES OF ANY DISPUTE RESOLUTION PROCEEDING) ARISING OUT OF, RESULTING FROM OR ATTRIBUTABLE TO ANY CLAIM THAT ANY MEANS, METHOD OR PROCESS, MATERIALS, GOODS OR SERVICES PROVIDED BY SUBCONTRACTOR OR ANY SUB-SUBCONTRACTOR IN THE PERFORMANCE OF WORK ON THE PROJECT INFRINGES ON ANY PATENT,

**COPYRIGHT, TRADEMARK, SERVICE MARK, OR TRADE NAME OR OTHER INTELLECTUAL PROPERTY RIGHT OF A THIRD PARTY, INVADES A THIRD PARTY'S RIGHT OF PUBLICITY OR PRIVACY, OR PLAGIARIZES THE WORK OF A THIRD PARTY, EVEN TO THE EXTENT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS ALLEGED TO BE CAUSED, IN WHOLE OR IN PART, BY THE SOLE OR CONCURRENT NEGLIGENCE OF THE CONTRACTOR, OWNER AND/OR THE INDEMNITEES OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM.**

D. In claims against any person or entity indemnified under this Section 8.2 by an employee of the Subcontractor, a sub-subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 8.2 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Subcontractor or sub-subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

E. It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligations under this Section 8.2 or the Additional Insured requirements under Section 8.3 such legal limitations are made a part of the contractual obligations and shall operate to amend the obligations to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the obligations shall continue in full force and effect. Should any provision in this Agreement be held invalid, unenforceable or contrary to public policy, law, statute or ordinance, then the remainder of the provision, paragraph, Section and/or Agreement shall not be affected thereby and shall remain valid and fully enforceable.

**F. THE OBLIGATIONS CONTAINED IN THIS SECTION 8.2 SHALL SURVIVE THE EXPIRATION, COMPLETION, ABANDONMENT AND/OR TERMINATION OF THE AGREEMENT AND FINAL COMPLETION OF THE WORK AND ANY OTHER SERVICES TO BE PROVIDED PURSUANT TO THIS AGREEMENT.**

### **8.3 Insurance.**

A. Before commencing its Work and as a condition of payment, Subcontractor shall purchase and maintain such insurance as will protect it from the claims arising out of its operations under this Agreement, whether such operations are by Subcontractor or any of its sub-subcontractors or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Subcontractor shall maintain in effect all insurance coverage required under Subparagraph 8.3 with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located and which is reasonably satisfactory to Contractor.

(1) **Worker's Compensation and Employer's Liability.** Subcontractor shall maintain workers compensation and employers liability insurance in the amount of \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease or within the statutory limits required under Texas law, whichever is greater. Subcontractor shall include a voluntary compensation endorsement, an alternative employer endorsement and an endorsement extending coverage to all states operation on an "if any" basis.

(a) The employer's liability insurance shall insure against liability for the death, bodily injury, illness or disease of all employees of Subcontractor working on or about the Site or otherwise engaged in the Work. The Subcontractor shall be the named insured.

(b) If marine vessels are involved:

Employers Liability	\$1,000,000 per accident
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(Endorsement shall include Hull Insurance coverage for Outer Continental Shelf Operations and liability for disease wages, maintenance and cure).

## P & I Protection & Indemnity Insurance

No less than \$10 Million coverage shall include Jones Act and other related marine liability coverage. The P & I shall be amended to include collision liability to the P & I limit.

The Contractor and Owner shall be named as assureds under such hull and P & I with respect to operations performed under this Subcontract.

(2) **Commercial General Liability Insurance.** Subcontractor shall maintain commercial general liability (CGL) insurance with a limit of not less than \$1,000,000 each occurrence with a \$2,000,000 general aggregate and \$2,000,000 products-completed operations aggregate. Coverage shall be provided on ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage). CGL insurance shall cover liability including, but not limited to, liability arising from premises; operations; independent contractors; products-completed operations for ten (10) years following completion of the Work under this Subcontract; property damage, including property damage liability arising out of the "XCU" hazards, explosion, underground and collapse; fellow employee coverage for supervisory personnel; personal injury; bodily injury; contractual liability; incidental medical malpractice; no exclusion for Work performed within 50 feet of a railroad; broad named insured endorsement; and except with regard to indemnifying a professional advisor, consultant or sub-consultant, supplier or manufacturer engaged by Subcontractor, no application of any limitation or exclusion for bodily injury or property damage arising out of professional services, including engineering, architecture and surveying, in any manner to (i) coverage respecting Subcontractor's supervision, coordination, management, scheduling or other similar services or (ii) products and completed operation coverage. The CGL policy shall provide for full separation of insureds and shall not include any insured v. insured exclusions or limitations. The CGL policy shall be endorsed so that the annual general aggregate applies separately to the Project. To the fullest extent of coverage allowed under Chapter 151 of the Texas Insurance Code, Contractor and the Owner, their officers, agents and employees, shall be included as additional insureds under the CGL policy, using ISO Additional Insured Endorsements CG 20 10 10 01 (ongoing operations) and CG 20 37 10 01 (completed operations), or equivalent. For Products-completed operations coverage shall be maintained in effect for two years after completion of Subcontractor's Work. This insurance shall apply as primary and non-contributing insurance with respect to any other insurance or self-insurance programs maintained by Contractor. There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.

(3) **Business Automobile Liability Insurance.** Subcontractor shall maintain business auto liability insurance with a limit of not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos). Business auto coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs maintained by Contractor. To the fullest extent of coverage allowed under Chapter 151 of the Texas Insurance Code, Contractor, Owner, the Indemnitees and their officers, agents and employees, shall be included as additional insureds on this policy.

(4) **Pollution Liability Insurance.** Subcontractor shall provide Pollution Liability coverage for the Project for claims during the Project period and completed operations period with a minimum limit of \$1,000,000. Subcontractor's Pollution Liability shall cover a pollution event or release resulting from the Subcontractor or any Sub-subcontractor's activities under and during the term of this Agreement including the activities of Subcontractor, Sub-subcontractors, suppliers and vendors. Subcontractor's Pollution Liability coverage shall include mold, mold remediation and diminution in value resulting from mold as it pertains to work performed by the Subcontractor or its Sub-subcontractors. To the fullest extent of coverage allowed under Chapter 151 of the

Texas Insurance Code, Contractor and the Owner, their officers, agents and employees, shall be included as additional insureds on this policy.

(5) **Excess/Umbrella Liability Insurance.** Subcontractor shall maintain Excess/Umbrella Liability insurance covering liabilities over and above the limits specified above, with a limit not less than \$2,000,000.00 per occurrence. Such insurance shall be excess of the commercial general liability insurance, business auto liability insurance and employers liability insurance. Continuing commercial umbrella coverage, if any, shall include liability coverage for bodily injury and property damage arising out of or related to insured's completed work. This policy shall contain an endorsement that the policy is primary to any other insurance available to Contractor with respect to claims arising under this Agreement and shall not contain an exclusion relating to work from heights. Contractor and the Owner, their officers, agents and employees, shall be included as additional insureds on this policy.

(6) If not covered under the Builder's Risk policy of insurance or any other property or equipment insurance required by the Contract Documents, the Subcontractor shall procure and maintain at his own expense property or equipment insurance for portions of the Subcontractor's Work stored off the site or in transit, when such portions of the Subcontractor's Work are to be included in an application for payment.

**B. Additional Insured Status.** The Commercial General Liability, Business Automobile Liability, Pollution Liability, and the Excess/Umbrella Liability insurance policies shall be endorsed to include the Contractor and the Owner and their members, directors, officers, employees agents and Project consultants, as additional insureds. Each policy shall be provided on an "occurrence" basis and not a "claims made" basis. All primary and umbrella/excess insurance provided under this Section 8.3 which includes the Contractor as an additional insured shall provide the primary and first level of insurance coverage for the Contractor. If the Contractor has any other type of valid and collectible insurance whether primary, excess or otherwise, the insurance afforded by such policy shall be in excess of all insurance, primary and umbrella/excess, required under this Article. All policies shall apply separately to each insured and additional insured against whom a claim is made or suit is brought, except with respect to the aggregate limits of the insurer's liability. The Subcontractor shall advise its insurance carrier and carrier shall verify to the Contractor that the provisions of this Section are met. Any failure on the part of a named insured to comply with reporting provisions or other conditions of the policies, any breach of warranty, any action or inaction of a named insured or others, any foreclosure relating to the Project or any change in ownership of all or any portion of the Project shall not affect coverage provided to the other insureds or additional insureds.

**C. Waivers of Subrogation.** The Contractor and Subcontractor waive all rights against each other, against each of their agents and employees and against sub-subcontractors and their respective members, directors, officers, employees, agents and consultants and the Indemnitees for any claims, but only to the extent covered by insurance obtained pursuant to this Section, except such rights as they may have to the proceeds of such insurance; and provided further that Subcontractor shall not be entitled to additional compensation or time extension under this Agreement to the extent compensated by any insurance specified herein. Subcontractor shall cause all Sub-subcontractors to provide similar waivers in writing each in favor of all other parties enumerated above. Each policy, including workers' compensation, shall include a waiver of any right of subrogation against the Indemnitees and additional insureds (and their respective members, directors, officers, employees, agents and consultants).

**D. Evidence/Proof of Insurance.** Before commencing work hereunder, the Subcontractor shall furnish to the Contractor Certificates of Insurance evidencing insurance limits and coverages specified in Section 8.3. The policies shall be endorsed or shall otherwise contain a provision that requires Contractor to be notified in writing thirty (30) calendar days prior to cancellation or a material change. The policy shall also be endorsed to provide the additional insured endorsement specified in Section 8.3.B. The Contractor shall have no duty to pay or perform under this Agreement until such certificate(s) shall have been delivered to the Contractor. Upon the Contractor's request, copies of each of the insurance policies (including all endorsements and amendments) required under this Section shall be provided to the Contractor. Not less than 30 Days prior to the expiration date of any policy of insurance required by this Section, Subcontractor shall deliver to the Contractor a binder or certificate of insurance with respect to

each renewal policy, bearing a notation evidencing payment of the premium therefor, or accompanied by other proof of payment satisfactory to the Contractor. If requested by the Contractor from time to time, certified duplicate copies of the renewal policy shall also be provided.

E. Subcontractor shall be responsible for payment of premiums for all insurance required under this Section. Subcontractor shall be solely responsible for all other deductibles and self-insured retentions hereunder. Subcontractor further agrees that for each claim, suit or action made against insurance provided hereunder, with respect to all matters for which Subcontractor is responsible hereunder, Subcontractor shall be solely responsible for amounts in excess of the coverage provided.

F. **Sub-subcontractor Insurance Requirements.** Subcontractor shall cause each sub-subcontractor to provide insurance that complies with requirements for Subcontractor-provided insurance set forth in this Section in circumstances where the sub-subcontractor is not covered by Subcontractor-provided insurance and provided that Subcontractor shall have sole responsibility for determining the limits of coverage required to be obtained by sub-subcontractors, which determination shall be made in accordance with reasonable and prudent business practices. Subcontractor shall cause each such sub-subcontractor to include Owner, Contractor and Subcontractor as additional insureds on a primary and non-contributory basis, under such sub-subcontractor's commercial general liability, umbrella excess liability, and business automobile liability insurance policies. Subcontractor shall require each such sub-subcontractor to require that its insurer agree to waive any subrogation rights the insurers may have against the Owner, Contractor and Subcontractor. The Contractor shall have the right to contact the sub-subcontractors directly in order to verify the above coverage. To the extent applicable, each Subcontractor policy shall not contain an exclusion relating to work from heights.

G. **Prosecution of Claims.** Unless otherwise directed by the Contractor in writing, Subcontractor shall report and process all potential claims by the Contractor or Subcontractor against the insurance required to be provided in this Section. Subcontractor agrees to report timely to the insurer(s) any and all matters which may give rise to an insurance claim and to promptly and diligently pursue any and all insurance claims on behalf of the Contractor, whether for defense or indemnity or both. The Contractor agrees to notify Subcontractor of the Contractor's incidents, potential claims, and matters which may give rise to an insurance claim by the Contractor, to tender its defense or the claim to Subcontractor, and to reasonably cooperate with Subcontractor for Subcontractor to fulfill its duties hereunder.

## **ARTICLE IX**

### **PAYMENT**

#### **9.1 Progress Payments.**

A. The Subcontractor will coordinate monthly with the Owner's representative on the Project with regards to quantities eligible for payment in the subject month.

B. Each month, within ten (10) Calendar days after the Contractor receives its monthly progress estimate from the Owner covering the preceding month's work, the Contractor shall submit to the Subcontractor a statement of the Work performed by the Subcontractor during that preceding month based upon the Owner's monthly progress estimate. Any amounts shown due to the Subcontractor by said monthly statement shall be paid, less retainage, to the Subcontractor within ten (10) Calendar days after the receipt by the Contractor of its payment for that month from Owner.

C. The Contractor, at its sole option, will retain [REDACTED] percent of each estimate due the Subcontractor until the final payment as stated in Section 9.2 below. Interest will not be paid to the Subcontractor on retainage held by the Contractor. In lieu of retainage, the Subcontractor has the option to provide a performance bond, payment bond, and retainage bond at the Subcontractor's expense.

D. As a condition precedent to Subcontractor's right to receive payment hereunder, upon the request of Contractor, Subcontractor shall provide a Conditional Waiver and Release on Progress Payment covering the amount due under the pending application for payment and an Unconditional Waiver and

Release on Progress Payment covering Work paid by previously funded applications for payment. Said forms shall be in conformance with Texas law.

## **9.2 Final Payment/Final Acceptance.**

A. Final payment, including retainage, will be paid to the Subcontractor within ten (10) calendar days after Subcontractor's Work is satisfactorily completed and accepted by Owner and the administrative requirements of the Contract Documents have been satisfied.

B. Subcontractor's Work shall not be finally accepted until:

(1) Subcontractor has fulfilled the Subcontract requirements and the requirements under the Contract Documents for the Subcontract Work, including the submission of all submittals required by the Subcontract and Contract Documents; and

(2) The Subcontract Work performed by the Subcontractor has been inspected and approved in accordance with the Contract Documents and the final quantities of the Subcontractor's Work have been determined and agreed upon.

(3) Subcontractor has submitted a Conditional Waiver and Release Upon Final Payment in a form in compliance with Texas law.

C. The foregoing payment requirements apply to all tiers of Subcontractors and shall be incorporated by Subcontractor into all sub-subcontracts.

**9.3 Subcontractor's Payments.** Compliance with the prompt payment statutes and associated provisions in the Contract Documents is a responsibility of the Subcontractor.

A. If the Contractor is made aware that the Subcontractor is in arrears regarding payments for materials, equipment, supplies, labor and/or other expenses used by the Subcontractor or any of its Subcontractors in connection with the work, or that Subcontractor has not timely made payment to sub-subcontractors as required by this Subcontract or any prompt payment statute the Contractor may, at its sole option, satisfy the matter in accordance with Section 9.3.E(1) or 9.3.E(2) below.

B. The Contractor, at its sole option, may demand the Subcontractor or its sub-subcontractors furnish evidence that all bills for material, equipment, supplies, labor and/or other expenses incurred by the Subcontractor or its sub-subcontractors in connection with the Work have been paid or are being paid.

C. In addition, the Contractor shall have the right to contact any person or persons whom the Contractor believes have supplied materials, equipment, supplies, labor and the like to the Subcontractor or any of its sub-subcontractors in connection with the Work in order to verify what amounts, if any, may then be due by the Subcontractor or any of its sub-subcontractors to said person or persons and whether said amount of amounts have been paid or are past due and owing.

D. Pending the outcome of actions taken under Sections 9.3.B or 9.3.C, the Contractor is authorized to withhold amounts necessary in to satisfy debts in dispute from the amount due and owing to the Subcontractor until such time as satisfactory evidence has been furnished and/or the investigation has been completed.

E. In the event that satisfactory evidence is not furnished and/or the investigation indicates Subcontractor or its sub-subcontractors have not met their payment obligations for the Work, then the Contractor, at its sole option and in its sole discretion, may upon seven (7) Calendar Days written notice:

(1) Withhold any and all sums then due to the Subcontractor until satisfactory evidence of the payment of such person or persons is furnished to the Contractor by the Subcontractor, or

(2) Issue checks jointly payable to the Subcontractor and to any such person or persons owed by the Subcontractor or any of its sub-subcontractors for materials, equipment, supplies, labor and the like owed in connection with the work hereunder.

(3) Terminate this Agreement for cause.

(4) In the event Contractor believes it necessary to issue checks jointly payable to the Subcontractor and any other person pursuant to 9.3(E)(2) above and Contractor is made aware that Subcontractor is refusing to furnish said joint check to the ultimate payee, Contractor may, upon three (3) days written notice to Subcontractor, stop payment on the joint check and re-issue a check directly to the payee. Any such sums paid shall be deducted from the next pay application submitted by Subcontractor.

F. Notwithstanding the foregoing, Contractor shall, at all times, comply with any and all DBE regulations concerning payment to sub-subcontractors and issuance of joint checks and such regulations shall take precedence over these provisions to the extent applicable.

G. Contractor may issue joint checks payable the Subcontractor and to any such person or persons owed by the Subcontractor in connection with the Work in an on-going or interim basis at the request of the Subcontractor. The Subcontractor shall make the request in writing. The Contractor's joint check agreement or an acceptable alternative provided by the other affected parties that is compliant with prompt pay statutes, prompt pay provisions to the Prime Contract, and with the DBE regulations must be executed.

9.4 Contractor and Subcontractor have addressed the contingency that Owner may not pay Contractor for the Subcontract Work and Subcontractor has agreed and does hereby agree to accept the risk of nonpayment by Owner, for whatever reason, **IT BEING SPECIFICALLY UNDERSTOOD THAT PAYMENT BY OWNER TO CONTRACTOR FOR THE SUBCONTRACT WORK, WHETHER FOR A MONTHLY PROGRESS PAYMENT OR FINAL PAYMENT, IS AN EXPRESS CONDITION PRECEDENT TO CONTRACTOR'S RESPONSIBILITY TO PAY SUBCONTRACTOR.** The Subcontract Amount includes an amount for assuming said risk of non-payment.

9.5 No payment made under this Subcontract shall be construed to be an acceptance by the Contractor or the Owner of any portion of the Subcontractor's Work.

9.6 The Subcontractor agrees to render performance under this Subcontract free and clear from all claims, encumbrances and liens for labor, services, or materials, and to protect and save harmless the Contractor from all claims, encumbrances and liens growing out of the performance of this work and furnishing of materials, labor, and equipment within five (5) days of receipt of notice by Contractor to Subcontractor of the assertion of a lien or payment bond claim. In the event suit is filed by any person, firm or corporation asserting a claim or lien for labor, services, or materials used or purchased for use in the Work covered by this Subcontract, the Subcontractor will at its own cost and expense, including counsel fees, defend such suit and ay any judgment rendered herein.

9.7 Failure by the Contractor to pay any amount in dispute shall not postpone, alleviate, diminish, release, alter or modify in any respect Subcontractor's obligation to perform under the Contract Documents, including Subcontractor's obligation to complete all Work within the time periods provided in the Project Schedule and in strict accordance with the Contract Documents. Subcontractor shall not cease or otherwise reduce its performance under this Agreement on account of any such dispute. Any dispute regarding such payment shall be resolved pursuant to Article XI of this Agreement.

## ARTICLE X

### SUBLETTING AND ASSIGNMENT

10.1 The Subcontractor shall not sublet, assign, pledge, transfer or otherwise alienate or encumber this Subcontract or any part thereof without the Contractor's written consent.

10.2 It is specifically understood that the prohibitions contained in this Article shall extend to, but not be limited to, any pledge or assignment of any monies which may be due or may become due to the Subcontractor in



accordance with the provisions of this Subcontract. Unless the Subcontractor shall have obtained the Contractor's prior written consent, any subletting, assignment, pledge, transfer or other alienation or encumbrance of this Subcontract or any part hereof or of any monies which may be due or may become due to the Subcontractor shall be null and void and of no effect whatsoever against the Contractor, its surety or the Owner.

10.3 The Subcontractor shall be required to submit to the Contractor copies of any and all agreements or other documents which will be executed in connection with any sublease, assignment, pledge, transfer or other alienation or encumbrance of this Subcontract or any part hereof or of any monies which may be due or which will become due to the Subcontractor under the provisions of this Subcontract prior to requesting the Contractor's written consent in accordance with Section 10.1 above. If the Contractor gives its written consent, the Subcontractor shall furnish the Contractor fully executed and completed copies of any agreements or other documents evidencing any such sublease, assignment, pledge, transfer or other alienation or encumbrance of this Subcontract or any part hereof or of any monies which may be due or which may become due to the Subcontractor under the provisions of this Subcontract within seven (7) calendar days of the date of execution of such agreements or other documents.

10.4 Pursuant to Section 7.3.6(c) of the Prime Contract, all rights of Contractor under this Subcontract as freely assignable to Owner (and Owner's permitted assigns) contingent upon written request by Owner or its successors or assigns following default of Contractor or termination or expiration of the Prime Contract. Under this assignment the Owner or its successor, assign or designee shall assume the benefit of Contractor's rights with liability only for those remaining obligations of the Contractor accruing after the date of the assumption. The assignment shall include the benefit all Subcontractor warranties, indemnities, guarantees, and personal responsibility. Owner may accept said assignment at any time during the course of construction prior to Final Completion. The acceptance of such an assignment by the Owner or its successor, assign or designee shall not operate to make the assignee responsible for any breach of the Subcontract by the Contractor or for any amounts due and owing under this Agreement for Work or services rendered prior to the assumption. Subcontractor covenants and attorns to Owner upon receipt of written notice from Owner that it has exercised its right of assignment under the Prime Contract, without necessity for consent or approval from Contractor or to determine whether Owner validly exercised its rights, and Contractor's covenant to waive and release any claim or cause of action against Subcontractor arising out of or relating to its recognition and attornment in reliance on any such written notice.

10.5 **[Use only for Major Subcontracts, as defined in the DBA].** Subcontractor covenants that it will promptly execute and deliver to Owner a new contract between Subcontractor and Owner on the same terms and conditions as this Agreement in the event (i) this Agreement is rejected by the Contractor in bankruptcy or otherwise wrongfully terminated by Contractor and (ii) Owner delivers a written request for the new contract following the termination or expiration of the Prime Contract. Subcontractor's covenants contained in this Section shall survive termination of this Agreement.

## ARTICLE XI

### DISPUTES

11.1 In case of any disputes between the Subcontractor and the Contractor, the Subcontractor agrees to be bound by the claims and disputes procedure set forth in Section 19 of the Prime Contract between Owner and the Contractor, and by any and all decisions or determinations made as authorized in the Prime Contract.

A. Subcontractor agrees to (i) submit its dispute to Contractor in a proper form in sufficient time to allow processing by Contractor in accordance with Section 19 of the Prime Contract; (ii) be bound by the terms of Section 19 of the Prime Contract to the extent applicable to the dispute; (iii) that completion of all steps required under Section 19 of the Prime Contract shall be a condition precedent to pursuit by Subcontractor of any other remedy permitted by Law, including institution of a Lawsuit against Contractor; (iv) that any dispute brought against Contractor's surety, that is also actionable against Owner through the Contractor, shall be stayed until completion of all steps required under Section 19.4(c) of the Prime Contract; and (v) that the existence of a dispute resolution process for disputes involving Subcontractor shall not be deemed to create any claim, right or cause of action by Subcontractor against Owner. Subcontractor shall at all times have rights and remedies only against the Contractor.

B. Unless otherwise agreed in writing, Subcontractor shall continue to perform the Work during any dispute mitigation or resolution proceeding. If Subcontractor continues to perform, Contractor

shall continue to make payments in accordance with this Agreement for amounts not in dispute. Subcontractor shall include in all contracts with sub-subcontractors a provision similar to this 11.1, particularly requiring all lower tier subcontractors to fully participate in the dispute resolution procedure set forth in the Prime Contract if requested by either Contractor or Owner.

11.2 In the event that a claim or dispute arising between the Contractor and the Subcontractor falls outside the scope of the Prime Contract dispute resolution procedure, such claims, disputes and other matters in question arising out of, or relating to, this Subcontract or the breach thereof, shall be decided as follows:

A. **Direct Discussions.** The parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions. If the parties' representatives are not able to resolve such matter within five (5) Working Days of the date of first discussion, the parties' representatives shall immediately inform senior executives of the parties in writing that resolution was not affected. Upon receipt of such notice, the senior executives of the parties shall meet within five (5) Working Days to endeavor to reach resolution. If the dispute remains unresolved after fifteen (15) Working Days from the date of first discussion, the parties shall submit such matter to the dispute resolution procedures selected herein.

B. **Litigation of Disputes.** If the matter remains unresolved after submission of the matter to direct discussions, the parties shall submit the matter to litigation in either the state or federal court having competent jurisdiction. Venue of any such litigation matter shall be in Harris County, Texas except to the extent any applicable Law requires it be brought in the county or district in which the Project is located.

11.3 **Lien Rights.** Nothing in this Article XI shall limit any rights or remedies not expressly waived by Subcontractor that Subcontractor may have under lien laws. Subcontractor acknowledges that under no circumstances shall any liens, claims and/or charges levied by it or any of its consultants attach to any interest of the Owner or the Final Right of Way.

11.4 Should the Contractor employ an attorney to enforce any of the provisions hereof, or to protect its interest in any manner arising under this Subcontract, or to collect damages for the breach of this Subcontract, the Subcontractor agrees to pay the Contractor all reasonable costs, charges, expenses and attorney's fees expended or incurred in connection therewith.

11.5 Pursuant to Section 7.3.6(j) of the Prime Contract, in the event of a dispute resolution proceeding between Contractor and Owner, if participation is requested by Owner or Contractor, Subcontractor shall give evidence in the dispute resolution proceeding.

## ARTICLE XII

### DEFAULT AND TERMINATION

12.1 **Events of Default.** The Subcontractor shall be in default under the terms of this Subcontract upon the happening of any of the following events or conditions:

- A. Immediately upon notification of ineligibility as a Disadvantaged Business Enterprise;
- B. If Subcontractor is certified as a DBE and fails to perform a commercially useful function, if applicable;
- C. Failure to begin Work promptly as provided for under this Subcontract;
- D. Failure to perform the Work with sufficient workmen, equipment or materials to assure prompt completion of said Work within the time limits set forth in this Subcontract or pursuant to the Project Schedule;

E. Performance of the Work unsuitably, or neglect, or refusal to remove materials, or perform anew any Work rejected as unacceptable;

F. Discontinuance of prosecution or abandonment of the Work;

G. Failure to complete the Project within the time specified herein;

H. Failure to resume Work which has been discontinued within a reasonable time after notice has been given to do so (which such time shall in no event exceed five (5) Working Days after written notice to resume work has been given to the Subcontractor by the Contractor);

I. If the Subcontractor is adjudged bankrupt, becomes insolvent, makes any assignments for the benefit of creditors, or if a receiver or trustee is appointed for any of the assets of the Subcontractor, whether insolvent or not, unless such receiver or trustee be removed within ten (10) Calendar Days; or the commencement of any proceedings under any bankruptcy or insolvency law by or against the Subcontractor;

J. If any final, non-appealable judgment requiring the payment of money be rendered against the Subcontractor and remains unsatisfied for a period of ten (10) Calendar Days;

K. Failure of the Subcontractor to obtain the prior written permission of Contractor before entering into any sublease, assignment, pledge, transfer or other alienation of encumbrance of this Subcontract or any part hereof or of any monies which may be due or will become due to the Subcontractor under the provisions of this Subcontract;

L. Failure of the Subcontractor to furnish to the Contractor executed and completed copies of any agreements or other documents evidencing any sublease, assignment, pledge, transfer or any other alienation or encumbrance of this Subcontract or of any part hereof or of any monies which may be due or may become due to the Subcontractor under the provisions of this Subcontract;

M. Making any false representation, report or claim in connection with the business relationship between the Contractor and the Subcontractor;

N. Failure in the performance of any obligation, agreement or undertaking contained or referred to in this Subcontract;

O. Failure to perform or the breach of any of the terms, provisions and conditions of the Contract Documents in the manner and within the time therein specified;

P. Disregards regulations or the terms of this Subcontract and/or orders of the Contractor or the Owner;

Q. If the Subcontractor's payments for materials, equipment, supplies, labor and any other expenses relating to this Project or this Subcontract is determined by the Contractor, in its sole judgment, to be inadequate, too slow, or not in accordance with the terms of this Subcontract or the Contract;

R. Failure of the Subcontractor to pay for any materials, equipment, supplies, labor and the like related to the Subcontractor's undertakings under this Subcontract in a prompt and a commercially reasonable manner;

S. The filing of any claim or lien against the Owner, the Contractor or the Contractor's Surety by any person or persons who have supplied materials, equipment, supplies, labor and the like to the Subcontractor or to the Sub-subcontractors unless the Subcontractor or his sub-subcontractors bond such claim or lien with good and solvent surety within ten (10) Calendar Days of the filing of such claims or liens;

T. Failure of the Subcontractor to supply the insurance and certificates covering both the Subcontractor and Contractor required in Article 8;

U. Failure to comply with the safety requirements set forth in this Agreement and the Contract Documents;

V. Failure to repair rejected or nonconforming Work as set forth in this Agreement; or

W. A material breach of any of the provisions of this Agreement.

**12.2 Contractor's Right to Cure.** If the Subcontractor fails or neglects to carry out the Work in accordance with this Subcontract, or fails to timely perform any term, condition, or requirement of this Subcontract, the Contractor may give the Subcontractor written notice to cure such failure or neglect. If the Subcontractor fails to commence and diligently continue to cure the same within three (3) Calendar Days after receipt of written notice, the Contractor may cure the Subcontractor's deficiencies by whatever means or methods the Contractor may deem necessary and Subcontractor shall pay, upon presentation of an invoice by Contractor, the costs of said cure within ten (10) Calendar Days. The Contractor may exercise this right to cure without further notice to the Subcontractor, and without prejudice to or waiver of any other right or remedy.

**12.3 Termination for Cause.**

A. Upon the occurrence of any one of such events of default set forth in this Agreement, and at any time thereafter, the Contractor may, at its option, without prejudice to any other rights or remedies, after five (5) Working Days' notice to the Subcontractor, terminate this Subcontract and withhold all further progress payments or other monies due to the Subcontractor and the Contractor may immediately, on its own or by use of independent contractor(s), immediately commence completion of this Subcontract and take possession of all materials, equipment, supplies, machinery and tools owned or leased by the Subcontractor located on the Project site, and use such materials, supplies, equipment, and tools, or any part thereof, together with any additional equipment, tools and supplies as the Contractor deems necessary, to complete the performance of the work under this Subcontract. The Contractor may contract with others for the completion of such work and the Contractor shall be entitled to receive all payments and funds due or thereafter earned as a result of the completion of said work from the Owner.

B. In connection and upon such event of default, the Subcontractor assigns and transfers to the Contractor all of its right, title and interest in and to all such materials and supplies and hereby grants the Contractor the right to possess and use any of such of the Subcontractor's machinery, equipment, and tools located on the project site (whether owned or leased), which such right of possession and use shall not terminate until the work called for in this Subcontract has been completed and accepted by the Owner. No rental payment or other payment shall be due by the Contractor to the Subcontractor or any other person, including, but not limited to, lessors or mortgage holders for the possession and use of such material, supplies, equipment, machinery or tools, it being the intention of the parties that this right of possession and use shall serve to help indemnify the Contractor from any potential loss due to the Subcontractor's default.

(1) By exercising its right of possession and use, the Contractor shall not assume nor become liable for any indebtedness to the Subcontractor's creditors or lessors having claims secured by any of the supplies, materials, machinery, equipment or tools possessed or used by the Contractor. Upon completion of the Subcontract, possession of all remaining material and supplies and the machinery, equipment and tools shall be given over to the Subcontractor. Furthermore, the Contractor shall not be liable for any physical damage or wear and tear or depreciation of any machinery, equipment, or tools used by it or its Subcontractors pursuant to this provision to complete the work called for by this Subcontract.

C. In the event the reasonable cost of completing the Work under this Subcontract incurred by the Contractor exceeds the monies which remain to be paid to the Subcontractor under this Subcontract, the Subcontractor shall promptly pay the amount of excess cost, together with any other advances or debts, to the Contractor, at Houston, Texas, upon demand, and the Contractor may set off such sums from any other contracts or obligations due the Subcontractor until paid; however, if the monies which would have been due to the Subcontractor hereunder for the completion of the work under this Subcontract exceed the total cost for completing such work as incurred by the Contractor and any other advances to, and payments of debts of, the Subcontractor, then the Contractor shall promptly pay the amount of such excess from such monies to the Subcontractor.

D. The Subcontractor further agrees that the judgments and decisions of the Contractor in exercising the rights provided herein shall be final and conclusive and the Subcontractor agrees to cooperate fully with the Contractor in order to facilitate the completion of said work under this Subcontract. In no event shall any monies be payable to the Subcontractor until the Project has been completed, accepted by the Owner, and the period for the filing of claims against the Project has expired.

#### **12.4 Termination for Convenience by Contractor (NON-DBE Subcontractors ONLY)**

A. Contractor may terminate this Subcontract, in whole or in part, at any time for convenience or for any reason whatsoever, with or without cause and without the Subcontractor being in default hereunder, by giving the Subcontractor written notice of termination, such termination to be effective immediately unless otherwise stated in such notice.

B. Upon receipt of such notice of termination, the Subcontractor shall immediately cease to perform Work or incur expenses pursuant to this Subcontract unless otherwise expressly directed in the Contractor's termination notice. Subcontractor shall be entitled to payment for the Work completed prior to the termination. Subcontractor shall not be entitled to profit or overhead on Work not completed. Contractor may deduct any amounts disputed in good faith and any deductions or credits to which the Contractor is entitled pursuant to this Subcontract. The Subcontractor expressly agrees to complete performance of any of the portions of the Work not terminated.

**12.5 Termination for Convenience by Owner.** In the event of a termination for convenience by Owner, this Agreement shall be terminated. Subcontractor shall not be entitled to any anticipatory or unearned profit on Work terminated or partly terminated, or to any payment which constitutes consequential damages on account of the termination or partial termination.

**12.6 Termination by Subcontractor.** Subcontractor may terminate this Agreement **only** upon a material breach of the Agreement and then only after written notice is provided to Contractor of the alleged breach and Contractor fails to cure said breach within thirty (30) Working Days after receipt of said notice.

**12.7** If the Contractor pursues any of the foregoing remedies, all monies expended including the Contractor's attorneys' fees, court costs and expert witness fees and all losses, damages and extra expenses (including, but not limited to, any liquidated, consequential or other damages which may become due to Owner or others as required by the Prime Contract or other legal actions) shall be deducted from the Subcontract Sum, and if such amounts exceed the amount otherwise due to the Subcontractor under this Subcontract the Subcontractor shall reimburse and be liable to the Contractor for the full amount of such excess.

### **ARTICLE XIII**

#### **MISCELLANEOUS**

**13.1** Waiver of any breach of this Subcontract shall not constitute a waiver of any subsequent breach of the same or any other provision hereof.

**13.2** This Agreement is executed in Harris County, Texas and will be governed by and construed in accordance with the laws of the State of Texas without giving effect to any principles of conflicts of laws, choice of laws or rules thereof.

**13.3** This Subcontract and the Contract Documents shall constitute the entire agreement between the Contractor and the Subcontractor and shall not be amended, modified, or changed except in writing, duly executed by the Contractor and the Subcontractor. This Subcontract supersedes any and all other representations or agreements, written or oral, between the Contractor and the Subcontractor.

**13.4** The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision. The failure of either party hereto to insist, in any one or more instances, upon the performance of any of the terms, promises or conditions of this Agreement, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, promise or condition as respects further performance.

### 13.5 Audits.

A. Subcontractor shall, throughout the term of this Agreement maintain usual and customary books and records for the type and scope of operations of business in which it is engaged and will permit audit thereof by Contractor or Owner upon reasonable notice. Subcontractor shall maintain at its Project administration office a complete set of all books and records prepared or employed by Subcontractor in its management, scheduling, cost accounting and other activities related to the Subcontract Work and the Project. Subcontractor shall grant to Contractor and Owner such audit rights and shall allow Contractor and Owner such access to and the right to copy such books and records as Contractor and Owner may request in connection with the issuance of Change Orders, the resolution of Disputes, and such other matters as Contractor and Owner may reasonably deem necessary for purposes of verifying compliance with this Agreement and applicable Law.

(1) At a minimum, the auditors shall have the following documents available to them: daily time sheets and supervisors daily reports; union agreements; insurance, welfare and benefits records; payroll registers; earnings records; payroll tax forms; material invoices and requisitions; material cost distribution worksheet; equipment records (list of company equipment, rates, etc.); sub-subcontractors' (including suppliers) invoices; sub-subcontractors' and agents payment certificates; cancelled checks (payroll and suppliers); job cost report; job payroll ledger; general ledger; cash disbursement ledger; project schedules; all documents that relate to each and every claim or dispute together with all documents that support the amount of damages as to each claim or dispute; worksheets used to prepare the claim or dispute establishing the cost components for items of the claim or dispute, including labor, benefits, insurance, materials, equipment, subcontractors, all documents that establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals.

(2) Subcontractor shall warrant to TxDot and the Contractor the completeness and accuracy of all information provided with respect to an audit under this Agreement.

B. The provisions of Section 21.4 of the Prime Contract shall apply to all audits.

C. Nothing in the Prime Contract or this Agreement shall in any way limit the constitutional and statutory powers, duties and rights of elected State officials, including the independent rights of the State auditor, in carrying out his or her legal authority. Subcontractor understands and acknowledges that (a) the State auditor may conduct an audit of any person receiving funds from the State directly under the Prime Contract or indirectly through a Subcontract; (b) acceptance of fund paid under the Prime Contract, including funds paid indirectly through a Subcontract acts as acceptance of the authority of the State auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds; and (c) a person that is the subject of an audit or investigation must provide the State auditor with access to any information the State auditor considers relevant to the investigation or the audit.

13.6 Subcontract shall include in all sub-subcontracts, including purchase orders, the Job Training and Small Business Opportunity Plan, which is incorporated into this Agreement through Appendix A. The provisions of the Job Training and Small Business Opportunity Plan, set forth in Appendix A, is incorporated as if set forth fully herein and shall be fully incorporated into all sub-subcontracts and purchase orders.

13.7 Subcontractor shall not, other than as provided by Law, directly or indirectly, give, offer or promise anything of value to any present or former employee or consultant of the Owner or its agency partners that might reasonably tend to influence them in the discharge of their official duties or is offered with the intent to influence official conduct, for or because of any official act performed or to be performed by such employee. The phrase "anything of value", as used herein means any item of value, including invitations or tickets to sporting events, social gatherings, outings or parties, or the provision of meals or lodging, or the use of vehicles of any kind, and any other item or thing of monetary value.

13.8 The captions at the beginning of each Article of this Subcontract are for convenience only and are to be given no weight in construing the provisions of this Subcontract.

13.9 All rights and remedies of the Contractor provided in this Subcontract shall be cumulative, and none shall exclude any other rights or remedies allowed by law or in equity.

13.10 This Subcontract constitutes the entire agreement of the parties. It is specifically agreed and understood that the parties to this Subcontract or anyone acting on their behalf have made no promise or representation which is not expressly stated in this Subcontract.

#### **ARTICLE XIV**

##### **CONTRACTOR RESPONSIBILITIES**

14.1 The Contractor shall be bound to the Subcontractor by the terms of this Subcontract and the Contract Documents, and shall have the benefit of all rights, remedies and redress against the Subcontractor which Owner, by the Contract Documents, has against the Contractor insofar as applicable to this Subcontract, provided that where any provision of the Contract Documents between Owner and the Contractor is inconsistent with any provision of this Subcontract, this Subcontract shall govern.

14.2 The Contractor shall promptly notify the Subcontractor of all modifications to the Contract between Owner and the Contractor which affect this Subcontract and which are issued or entered into subsequent to the execution of this Subcontract.

14.3 The Contractor will cooperate with the Subcontractor in scheduling and performing its work to avoid conflicts or interference in the Subcontractor's work, and may reschedule the Subcontractor's Work pursuant to Section 3.4

14.4 The Contractor will permit the Subcontractor to be present and to submit evidence in any proceeding involving the Subcontractor's rights.

#### **ARTICLE XV**

##### **NOTICE**

15.1 All notices shall be in writing addressed to the parties at the addresses set out in this Subcontract unless subsequently changed in conformance with this notice provision.

15.2 Notices shall be considered as delivered on the third business day after the date of mailing if sent by certified mail, or when received in all other cases, including telecopy or other printed electronic medium or personal delivery.

#### **ARTICLE XVI**

##### **SIGNATORY**

Those persons signing below as officers of the respective parties to this Agreement, do hereby obligate and guarantee the faithful and prompt performance of this Subcontract and all of its provisions. The Subcontractor shall provide a copy of the Corporate Resolution that authorizes the individual to obligate the firm.

IN WITNESS WHEREOF, the parties hereto have caused this Subcontract to be executed by their respective duly authorized officer as of the date first written:

WITNESSES:

**CONTRACTOR:**

**WILLIAMS BROTHERS CONSTRUCTION CO., INC.**

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

By: \_\_\_\_\_

Name: \_\_\_\_\_  
Its: \_\_\_\_\_

WITNESSES:

**SUBCONTRACTOR:**

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**\*\*By executing this Subcontract, Subcontractor certifies that it has received, has read, and understands the listed Special Provisions and required Contract Documents. In addition, the Subcontractor certifies that it is obligated to incorporate the same into all of its sub-subcontracts. Furthermore, the Subcontractor understands that the Special Provisions and required Prime Contract Documents are part of this Subcontract and the Subcontractor is bound accordingly to compliance therewith.**



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**Appendix A: Prime Contract Required Subcontract Provisions**

<b>Exhibit 3</b>	Federal Requirements in All Contracts
<b>Exhibit 6</b>	TxDot's Disadvantaged Business Enterprise (DBE) Special Provisions
<b>Exhibit 8</b>	Job Training/Small Business Opportunity Plan

**Note- Will need to include the actual pages after this cover page.**

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**Appendix B: Scope of Work**

ITEM NO.	DESCRIPTION	UM	ESTIMATED QUANTITY	UNIT PRICE	TOTAL
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**Appendix C: The Prime Contract General Conditions**

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# Appendix 6 – Federally Required Provisions

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**EXHIBIT 3**  
**FEDERAL REQUIREMENTS**

<b><u>Exhibit Description</u></b>	<b><u>No. of Pages</u></b>
Attachment 1 – Federal Requirements for Federal-Aid Construction Projects	2
Attachment 2 – FHWA Form 1273	21
Attachment 3 – Wage Determination of the Secretary of Labor	3
Attachment 4 – Equal Employment Opportunity	5
Attachment 5 – Affirmative Action	5
Attachment 6 – Lobbying Certification	1
Attachment 7 – Compliance with Buy America Requirements	2
Attachment 8 – Certification of Nondiscrimination in Employment	1
Attachment 9 – On-the-Job Training Program	1

## **ATTACHMENT 1 TO EXHIBIT 3**

### **FEDERAL REQUIREMENTS FOR FEDERAL-AID CONSTRUCTION PROJECTS**

GENERAL. — Regardless of whether the Work herein proposed will be financed in whole or in part with Federal funds, all of the statutes, rules and regulations promulgated by the Federal Government that would be applicable to work financed in whole or in part with Federal funds will apply to such work. The “Required Contract Provisions, Federal-Aid Construction Contracts, Form FHWA 1273,” are included in this Exhibit 3. Whenever in said required contract provisions references are made to:

- (a) “contracting officer” or “authorized representative”, such references shall be construed to mean TxDOT or its Authorized Representative;
- (b) “contractor”, “prime contractor”, “bidder”, “Federal-aid construction contractor”, “prospective first tier participant” or “First Tier Participant”, such references shall be construed to mean DB Contractor or its authorized representative;
- (c) “contract”, “prime contract”, “Federal-aid construction contract” or “design-build contract”, such references shall be construed to mean the Design-Build Agreement (“DBA”) between DB Contractor and TxDOT for the Project;
- (d) “subcontractor”, “supplier”, “vendor”, “prospective lower tier participant”, “lower tier prospective participant”, “Lower Tier Participant” or “lower tier subcontractor”, such references shall be construed to mean any Subcontractor or Supplier; and
- (e) “department”, “agency”, “department or agency with which this transaction originated” or “contracting agency”, such references shall be construed to mean TxDOT, except where a different department or agency or officer is specified.

PERFORMANCE OF PREVIOUS CONTRACT. — In addition to the provisions in Section II, “Nondiscrimination,” and Section VI, “Subletting or Assigning the Contract,” of the Form 1273 required contract provisions, DB Contractor shall comply with the following:

The bidder shall execute the CERTIFICATION WITH REGARD TO THE PERFORMANCE OF PREVIOUS CONTRACTS OR SUBCONTRACTS SUBJECT TO THE EQUAL OPPORTUNITY CLAUSE AND THE FILING OF REQUIRED REPORTS located in the proposal. No request for subletting or assigning any portion of the contract in excess of \$10,000 will be considered under the provisions of Section VI of the required contract provisions unless such request is accompanied by the CERTIFICATION referred to above, executed by the proposed subcontractor.

NON-COLLUSION PROVISION. — The provisions in this section are applicable to all contracts except contracts for Federal Aid Secondary Projects. Title 23, United States Code, Section 112, requires as a condition precedent to approval by the Federal Highway Administrator of the contract for this work that each bidder file a sworn statement executed by, or on behalf of, the person, firm, association, or corporation to whom such contract is to be awarded, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted bid. A form to

make the non-collusion affidavit statement required by Section 112 as a certification under penalty of perjury rather than as a sworn statement as permitted by 28 U.S.C., Sec. 1746, is included in the Proposal.

PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN SUBCONTRACTING. — Part 26, Title 49, Code of Federal Regulations applies to the Project. Pertinent sections of said Code are incorporated within other sections of the DBA and the TxDOT Disadvantaged Business Enterprise Program adopted pursuant to 49 CFR Part 26.

#### CONVICT PRODUCED MATERIALS

a. FHWA Federal-aid projects are subject to 23 CFR § 635.417, Convict produced materials.

b. Materials produced after July 1, 1991, by convict labor may only be incorporated in a Federal aid highway construction project if such materials have been: (i) produced by convicts who are on parole, supervised release, or probation from a prison, or (ii) produced in a prison project in which convicts, during the 12 month period ending July 1, 1987, produced materials for use in Federal aid highway construction projects, and the cumulative annual production amount of such materials for use in Federal aid highway construction does not exceed the amount of such materials produced in such project for use in Federal aid highway construction during the 12 month period ending July 1, 1987.

#### ACCESS TO RECORDS

a. As required by 49 CFR 18.36(i)(10), DB Contractor and its subcontractors shall allow FHWA and the Comptroller General of the United States, or their duly authorized representatives, access to all books, documents, papers, and records of DB Contractor and subcontractors which are directly pertinent to any grantee or subgrantee contract, for the purpose of making audit, examination, excerpts, and transcriptions thereof. In addition, as required by 49 CFR 18.36(i)(11), DB Contractor and its subcontractors shall retain all such books, documents, papers and records for three years after final payment is made pursuant to any such contract and all other pending matters are closed.

b. DB Contractor agrees to include this section in each Subcontract at each tier, without modification except as appropriate to identify the subcontractor who will be subject to its provisions.

**ATTACHMENT 2 TO EXHIBIT 3**  
**REQUIRED CONTRACT PROVISIONS**  
**FEDERAL-AID CONSTRUCTION CONTRACTS**

**FHWA Form 1273**  
**Revised May 1, 2012**

- I. General**
- II. Nondiscrimination**
- III. Nonsegregated Facilities**
- IV. Davis-Bacon and Related Act Provisions**
- V. Contract Work Hours and Safety Standards Act Provisions**
- VI. Subletting or Assigning the Contract**
- VII. Safety: Accident Prevention**
- VIII. False Statements Concerning Highway Projects**
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act**
- X. Compliance with Governmentwide Suspension and Debarment Requirements**
- XI. Certification Regarding Use of Contract Funds for Lobbying**

**I. GENERAL**

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment,

termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

## **II. NONDISCRIMINATION**

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

**1. Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:



a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

“It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training.”

**2. EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

**3. Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

**4. Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: “An Equal Opportunity Employer.” All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to

yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

**5. Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

## **6. Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this

subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

**8. Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

**9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of

materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

**10. Assurance Required by 49 CFR 26.13(b):**

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

**11. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

### **III. NONSEGREGATED FACILITIES**

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

### **IV. DAVIS-BACON AND RELATED ACT PROVISIONS**

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

#### **1. Minimum wages**

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as

provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

## **2. Withholding**

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## **3. Payrolls and basic records**

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee ( e.g. , the last four digits of the employee's social security number).

The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.



#### **4. Apprentices and trainees**

##### **a. Apprentices (programs of the USDOL).**

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

##### **b. Trainees (programs of the USDOL).**

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified

in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

**6. Subcontracts.** The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

**7. Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes

between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**10. Certification of eligibility.**

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

**1. Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**2. Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

**3. Withholding for unpaid wages and liquidated damages.** The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

**4. Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

## **VI. SUBLETTING OR ASSIGNING THE CONTRACT**

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and

engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

## **VII. SAFETY: ACCIDENT PREVENTION**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

## **VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential

that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

“Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both.”

## **IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

## **X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

### **1. Instructions for Certification – First Tier Participants:**

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and

Voluntary Exclusion-Lower Tier Covered Transactions,” provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

\* \* \* \* \*

## **2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:**

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.



b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

## **2. Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of

its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

\* \* \* \* \*

#### **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-- Lower Tier Participants:**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\* \* \* \* \*

### **XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative

agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT 3 TO EXHIBIT 3**  
**FEDERAL PREVAILING WAGE RATE**

(Attached; subject to change)

## **ATTACHMENT 4 TO EXHIBIT 3**

### **EQUAL EMPLOYMENT OPPORTUNITY**

#### **SPECIAL PROVISION**

**000---006**

#### **Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)**

1. As used in these specifications:
  - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
  - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
  - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
  - d. "Minority" includes:
    - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
    - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
    - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
    - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North American and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan.

Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing contracts in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the contract is being performed. Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any Office of Federal Contract Compliance Programs office or any Federal procurement contracting officer. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.
5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
  - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
  - b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

- c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
- d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral Process has impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and Collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment

source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.
  - k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
  - l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
  - m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
  - n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
  - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
  - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the



Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. Nondiscrimination programs require that Federal-aid recipients, subrecipients, and contractors prevent discrimination and ensure nondiscrimination in all of their programs and activities, whether those programs and activities are federally funded or not. The factors prohibited from serving as a basis for action or inaction which discriminates include race, color, national origin, sex, age, and handicap/disability. The efforts to prevent discrimination must address, but not be limited to a program's impacts, access, benefits, participation, treatment, services, contracting opportunities, training opportunities, investigations of complaints, allocations of funds, prioritization of projects, and the functions of right-of-way, research, planning, and design.
11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

16. In addition to the reporting requirements set forth elsewhere in this contract, the Contractor and the subcontractors holding subcontracts, not including material suppliers, of \$10,000 or more, shall submit for every month of July during which work is performed, employment data as contained under Form PR 1391 (Appendix C to 23 CFR, Part 230), and in accordance with the instructions included thereon.

## **ATTACHMENT 5 TO EXHIBIT 3**

### **AFFIRMATIVE ACTION**

#### **SPECIAL PROVISION 000--004**

#### **Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)**

1. **General.** In addition to the affirmative action requirements of the Special Provision titled "Standard Federal Equal Employment Opportunity Construction Contract Specifications" as set forth elsewhere in this proposal, the Bidder's attention is directed to the specific requirements for utilization of minorities and females as set forth below.
2. **Goals.**
  - a. Goals for minority and female participation are hereby established in accordance with 41 CFR 60-4.
  - b. The goals for minority and female participation expressed in percentage terms for the Contractor's aggregate work force in each trade on all construction work in the covered area, are as follows:

**Goals for minority  
participation in  
each trade (per-  
cent)**

See Table 1

**Goals for female  
participation in  
each trade (per-  
cent)**

6.9

- c. These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction. The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Standard Federal Equal Employment Opportunity Construction Contract Specifications Special Provision and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority and female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of

the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

- d. A contractor or subcontractor will be considered in compliance with these provisions by participation in the Texas Highway-Heavy Branch, AGC, Statewide Training and Affirmative Action Plan. Provided that each contractor or subcontractor participating in this plan must individually comply with the equal opportunity clause set forth in 41 CFR 60-1.4 and must make a good faith effort to achieve the goals set forth for each participating trade in the plan in which it has employees. The overall good performance of other contractors and subcontractors toward a goal in an approved plan does not excuse any covered contractor's or subcontractor's failure to make good faith efforts to achieve the goals contained in these provisions. Contractors or subcontractors participating in the plan must be able to demonstrate their participation and document their compliance with the provisions of this Plan.
3. **Subcontracting.** The Contractor shall provide written notification to the Department within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation pending concurrence of the Department in the award. The notification shall list the names, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.
4. **Covered Area.** As used in this special provision, and in the contract resulting from this solicitation, the geographical area covered by these goals for female participation is the State of Texas. The geographical area covered by these goals for other minorities are the counties in the State of Texas as indicated in Table 1.
5. **Reports.** The Contractor is hereby notified that he may be subject to the Office of Federal Contract Compliance Programs (OFCCP) reporting and record keeping requirements as provided for under Executive Order 11246 as amended. OFCCP will provide direct notice to the Contractor as to the specific reporting requirements that he will be expected to fulfill.

**Table 1**

<b>County</b>	<b>Goals for Minority Participation</b>	<b>County</b>	<b>Goals for Minority Participation</b>
Anderson	22.5	Concho	20.0
Andrews	18.9	Cooke	17.2
Angelina	22.5	Coryell	16.4
Aransas	44.2	Cottle	11.0
Archer	11.0	Crane	18.9
Armstrong	11.0	Crockett	20.0
Atascosa	49.4	Crosby	19.5
Austin	27.4	Culberson	49.0
Bailey	19.5	Dallam	11.0
Bandera	49.4	Dallas	18.2
Bastrop	24.2	Dawson	19.5
Baylor	11.0	Deaf Smith	11.0
Bee	44.2	Delta	17.2
Bell	16.4	Denton	18.2
Bexar	47.8	DeWitt	27.4
Blanco	24.2	Dickens	19.5
Borden	19.5	Dimmit	49.4
Bosque	18.6	Donley	11.0
Bowie	19.7	Duval	44.2
Brazoria	27.3	Eastland	10.9
Brazos	23.7	Ector	15.1
Brewster	49.0	Edwards	49.4
Briscoe	11.0	Ellis	18.2
Brooks	44.2	El Paso	57.8
Brown	10.9	Erath	17.2
Burleson	27.4	Falls	18.6
Burnet	24.2	Fannin	17.2
Caldwell	24.2	Fayette	27.4
Calhoun	27.4	Fisher	10.9
Callahan	11.6	Floyd	19.5
Cameron	71.0	Foard	11.0
Camp	20.2	Fort Bend	27.3
Carson	11.0	Franklin	17.2
Cass	20.2	Freestone	18.6
Castro	11.0	Frio	49.4
Chambers	27.4	Gaines	19.5
Cherokee	22.5	Galveston	28.9
Childress	11.0	Garza	19.5
Clay	12.4	Gillespie	49.4
Cochran	19.5	Glasscock	18.9
Coke	20.0	Goliad	27.4
Coleman	10.9	Gonzales	49.4
Collin	18.2	Gray	11.0
Collingsworth	11.0	Grayson	9.4
Colorado	27.4	Gregg	22.8
Comal	47.8	Grimes	27.4
Comanche	10.9	Guadalupe	47.8

<b>County</b>	<b>Goals for Minority Participation</b>	<b>County</b>	<b>Goals for Minority Participation</b>
Hale	19.5	Lavaca	27.4
Hall	11.0	Lee	24.2
Hamilton	18.6	Leon	27.4
Hansford	11.0	Liberty	27.3
Hardeman	11.0	Limestone	18.6
Hardin	22.6	Lipscomb	11.0
Harris	27.3	Live Oak	44.2
Harrison	22.8	Llano	24.2
Hartley	11.0	Loving	18.9
Haskell	10.9	Lubbock	19.6
Hays	24.1	Lynn	19.5
Hemphill	11.0	Madison	27.4
Henderson	22.5	Marion	22.5
Hidalgo	72.8	Martin	18.9
Hill	18.6	Mason	20.0
Hockley	19.5	Matagorda	27.4
Hood	18.2	Maverick	49.4
Hopkins	17.2	McCulloch	20.0
Houston	22.5	McLennan	20.7
Howard	18.9	McMullen	49.4
Hudspeth	49.0	Medina	49.4
Hunt	17.2	Menard	20.0
Hutchinson	11.0	Midland	19.1
Irion	20.0	Milam	18.6
Jack	17.2	Mills	18.6
Jackson	27.4	Mitchell	10.9
Jasper	22.6	Montague	17.2
Jeff Davis	49.0	Montgomery	27.3
Jefferson	22.6	Moore	11.0
Jim Hogg	49.4	Morris	20.2
Jim Wells	44.2	Motley	19.5
Johnson	18.2	Nacogdoches	22.5
Jones	11.6	Navarro	17.2
Karnes	49.4	Newton	22.6
Kaufman	18.2	Nolan	10.9
Kendall	49.4	Nueces	41.7
Kenedy	44.2	Ochiltree	11.0
Kent	10.9	Oldham	11.0
Kerr	49.4	Orange	22.6
Kimble	20.0	Palo Pinto	17.2
King	19.5	Panola	22.5
Kinney	49.4	Parker	18.2
Kleberg	44.2	Parmer	11.0
Knox	10.9	Pecos	18.9
Lamar	20.2	Polk	27.4
Lamb	19.5	Potter	9.3
Lampasas	18.6	Presidio	49.0
LaSalle	49.4	Rains	17.2

<b>County</b>	<b>Goals for Minority Participation</b>	<b>County</b>	<b>Goals for Minority Participation</b>
Randall	9.3	Webb	87.3
Reagan	20.0	Wharton	27.4
Real	49.4	Wheeler	11.0
Red River	20.2	Wichita	12.4
Reeves	18.9	Wilbarger	11.0
Refugio	44.2	Willacy	72.9
Roberts	11.0	Williamson	24.1
Robertson	27.4	Wilson	49.4
Rockwall	18.2	Winkler	18.9
Runnels	20.0	Wise	18.2
Rusk	22.5	Wood	22.5
Sabine	22.6	Yoakum	19.5
San Augustine	22.5	Young	11.0
San Jacinto	27.4	Zapata	49.4
San Patricio	41.7	Zavala	49.4
San Saba	20.0		
Schleicher	20.0		
Scurry	10.9		
Shackelford	10.9		
Shelby	22.5		
Sherman	11.0		
Smith	23.5		
Somervell	17.2		
Starr	72.9		
Stephens	10.9		
Sterling	20.0		
Stonewall	10.9		
Sutton	20.0		
Swisher	11.0		
Tarrant	18.2		
Taylor	11.6		
Terrell	20.0		
Terry	19.5		
Throckmorton	10.9		
Titus	20.2		
Tom Green	19.2		
Travis	24.1		
Trinity	27.4		
Tyler	22.6		
Upshur	22.5		
Upton	18.9		
Uvalde	49.4		
Val Verde	49.4		
Van Zandt	17.2		
Victoria	27.4		
Walker	27.4		
Waller	27.3		
Ward	18.9		
Washington	27.4		

## **ATTACHMENT 6 TO EXHIBIT 3**

### **CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

By signing and submitting its proposal or bid, and by executing the DBA or Subcontract, each prospective DB Contractor and subcontractor (at all tiers) shall be deemed to have signed and delivered the following:

1. The prospective DB Contractor/subcontractor certifies, to the best of its knowledge and belief, that:
  - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
  - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, and shall include a copy of said form in its proposal or bid, or submit it with the executed DBA or Subcontract.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
3. DB Contractor/subcontractor shall require that the language of this certification be included in all lower tier Subcontracts which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.
4. The undersigned certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the undersigned understands and agrees that the provisions of 31 U.S.C. §3801, et seq., apply to this certification and disclosure, if any.

[Note: Pursuant to 31 U.S.C. §1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure or failure.]



## **ATTACHMENT 7 TO EXHIBIT 3**

### **COMPLIANCE WITH BUY AMERICA REQUIREMENTS**

DB Contractor shall comply with the Federal Highway Administration (FHWA) Buy America Requirement in 23 CFR 635.410, which permits FHWA participation in the DBA only if domestic steel and iron will be used on the Project. To be considered domestic, all steel and iron used and all products manufactured from steel and iron must be produced in the United States and all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes that protect or enhance the value of the material to which the coating is applied. This requirement does not preclude a minimal use of foreign steel and iron materials, provided the cost of such materials does not exceed 0.1% of the contract price under the DBA.

Concurrently with execution of the DBA, DB Contractor has completed and submitted, or shall complete and submit, to TxDOT a Buy America Certificate, in format below. After submittal, DB Contractor is bound by its original certification.

A false certification is a criminal act in violation of 18 U.S.C. 1001. Should this DBA be investigated, DB Contractor has the burden of proof to establish that it is in compliance.

At DB Contractor's request, TxDOT may, but is not obligated to, seek a waiver of Buy America requirements if grounds for the waiver exist. However, DB Contractor certifies that it will comply with the applicable Buy America requirements if a waiver of those requirements is not available or not pursued by TxDOT. A request for a waiver shall be treated as a Request for Change Order under Section 13.3 of the DBA.

## **BUY AMERICA CERTIFICATE**

The undersigned certifies on behalf of itself and all proposed Subcontractors (at all tiers) that only domestic steel and iron will be used in the Project.

- A. DB Contractor shall comply with the Federal Highway Administration ("FHWA") Buy America Requirements of 23 CFR 635.410, which permits FHWA participation in the DBA only if domestic steel and iron will be used on the Project. To be considered domestic, all steel and iron used and all products manufactured from steel and iron must be produced in the United States, and all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes which protect or enhance the value of the material to which the coating is applied. This requirement does not preclude a minimal use of foreign steel and iron materials, provided the cost of such materials does not exceed 0.1% of the Price.
- B. A false certification is a criminal act in violation of 18 U.S.C. 1001. Should this DBA be investigated, DB Contractor has the burden of proof to establish that it is in compliance.
- C. At DB Contractor's request, TxDOT may, but is not obligated to, seek a waiver of Buy America requirements if grounds for the waiver exist. However, DB Contractor certifies that it will comply with the applicable Buy America requirements if a waiver of those requirements is not available or not pursued by TxDOT.

<b>PROPOSER</b>	
<b>SIGNATURE</b>	
<b>NAME (printed or typed)</b>	
<b>TITLE</b>	
<b>DATE</b>	

## **ATTACHMENT 8 TO EXHIBIT 3**

### **CERTIFICATION OF NONDISCRIMINATION IN EMPLOYMENT**

2004 Specifications

#### **SPECIAL PROVISION**

**000---009**

#### **Certification of Nondiscrimination in Employment**

By signing this proposal, the bidder certifies that he has participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Orders 10925, 11114, or 11246, or if he has not participated in a previous contract of this type, or if he has had previous contract or subcontracts and has not filed, he will file with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

**Note:** The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1)), and must be submitted by bidders and proposed subcontractors only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally only contracts or subcontracts of \$10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

Proposed prime contractors and subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U. S. Department of Labor.

## **ATTACHMENT 9 TO EXHIBIT 3**

### **ON-THE-JOB TRAINING PROGRAM**

2004 Specifications

#### **SPECIAL PROVISION**

**000—1676**

##### **On-the-Job Training Program**

**1. Description.** The primary objective of this Special Provision is the training and advancement of minorities, women and economically disadvantaged persons toward journeyworker status. Accordingly, make every effort to enroll minority, women and economically disadvantaged persons to the extent that such persons are available within a reasonable area of recruitment. This training commitment is not intended, and shall not be used to discriminate against any applicant for training, whether or not he/she is a member of a minority group.

**2. Trainee Assignment.** Training assignments are determined based on the past contract volume of federal-aid work performed with the Department. Contractors meeting the selection criteria will be notified of their training assignment at the beginning of the reporting year by the Department's Office of Civil Rights.

**3. Program Requirements.** Fulfill all of the requirements of the On-the-Job Training Program including the maintenance of records and submittal of periodic reports documenting program performance. Trainees shall be paid at least 60% of the appropriate minimum journeyworker's rate specified in the contract for the first half of the training period, 75% for the third quarter and 90% for the last quarter, respectively. Contractors may be reimbursed \$0.80 per training hour at no additional cost to the Department.

**4. Compliance.** The Contractor will have fulfilled the contractual responsibilities by having provided acceptable training to the number of trainees specified in their goal assignment. Noncompliance may be cause for corrective and appropriate measures pursuant to Article 8.6., "Abandonment of Work or Default of Contract," which may be used to comply with the sanctions for noncompliance pursuant to 23 CFR Part 230.

**EXHIBIT 9**

**FORM OF PERFORMANCE BOND**

**LOOP 1604 WESTERN EXTENSION PROJECT**

Bond No. PRF09096574 - Zurich  
82190213 - Pacific  
58S204398 - Liberty

WHEREAS, the Texas Department of Transportation ("Obligee"), has awarded to Williams Brothers Construction Co., Inc., a Texas corporation ("Principal"), a Design-Build Agreement for the Loop 1604 Western Extension Project, duly executed and delivered as of December 5, 2013 (the "DBA"), on the terms and conditions set forth therein; and

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

Zurich American Insurance Company and  
Pacific Indemnity Company and  
Liberty Mutual Insurance Company a

NOW, THEREFORE, Principal and New York and New Jersey and Massachusetts corporations ("Surety"), an admitted surety insurer in the State of Texas, are held and firmly bound unto Obligee in the initial amount of \$3,048,000.00, subject to increase in accordance with the NTP2, NTP3 and NTP4 Riders attached hereto (the "Bonded Sum"), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS BOND IS SUCH THAT, if Principal shall promptly and faithfully perform all of its obligations under the DBA Documents, including any and all amendments and supplements thereto, then the obligations under this Bond shall be null and void; otherwise this Bond shall remain in full force and effect. Obligee shall release this Bond upon the occurrence of all of the conditions to release set forth in Section 8.1.3 of the DBA.

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

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

2. This Bond specifically guarantees the performance of each and every obligation of Principal under the DBA Documents, as they may be amended and supplemented, including but not limited to, its liability for Liquidated Damages as specified in the DBA Documents, but not to exceed the Bonded Sum.

3. The guarantees contained herein shall survive Final Acceptance of the Work called for in the DBA Documents with respect to those obligations of Principal which survive such Final Acceptance.

4. Whenever Principal shall be, and is declared by Obligor to be, in default under the DBA Documents, provided that Obligor is not then in material default thereunder, Surety shall promptly:

a. arrange for the Principal to perform and complete the DBA;  
or

b. complete the Project in accordance with the terms and conditions of the DBA Documents then in effect, through its agents or through independent contractors; or

c. obtain bids or negotiated proposals from qualified contractors acceptable to the Obligor for a contract for performance and completion of the Work, through a procurement process approved by the Obligor, arrange for a contract to be prepared for execution by the Obligor and the contractor selected with the Obligor's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the DBA, and pay to the Obligor the amount of damages as described in Paragraph 6 of this Bond in excess of the unpaid balance of the Price incurred by the Obligor resulting from the Principal's default; or

d. waive their right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances, (i) after investigation, determine the amount for which they may be liable to the Obligor and, as soon as practicable after the amount is determined, tender payment therefore to the Obligor, or (ii) deny liability in whole or in part and notify the Obligor citing reasons therefor.

5. If Surety does not proceed as provided in Paragraph 4 of this Bond with reasonable promptness, Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Obligor to Surety demanding that Surety perform its obligations under this Bond, and the Obligor shall be entitled to enforce any remedy available to the Obligor. If Surety proceeds as provided in Subparagraph 4.d of this Bond, and the Obligor refuses the payment tendered or Sureties has denied liability, in whole or in part, without further notice, the Obligor shall be entitled to enforce any remedy available to the Obligor.

6. After the Obligor has terminated the Principal's right to complete the DBA, and if Surety elects to act under Subparagraph 4.a, 4.b, or 4.c above, then the responsibilities of Surety to the Obligor shall not be greater than those of the Principal under the DBA, and the responsibilities of the Obligor to Surety shall not be greater than those of the Obligor under the DBA. To the limit of the Bonded Sum, but subject

to commitment of the unpaid balance of the Price to mitigation costs and damages on the DBA, Surety is obligated without duplication for:

a. the responsibilities of the Principal for correction of defective work and completion of the Work;

b. actual damages, including additional legal, design, engineering, professional and delay costs resulting from Principal's default, and resulting from the actions or failure to act of Surety under Paragraph 4 of this Bond; and

c. Liquidated Damages under the DBA.

7. No alteration, modification or supplement to the DBA Documents or the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Surety under this Bond, provided that the aggregate dollar amount of TxDOT-Directed Changes, without the Surety's prior written consent thereto having been obtained, does not increase the Price by more than \$12,555,187.10. Surety waives notice of any alteration, modification, supplement or extension of time other than Change Orders for TxDOT-Directed Changes in excess of such amount.

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

Zurich - 2000 W. Sam Houston Parkway South, Suite 900, Houston, Texas 77042  
Pacific - Williams Tower, 2800 Post Oak Blvd., Suite 2400, Houston, Texas 77056  
Liberty - 13201 Northwest Freeway, Suite 600, Houston, Texas 77040

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



IN WITNESS WHEREOF, Principal and Surety have caused this Bond to be executed and delivered as of December 5, 2013.

Principal:

Williams Brothers Construction Co., Inc.

By: Robert C. Lanham ROBERT C LANHAM, Jr.  
Its: PRESIDENT  
(Seal)

Surety:

Zurich American Insurance Company and Pacific Indemnity Company and Liberty Mutual Insurance Company

By: Larry H. Senkel

Its: Attorney in Fact

(Seal)

**[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]**

Jacqueline Kirk  
or secretary attest Jacqueline Kirk, Witness

**SURETY - Zurich American Insurance Company**

By: Larry H. Senkel  
Name Larry H. Senkel  
Title: Attorney in Fact  
Address: 920 Memorial City Way, Suite 500  
Houston, Texas 77024

Jacqueline Kirk  
or secretary attest Jacqueline Kirk, Witness

**SURETY - Pacific Indemnity Company**

By: Larry H. Senkel  
Name Larry H. Senkel  
Title: Attorney in Fact  
Address: 920 Memorial City Way, Suite 500  
Houston, Texas 77024

Jacqueline Kirk  
or secretary attest Jacqueline Kirk, Witness

**SURETY - Liberty Mutual Insurance Company**

By: Larry H. Senkel  
Name Larry H. Senkel  
Title: Attorney in Fact  
Address: 920 Memorial City Way, Suite 500  
Houston, Texas 77024

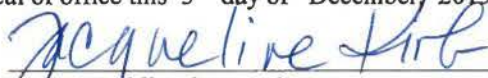


NOTARY ACKNOWLEDGMENT

THE STATE OF TEXAS}  
COUNTY OF HARRIS}

BEFORE ME, the undersigned authority, on this day personally appeared, LARRY H. SENKEL, Attorney-in-Fact of Zurich American Insurance Company, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed, and in the capacity stated.

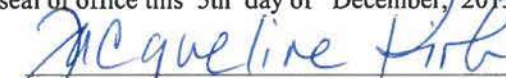
GIVEN UNDER MY HAND and seal of office this 5<sup>th</sup> day of December, 2013.

  
(Notary Public-Signature)  
Jacqueline Kirk  
Notary Public in and for the State of Texas.  
My Commission Expires 5/16/2015.

THE STATE OF TEXAS}  
COUNTY OF HARRIS}

BEFORE ME, the undersigned authority, on this day personally appeared, LARRY H. SENKEL, Attorney-in-Fact of Pacific Indemnity Company, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed, and in the capacity stated.

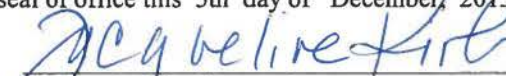
GIVEN UNDER MY HAND and seal of office this 5th day of December, 2013.

  
(Notary Public-Signature)  
Jacqueline Kirk  
Notary Public in and for the State of Texas.  
My Commission Expires 5/16/2015.

THE STATE OF TEXAS}  
COUNTY OF HARRIS}

BEFORE ME, the undersigned authority, on this day personally appeared, LARRY H. SENKEL, Attorney-in-Fact of Liberty Mutual Insurance Company, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed, and in the capacity stated.

GIVEN UNDER MY HAND and seal of office this 5th day of December, 2013.

  
(Notary Public-Signature)  
Jacqueline Kirk  
Notary Public in and for the State of Texas.  
My Commission Expires 5/16/2015.

**ZURICH AMERICAN INSURANCE COMPANY  
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY  
FIDELITY AND DEPOSIT COMPANY OF MARYLAND  
POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Maryland, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Maryland (herein collectively called the "Companies"), by **GEOFFREY DELISIO, Vice President**, in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint **Larry H. SENKEL, Jacqueline KIRK, Judy M. DOLD, Cynthia A. PETERS and Jo Ann PARKER, all of Houston, Texas, EACH** its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings, EXCEPT bonds on behalf of Independent Executors, Community Survivors and Community Guardians.** and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York., the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland., and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland., in their own proper persons.

The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 26th day of March, A.D. 2013.

ATTEST:

**ZURICH AMERICAN INSURANCE COMPANY  
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY  
FIDELITY AND DEPOSIT COMPANY OF MARYLAND**



By: *Gregory E. Murray*  
Assistant Secretary  
Gregory E. Murray

*Geoffrey Delisio*  
Vice President  
Geoffrey Delisio

State of Maryland  
City of Baltimore

On this 26th day of March, A.D. 2013, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, **GEOFFREY DELISIO, Vice President, and GREGORY E. MURRAY, Assistant Secretary**, of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, depose and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.

*Constance A. Dunn*



Constance A. Dunn, Notary Public  
My Commission Expires: July 14, 2015

## EXTRACT FROM BY-LAWS OF THE COMPANIES

"Article V, Section 8, Attorneys-in-Fact. The Chief Executive Officer, the President, or any Executive Vice President or Vice President may, by written instrument under the attested corporate seal, appoint attorneys-in-fact with authority to execute bonds, policies, recognizances, stipulations, undertakings, or other like instruments on behalf of the Company, and may authorize any officer or any such attorney-in-fact to affix the corporate seal thereto; and may with or without cause modify or revoke any such appointment or authority at any time."

### CERTIFICATE

I, the undersigned, Vice President of the ZURICH AMERICAN INSURANCE COMPANY, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that Article V, Section 8, of the By-Laws of the Companies is still in force.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the ZURICH AMERICAN INSURANCE COMPANY at a meeting duly called and held on the 15th day of December 1998.

RESOLVED: "That the signature of the President or a Vice President and the attesting signature of a Secretary or an Assistant Secretary and the Seal of the Company may be affixed by facsimile on any Power of Attorney...Any such Power or any certificate thereof bearing such facsimile signature and seal shall be valid and binding on the Company."

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at a meeting duly called and held on the 5th day of May, 1994, and the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seals of the said Companies, this 5th day of December, 2013.



*Thomas O. McClellan*

Thomas O. McClellan, Vice President



**Chubb  
Surety**

**POWER  
OF  
ATTORNEY**

**Federal Insurance Company  
Vigilant Insurance Company  
Pacific Indemnity Company**

**Attn: Surety Department  
15 Mountain View Road  
Warren, NJ 07059**

Know All by These Presents, That FEDERAL INSURANCE COMPANY, an Indiana corporation, VIGILANT INSURANCE COMPANY, a New York corporation, and PACIFIC INDEMNITY COMPANY, a Wisconsin corporation, do each hereby constitute and appoint **Judy M. Dold, Theresa Gildart, Jacqueline Kirk, Cindy Peters and Larry H. Senkel** of Houston, Texas

each as their true and lawful Attorney- in- Fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in the nature thereof (other than bail bonds) given or executed in the course of business, and any instruments amending or altering the same, and consents to the modification or alteration of any instrument referred to in said bonds or obligations.

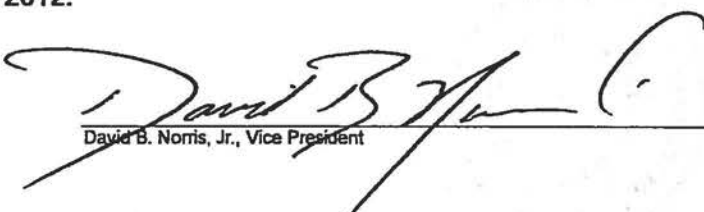
In Witness Whereof, said FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY have each executed and attested these presents and affixed their corporate seals on this **12th** day of **January, 2012**.

  
Kenneth C. Wendel, Assistant Secretary

STATE OF NEW JERSEY

County of Somerset

ss.

  
David B. Norris, Jr., Vice President

On this **12th** day of **January, 2012**

before me, a Notary Public of New Jersey, personally came Kenneth C. Wendel, to me known to be Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY, the companies which executed the foregoing Power of Attorney, and the said Kenneth C. Wendel, being by me duly sworn, did depose and say that he is Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY and knows the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of the By- Laws of said Companies; and that he signed said Power of Attorney as Assistant Secretary of said Companies by like authority; and that he is acquainted with David B. Norris, Jr., and knows him to be Vice President of said Companies; and that the signature of David B. Norris, Jr., subscribed to said Power of Attorney is in the genuine handwriting of David B. Norris, Jr., and was thereto subscribed by authority of said By- Laws and in deponent's presence.

Notarial Seal



**KATHERINE J. ADELAAR**  
NOTARY PUBLIC OF NEW JERSEY  
No. 2316685  
Commission Expires July 16, 2014

  
Notary Public

### CERTIFICATION

Extract from the By- Laws of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY:

"All powers of attorney for and on behalf of the Company may and shall be executed in the name and on behalf of the Company, either by the Chairman or the President or a Vice President or an Assistant Vice President, jointly with the Secretary or an Assistant Secretary, under their respective designations. The signature of such officers may be engraved, printed or lithographed. The signature of each of the following officers: Chairman, President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary and the seal of the Company may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing Assistant Secretaries or Attorneys- in- Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such power of attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached."

I, Kenneth C. Wendel, Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY

(the "Companies") do hereby certify that

- (i) the foregoing extract of the By- Laws of the Companies is true and correct,
- (ii) the Companies are duly licensed and authorized to transact surety business in all 50 of the United States of America and the District of Columbia and are authorized by the U.S. Treasury Department; further, Federal and Vigilant are licensed in Puerto Rico and the U.S. Virgin Islands, and Federal is licensed in American Samoa, Guam, and each of the Provinces of Canada except Prince Edward Island; and
- (iii) the foregoing Power of Attorney is true, correct and in full force and effect.

Given under my hand and seals of said Companies at Warren, NJ this **December 5, 2013**.



  
Kenneth C. Wendel, Assistant Secretary

IN THE EVENT YOU WISH TO NOTIFY US OF A CLAIM, VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT ADDRESS LISTED ABOVE, OR BY Telephone (908) 903- 3493 Fax (908) 903- 3656

e-mail: [surety@chubb.com](mailto:surety@chubb.com)



**THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.**

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Certificate No. 6213664

American Fire and Casualty Company  
The Ohio Casualty Insurance Company

Liberty Mutual Insurance Company  
West American Insurance Company

**POWER OF ATTORNEY**

KNOW ALL PERSONS BY THESE PRESENTS: That American Fire & Casualty Company and The Ohio Casualty Insurance Company are corporations duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Cindy Peters; Jacqueline Kirk; Jo Ann Parker; Judy M. Dold; Larry H. Senkel; Mark Hilliard

all of the city of Houston, state of TX each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 19th day of July, 2013.

American Fire and Casualty Company  
The Ohio Casualty Insurance Company  
Liberty Mutual Insurance Company  
West American Insurance Company

By: Gregory W. Davenport  
Gregory W. Davenport, Assistant Secretary

STATE OF WASHINGTON ss  
COUNTY OF KING

On this 19th day of July, 2013, before me personally appeared Gregory W. Davenport, who acknowledged himself to be the Assistant Secretary of American Fire and Casualty Company, Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Seattle, Washington, on the day and year first above written.

By: KD Riley  
KD Riley, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

**ARTICLE IV – OFFICERS** – Section 12. Power of Attorney. Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

**ARTICLE XIII – Execution of Contracts – SECTION 5. Surety Bonds and Undertakings.** Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

**Certificate of Designation** – The President of the Company, acting pursuant to the Bylaws of the Company, authorizes Gregory W. Davenport, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

**Authorization** – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, David M. Carey, the undersigned, Assistant Secretary, of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 5th day of December, 2013.

By: David M. Carey  
David M. Carey, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or dual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.





## Fidelity and Deposit Company of Maryland

Home Office: P.O. Box 1227, Baltimore, MD 21203-1227

### IMPORTANT NOTICE

To obtain information or make a complaint:

You may call the Fidelity and Deposit Company of Maryland or Colonial American Casualty and Surety Company's or Zurich American Insurance Company toll-free telephone number for information or to make a complaint at:

**1-800-654-5155**

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights, or complaints at:

**1-800-252-3439**

You may write the Texas Department of Insurance:

**P.O. Box 149104  
Austin, TX 78714-9104  
FAX # (512) 475-1771**

**PREMIUM OR CLAIM DISPUTES:** Should you have a dispute concerning the premium or about a claim, you should first contact Fidelity and Deposit Company of Maryland or Colonial American Casualty and Surety Company. If the dispute is not resolved, you may contact the Texas Department of Insurance.

**ATTACH THIS NOTICE TO YOUR POLICY:** This notice is for information only and does not become a part or condition of the attached document.

## *Policyholder Information Notice*

### **IMPORTANT NOTICE**

To obtain information or make a complaint:

You may call Chubb's toll-free telephone number for information or to make a complaint at

**1-800-36-CHUBB**

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at

**1-800-252-3439**

You may write the Texas Department of Insurance

P.O. Box 149104

Austin, TX 78714-9104

FAX # (512) 475-1771

Web: <http://www.tdi.state.tx.us>

E-mail: [ConsumerProtection@tdi.state.tx.us](mailto:ConsumerProtection@tdi.state.tx.us)

### **PREMIUM OR CLAIM DISPUTES:**

Should you have a dispute concerning your premium or about a claim you should contact the agent first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

### **ATTACH THIS NOTICE TO YOUR POLICY:**

This notice is for information only and does not become a part or condition of the attached document.

### **AVISO IMPORTANTE**

Para obtener información o para someter una queja:

Usted puede llamar al número de teléfono gratis de Chubb's para información o para someter una queja al

**1-800-36-CHUBB**

Puede comunicarse con el Departamento de Seguros de Texas para obtener información acerca de compañías, coberturas, derechos o quejas al

**1-800-252-3439**

Puede escribir al Departamento de Seguros de Texas

P.O. Box 149104

Austin, TX 78714-9104

FAX # (512) 475-1771

Web: <http://www.tdi.state.tx.us>

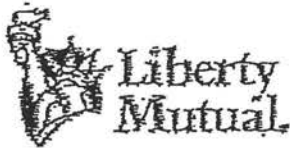
E-mail: [ConsumerProtection@tdi.state.tx.us](mailto:ConsumerProtection@tdi.state.tx.us)

### **DISPUTAS SOBRE PRIMAS O RECLAMOS:**

Si tiene una disputa concerniente a su prima o a un reclamo, debe comunicarse con el agente primero. Si no se resuelve la disputa, puede entonces comunicarse con el departamento (TDI).

### **UNA ESTE AVISO A SU POLIZA:**

Este aviso es solo para propósito de información y no se convierte en parte o condición del documento adjunto.



## Important Notice

TO OBTAIN INFORMATION OR TO MAKE A COMPLAINT:

You may write to Liberty Mutual Surety at:

Liberty Mutual Surety  
Interchange Corporate Center  
450 Plymouth Road, Suite 400  
Plymouth Meeting, PA 19462-8284

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at:

1-800-252-3439

You may write the Texas Department of Insurance:

P. O. Box 149104  
Austin, TX 78714-9104  
Fax: (512) 475-1771  
Web: <http://www.tdi.state.tx.us>  
E-mail: [ConsumerProtection@tdi.state.tx.us](mailto:ConsumerProtection@tdi.state.tx.us)

### Premium or Claim Disputes

Should you have a dispute concerning a premium, you should contact the agent first. If you have a dispute concerning a claim, you should contact the company first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

### Attach This Notice To Your Policy:

This notice is for information only and does not become a part or condition of the attached document.



## NTP2 RIDER

To be attached to and form a part of

Bond No.

Type of  
Bond: **Performance Bond**

dated  
effective

(MONTH-DAY-YEAR)

**Williams Brothers Construction Co., Inc.**

, as Principal,

(PRINCIPAL)

and by

, as Surety,

in favor of **Texas Department of Transportation**

(OBLIGEE)

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

**The Bonded Sum hereunder shall increase to the amount of \$69,357,209.34 (ONE HUNDRED PERCENT (100%) of the Price allocable to Construction Work on the Base Scope) effective upon issuance by the Obligee of NTP2 under the DBA.**

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

This rider  
is effective

(MONTH-DAY-YEAR)

Signed and Sealed

(MONTH-DAY-YEAR)

(PRINCIPAL)

By: \_\_\_\_\_  
(PRINCIPAL)

\_\_\_\_\_  
(SURETY)

By: \_\_\_\_\_  
**Attorney in fact**

## NTP3 RIDER

To be attached to and form a part of

Bond No.

Type of  
Bond: **Performance Bond**

dated  
effective

(MONTH-DAY-YEAR)

**Williams Brothers Construction Co., Inc.**

, as Principal,

(PRINCIPAL)

and by

, as Surety,

in favor of **Texas Department of Transportation**

(OBLIGEE)

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

**The Bonded Sum hereunder shall increase by \$3,000,000 to the amount of \$72,357,209.34 (\$3,000,000 plus ONE HUNDRED PERCENT (100%) of the Price allocable to Construction Work on the Base Scope) effective upon issuance (if any) by the Obligee of NTP3 under the DBA.**

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

This rider  
is effective

(MONTH-DAY-YEAR)

Signed and Sealed

(MONTH-DAY-YEAR)

(PRINCIPAL)

By: \_\_\_\_\_  
(PRINCIPAL)

\_\_\_\_\_  
(SURETY)

By: \_\_\_\_\_  
Attorney in fact

## NTP4 RIDER

To be attached to and form a part of

Bond No.

Type of  
Bond: **Performance Bond**

dated  
effective

(MONTH-DAY-YEAR)

**Williams Brothers Construction Co., Inc.**

, as Principal,

(PRINCIPAL)

and by

, as Surety,

in favor of **Texas Department of Transportation**

(OBLIGEE)

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

**The Bonded Sum** hereunder shall increase to the amount of \$108,063,112.97 (ONE HUNDRED PERCENT (100%) of the Price allocable to Construction Work on the Base Scope plus ONE HUNDRED PERCENT (100%) of the Option Price allocable to Construction Work on the Option) effective upon issuance (if any) by the Obligee of NTP4 under the DBA.

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

This rider  
is effective

(MONTH-DAY-YEAR)

Signed and Sealed

(MONTH-DAY-YEAR)

(PRINCIPAL)

By: \_\_\_\_\_  
(PRINCIPAL)

\_\_\_\_\_  
(SURETY)

By: \_\_\_\_\_  
**Attorney in fact**

**EXHIBIT 10**

**FORM OF PAYMENT BOND**

**LOOP 1604 WESTERN EXTENSION PROJECT**

Bond No. PRF09096574 - Zurich  
82190213 - Pacific  
58S204398 - Liberty

WHEREAS, the Texas Department of Transportation ("Obligee"), has awarded to Williams Brothers Construction Co., Inc., a Texas corporation ("Principal"), a Design-Build Agreement for the Loop 1604 Western Extension Project, duly executed and delivered as of December 5, 2013 (the "DBA"), on the terms and conditions set forth therein; and

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

NOW, THEREFORE, Principal and <sup>Zurich American Insurance Company and Pacific Indemnity Company and Liberty Mutual Insurance Company</sup> a New York and New Jersey and Massachusetts corporations ("Surety"), an admitted surety insurer in the State of Texas, are held and firmly bound unto Obligee in the initial amount of \$3,048,000.00, subject to increase in accordance with the NTP2, NTP3 and NTP4 Riders attached hereto (the "Bonded Sum"), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS BOND IS SUCH THAT, if Principal shall fail to pay any valid claims by Subcontractors and Suppliers with respect to the Work, then Surety shall pay for the same in an amount not to exceed the Bonded Sum; otherwise this Bond shall be null and void upon the occurrence of all of the conditions to release set forth in Section 8.1.4 of the DBA.

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

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

2. No alteration, modification or supplement to the DBA Documents or the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Surety under this Bond, provided that the aggregate dollar amount of TxDOT-Directed Changes without the Surety's prior written consent thereto having been obtained, does not increase the Price by more than \$12,555,187.10. Surety waives notice of any alteration, modification, supplement or extension of time other than Change Orders for TxDOT-Directed Changes in excess of such amount.

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

Zurich - 2000 W. Sam Houston Parkway South, Suite 900, Houston, Texas 77042  
Pacific - Williams Tower, 2800 Post Oak Blvd., Suite 2400, Houston, Texas 77056  
Liberty - 13201 Northwest Freeway, Suite 600, Houston, Texas 77040

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

IN WITNESS WHEREOF, Principal and Surety have caused this Bond to be executed and delivered as of December 5, 2013.

Principal:

Williams Brothers Construction Co., Inc.  
By: Robert C. Lanham, Jr.  
Its: PRESIDENT  
(Seal)

Surety:

Zurich American Insurance Company and Pacific Indemnity Company and  
Liberty Mutual Insurance Company  
By: Larry H. Senkel  
Its: Attorney in Fact  
(Seal)

**[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]**

**SURETY - Zurich American Insurance Company**

Jacqueline Kirk  
or secretary attest Jacqueline Kirk, Witness

By: Larry H. Senkel  
Name Larry H. Senkel  
Title: Attorney in Fact  
Address: 920 Memorial City Way, Suite 500  
Houston, Texas 77024

**SURETY - Pacific Indemnity Company**

Jacqueline Kirk  
or secretary attest Jacqueline Kirk, Witness

By: Larry H. Senkel  
Name Larry H. Senkel  
Title: Attorney in Fact  
Address: 920 Memorial City Way, Suite 500  
Houston, Texas 77024

**SURETY - Liberty Mutual Insurance Company**

Jacqueline Kirk  
or secretary attest Jacqueline Kirk, Witness

By: Larry H. Senkel  
Name Larry H. Senkel  
Title: Attorney in Fact  
Address: 920 Memorial City Way, Suite 500  
Houston, Texas 77024

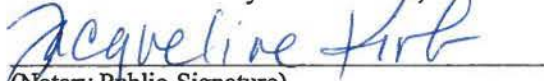


NOTARY ACKNOWLEDGMENT

THE STATE OF TEXAS}  
COUNTY OF HARRIS}

BEFORE ME, the undersigned authority, on this day personally appeared, LARRY H. SENKEL, Attorney-in-Fact of Zurich American Insurance Company, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed, and in the capacity stated.

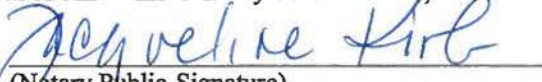
GIVEN UNDER MY HAND and seal of office this 5<sup>th</sup> day of December, 2013.

  
(Notary Public-Signature)  
Jacqueline Kirk  
Notary Public in and for the State of Texas.  
My Commission Expires 5/16/2015.

THE STATE OF TEXAS}  
COUNTY OF HARRIS}

BEFORE ME, the undersigned authority, on this day personally appeared, LARRY H. SENKEL, Attorney-in-Fact of Pacific Indemnity Company, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed, and in the capacity stated.

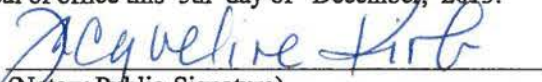
GIVEN UNDER MY HAND and seal of office this 5th day of December, 2013.

  
(Notary Public-Signature)  
Jacqueline Kirk  
Notary Public in and for the State of Texas.  
My Commission Expires 5/16/2015.

THE STATE OF TEXAS}  
COUNTY OF HARRIS}

BEFORE ME, the undersigned authority, on this day personally appeared, LARRY H. SENKEL, Attorney-in-Fact of Liberty Mutual Insurance Company, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed, and in the capacity stated.

GIVEN UNDER MY HAND and seal of office this 5th day of December, 2013.

  
(Notary Public-Signature)  
Jacqueline Kirk  
Notary Public in and for the State of Texas.  
My Commission Expires 5/16/2015.

**ZURICH AMERICAN INSURANCE COMPANY  
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY  
FIDELITY AND DEPOSIT COMPANY OF MARYLAND  
POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Maryland, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Maryland (herein collectively called the "Companies"), by **GEOFFREY DELISIO, Vice President**, in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint **Larry H. SENKEL, Jacqueline KIRK, Judy M. DOLD, Cynthia A. PETERS and Jo Ann PARKER, all of Houston, Texas, EACH** its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings, EXCEPT bonds on behalf of Independent Executors, Community Survivors and Community Guardians.** and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York., the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland., and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland., in their own proper persons.

The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 26th day of March, A.D. 2013.

**ATTEST:**

**ZURICH AMERICAN INSURANCE COMPANY  
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY  
FIDELITY AND DEPOSIT COMPANY OF MARYLAND**



*Gregory E. Murray*

By: \_\_\_\_\_

*Assistant Secretary  
Gregory E. Murray*

*Geoffrey Delisio*

*Vice President  
Geoffrey Delisio*

State of Maryland  
City of Baltimore

On this 26th day of March, A.D. 2013, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, **GEOFFREY DELISIO, Vice President, and GREGORY E. MURRAY, Assistant Secretary**, of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, depose and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.

*Constance A. Dunn*

*Constance A. Dunn, Notary Public  
My Commission Expires: July 14, 2015*



## EXTRACT FROM BY-LAWS OF THE COMPANIES

"Article V, Section 8, Attorneys-in-Fact. The Chief Executive Officer, the President, or any Executive Vice President or Vice President may, by written instrument under the attested corporate seal, appoint attorneys-in-fact with authority to execute bonds, policies, recognizances, stipulations, undertakings, or other like instruments on behalf of the Company, and may authorize any officer or any such attorney-in-fact to affix the corporate seal thereto; and may with or without cause modify or revoke any such appointment or authority at any time."

### CERTIFICATE

I, the undersigned, Vice President of the ZURICH AMERICAN INSURANCE COMPANY, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that Article V, Section 8, of the By-Laws of the Companies is still in force.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the ZURICH AMERICAN INSURANCE COMPANY at a meeting duly called and held on the 15th day of December 1998.

RESOLVED: "That the signature of the President or a Vice President and the attesting signature of a Secretary or an Assistant Secretary and the Seal of the Company may be affixed by facsimile on any Power of Attorney...Any such Power or any certificate thereof bearing such facsimile signature and seal shall be valid and binding on the Company."

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at a meeting duly called and held on the 5th day of May, 1994, and the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seals of the said Companies, this 5th day of December, 20 13.



*Thomas O. McClellan*

Thomas O. McClellan, Vice President



**Chubb  
Surety**

**POWER  
OF  
ATTORNEY**

**Federal Insurance Company  
Vigilant Insurance Company  
Pacific Indemnity Company**

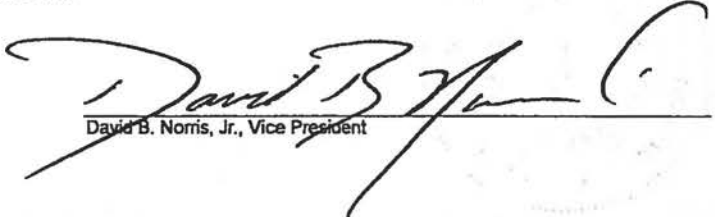
**Attn: Surety Department  
15 Mountain View Road  
Warren, NJ 07059**

Know All by These Presents, That **FEDERAL INSURANCE COMPANY**, an Indiana corporation, **VIGILANT INSURANCE COMPANY**, a New York corporation, and **PACIFIC INDEMNITY COMPANY**, a Wisconsin corporation, do each hereby constitute and appoint **Judy M. Dold, Theresa Gildart, Jacqueline Kirk, Cindy Peters and Larry H. Senkel** of **Houston, Texas**

each as their true and lawful Attorney-in-Fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in the nature thereof (other than bail bonds) given or executed in the course of business, and any instruments amending or altering the same, and consents to the modification or alteration of any instrument referred to in said bonds or obligations.

In Witness Whereof, said **FEDERAL INSURANCE COMPANY**, **VIGILANT INSURANCE COMPANY**, and **PACIFIC INDEMNITY COMPANY** have each executed and attested these presents and affixed their corporate seals on this **12th** day of **January, 2012**.

  
Kenneth C. Wendel, Assistant Secretary

  
David B. Norris, Jr., Vice President

STATE OF NEW JERSEY

County of Somerset

ss.

On this **12th** day of **January, 2012** before me, a Notary Public of New Jersey, personally came Kenneth C. Wendel, to me known to be Assistant Secretary of **FEDERAL INSURANCE COMPANY**, **VIGILANT INSURANCE COMPANY**, and **PACIFIC INDEMNITY COMPANY**, the companies which executed the foregoing Power of Attorney, and the said Kenneth C. Wendel, being by me duly sworn, did depose and say that he is Assistant Secretary of **FEDERAL INSURANCE COMPANY**, **VIGILANT INSURANCE COMPANY**, and **PACIFIC INDEMNITY COMPANY** and knows the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of the By-Laws of said Companies; and that he signed said Power of Attorney as Assistant Secretary of said Companies by like authority; and that he is acquainted with David B. Norris, Jr., and knows him to be Vice President of said Companies; and that the signature of David B. Norris, Jr., subscribed to said Power of Attorney is in the genuine handwriting of David B. Norris, Jr., and was thereto subscribed by authority of said By-Laws and in deponent's presence.

Notarial Seal



**KATHERINE J. ADELAAR**  
NOTARY PUBLIC OF NEW JERSEY  
No. 2316685  
Commission Expires July 16, 2014

  
Notary Public

### CERTIFICATION

Extract from the By-Laws of **FEDERAL INSURANCE COMPANY**, **VIGILANT INSURANCE COMPANY**, and **PACIFIC INDEMNITY COMPANY**:

"All powers of attorney for and on behalf of the Company may and shall be executed in the name and on behalf of the Company, either by the Chairman or the President or a Vice President or an Assistant Vice President, jointly with the Secretary or an Assistant Secretary, under their respective designations. The signature of such officers may be engraved, printed or lithographed. The signature of each of the following officers: Chairman, President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary and the seal of the Company may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such power of attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached."

I, Kenneth C. Wendel, Assistant Secretary of **FEDERAL INSURANCE COMPANY**, **VIGILANT INSURANCE COMPANY**, and **PACIFIC INDEMNITY COMPANY** (the "Companies") do hereby certify that

- (i) the foregoing extract of the By-Laws of the Companies is true and correct,
- (ii) the Companies are duly licensed and authorized to transact surety business in all 50 of the United States of America and the District of Columbia and are authorized by the U.S. Treasury Department; further, Federal and Vigilant are licensed in Puerto Rico and the U.S. Virgin Islands, and Federal is licensed in American Samoa, Guam, and each of the Provinces of Canada except Prince Edward Island; and
- (iii) the foregoing Power of Attorney is true, correct and in full force and effect.

Given under my hand and seals of said Companies at Warren, NJ this **December 5, 2013**.



  
Kenneth C. Wendel, Assistant Secretary

IN THE EVENT YOU WISH TO NOTIFY US OF A CLAIM, VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT ADDRESS LISTED ABOVE, OR BY Telephone (908) 903- 3493 Fax (908) 903- 3656

e-mail: surety@chubb.com



**THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.**

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Certificate No. 6213668

American Fire and Casualty Company  
The Ohio Casualty Insurance Company

Liberty Mutual Insurance Company  
West American Insurance Company

**POWER OF ATTORNEY**

KNOWN ALL PERSONS BY THESE PRESENTS: That American Fire & Casualty Company and The Ohio Casualty Insurance Company are corporations duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Cindy Peters; Jacqueline Kirk; Jo Ann Parker; Judy M. Dold; Larry H. Senkel; Mark Hilliard

all of the city of Houston, state of TX each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 19th day of July, 2013.



STATE OF WASHINGTON ss  
COUNTY OF KING

American Fire and Casualty Company  
The Ohio Casualty Insurance Company  
Liberty Mutual Insurance Company  
West American Insurance Company

By: Gregory W. Davenport  
Gregory W. Davenport, Assistant Secretary

On this 19th day of July, 2013, before me personally appeared Gregory W. Davenport, who acknowledged himself to be the Assistant Secretary of American Fire and Casualty Company, Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Seattle, Washington, on the day and year first above written.



By: KD Riley  
KD Riley, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

**ARTICLE IV – OFFICERS – Section 12. Power of Attorney.** Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

**ARTICLE XIII – Execution of Contracts – SECTION 5. Surety Bonds and Undertakings.** Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

**Certificate of Designation –** The President of the Company, acting pursuant to the Bylaws of the Company, authorizes Gregory W. Davenport, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

**Authorization –** By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, David M. Carey, the undersigned, Assistant Secretary, of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 5th day of December, 20 13.



By: David M. Carey  
David M. Carey, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or dual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.





## Fidelity and Deposit Company of Maryland

Home Office: P.O. Box 1227, Baltimore, MD 21203-1227

### IMPORTANT NOTICE

To obtain information or make a complaint:

You may call the Fidelity and Deposit Company of Maryland or Colonial American Casualty and Surety Company's or Zurich American Insurance Company toll-free telephone number for information or to make a complaint at:

**1-800-654-5155**

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights, or complaints at:

**1-800-252-3439**

You may write the Texas Department of Insurance:

**P.O. Box 149104  
Austin, TX 78714-9104  
FAX # (512) 475-1771**

**PREMIUM OR CLAIM DISPUTES:** Should you have a dispute concerning the premium or about a claim, you should first contact Fidelity and Deposit Company of Maryland or Colonial American Casualty and Surety Company. If the dispute is not resolved, you may contact the Texas Department of Insurance.

**ATTACH THIS NOTICE TO YOUR POLICY:** This notice is for information only and does not become a part or condition of the attached document.

## *Policyholder Information Notice*

### **IMPORTANT NOTICE**

To obtain information or make a complaint:

You may call Chubb's toll-free telephone number for information or to make a complaint at

**1-800-36-CHUBB**

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at

**1-800-252-3439**

You may write the Texas Department of Insurance

P.O. Box 149104

Austin, TX 78714-9104

FAX # (512) 475-1771

Web: <http://www.tdi.state.tx.us>

E-mail: [ConsumerProtection@tdi.state.tx.us](mailto:ConsumerProtection@tdi.state.tx.us)

### **PREMIUM OR CLAIM DISPUTES:**

Should you have a dispute concerning your premium or about a claim you should contact the agent first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

### **ATTACH THIS NOTICE TO YOUR POLICY:**

This notice is for information only and does not become a part or condition of the attached document.

### **AVISO IMPORTANTE**

Para obtener información o para someter una queja:

Usted puede llamar al número de teléfono gratis de Chubb's para información o para someter una queja al

**1-800-36-CHUBB**

Puede comunicarse con el Departamento de Seguros de Texas para obtener información acerca de compañías, coberturas, derechos o quejas al

**1-800-252-3439**

Puede escribir al Departamento de Seguros de Texas

P.O. Box 149104

Austin, TX 78714-9104

FAX # (512) 475-1771

Web: <http://www.tdi.state.tx.us>

E-mail: [ConsumerProtection@tdi.state.tx.us](mailto:ConsumerProtection@tdi.state.tx.us)

### **DISPUTAS SOBRE PRIMAS O RECLAMOS:**

Si tiene una disputa concerniente a su prima o a un reclamo, debe comunicarse con el agente primero. Si no se resuelve la disputa, puede entonces comunicarse con el departamento (TDI).

### **UNA ESTE AVISO A SU POLIZA:**

Este aviso es solo para propósito de información y no se convierte en parte o condición del documento adjunto.



## Important Notice

TO OBTAIN INFORMATION OR TO MAKE A COMPLAINT:

You may write to Liberty Mutual Surety at:

Liberty Mutual Surety  
Interchange Corporate Center  
450 Plymouth Road, Suite 400  
Plymouth Meeting, PA 19462-8284

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at:

1-800-252-3439

You may write the Texas Department of Insurance:

P. O. Box 149104  
Austin, TX 78714-9104  
Fax: (512) 475-1771  
Web: <http://www.tdi.state.tx.us>  
E-mail: [ConsumerProtection@tdi.state.tx.us](mailto:ConsumerProtection@tdi.state.tx.us)

### Premium or Claim Disputes

Should you have a dispute concerning a premium, you should contact the agent first. If you have a dispute concerning a claim, you should contact the company first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

### Attach This Notice To Your Policy:

This notice is for information only and does not become a part or condition of the attached document.



## NTP2 RIDER

To be attached to and form a part of

Bond No.

Type of  
Bond: **Payment Bond**

dated  
effective

(MONTH-DAY-YEAR)

**Williams Brothers Construction Co., Inc.**

, as Principal,

(PRINCIPAL)

and by

, as Surety,

in favor of **Texas Department of Transportation**

(OBLIGEE)

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

**The Bonded Sum hereunder shall increase to the amount of \$69,357,209.34 (ONE HUNDRED PERCENT (100%) of Price allocable to Construction Work on the Base Scope) effective upon issuance by the Obligee of NTP2 under the DBA.**

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

This rider  
is effective

(MONTH-DAY-YEAR)

Signed and Sealed

(MONTH-DAY-YEAR)

(PRINCIPAL)

By: \_\_\_\_\_  
(PRINCIPAL)

\_\_\_\_\_  
(SURETY)

By: \_\_\_\_\_  
**Attorney in fact**

## NTP3 RIDER

To be attached to and form a part of

Bond No.

Type of  
Bond: **Payment Bond**

dated  
effective

(MONTH-DAY-YEAR)

**Williams Brothers Construction Co., Inc.**

, as Principal,

(PRINCIPAL)

and by

, as Surety,

in favor of **Texas Department of Transportation**

(OBLIGEE)

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

**The Bonded Sum hereunder shall increase by \$3,000,000 to the amount of \$72,357,209.34 (\$3,000,000 plus ONE HUNDRED PERCENT (100%) of Price allocable to Construction Work on the Base Scope) effective upon issuance (if any) by the Obligee of NTP3 under the DBA.**

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

This rider  
is effective

(MONTH-DAY-YEAR)

Signed and Sealed

(MONTH-DAY-YEAR)

(PRINCIPAL)

By: \_\_\_\_\_  
(PRINCIPAL)

\_\_\_\_\_  
(SURETY)

By: \_\_\_\_\_  
**Attorney in fact**

## NTP4 RIDER

To be attached to and form a part of

Bond No.

Type of  
Bond: **Payment Bond**

dated  
effective

(MONTH-DAY-YEAR)

**Williams Brothers Construction Co., Inc.**

, as Principal,

(PRINCIPAL)

and by

, as Surety,

in favor of **Texas Department of Transportation**

(OBLIGEE)

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

**The Bonded Sum hereunder shall increase to the amount of \$108,063,112.97 (ONE HUNDRED PERCENT (100%) of Price allocable to Construction Work on the Base Scope plus ONE HUNDRED PERCENT (100%) of the Option Price allocable to Construction Work on the Option) effective upon issuance (if any) by the Obligee of NTP4 under the DBA.**

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

This rider  
is effective

(MONTH-DAY-YEAR)

Signed and Sealed

(MONTH-DAY-YEAR)

(PRINCIPAL)

By: \_\_\_\_\_  
(PRINCIPAL)

\_\_\_\_\_  
(SURETY)

By: \_\_\_\_\_  
**Attorney in fact**

**EXHIBIT 11**

**FORM OF RETAINAGE BOND**

CONTRACT NO. \_\_\_\_\_  
COUNTY \_\_\_\_\_  
BOND NO. \_\_\_\_\_

**RETAINAGE BOND**

**KNOW ALL PERSONS BY THESE PRESENTS that CONTRACTOR**, as Principal, and the undersigned surety, are held and firmly bound unto the State of Texas as Obligee, in the amount of FOUR PERCENT (4%) of the total amount paid the Principal under the contract, including any increases due to change orders, quantities of work, new items of work, or other additions as the Obligee may pay under the DBA, lawful money of the United States, well and truly to be paid to the State of Texas, and we bind ourselves, our heirs, successors, executors, and administrators jointly and severally, firmly by these presents.

Whereas, the Principal has entered into the above-referenced contract with the State of Texas, attached hereto, and

Whereas, under the contract, the Principal is required before commencing the work provided for in the contract to execute a bond in the above amount.

Now therefore, the condition of this obligation is such that if the Principal and its heirs, successors, executors, and administrators shall fully indemnify and save harmless the State of Texas from all costs and damages from valid claims filed within 90 days of notification of final acceptance of the work under the contract by any person or entity against the contract funds, and shall fully reimburse the State of Texas for amounts owed by the **Principal** to the State of Texas with regard to the contract after notification of final acceptance of the work, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

Provided further, that the said surety(s) for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the contract, or to the work to be performed thereunder, or the Specifications accompanying the same, shall in anyway affect its obligation on this bond. The surety(s) does hereby waive notice of any such change, extension of time, alteration or addition, to the terms of the contract or to the work or to the Specifications, unless otherwise specified in the contract.

**WITNESS** our hand this, \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**CONTRACTOR**

\_\_\_\_\_  
**SURETY** (Print Firm Name and Seal)

By: \_\_\_\_\_  
(Title)

\*By: \_\_\_\_\_  
(Title)

By: \_\_\_\_\_  
(Title)

\_\_\_\_\_  
**SURETY** (Print Firm Name and Seal)

\_\_\_\_\_  
**SURETY** (Print Firm Name and Seal)

\*By: \_\_\_\_\_  
(Title)

\*By: \_\_\_\_\_  
(Title)

\*NOTE: A Power of Attorney, showing that the surety officer or Attorney-In-Fact has authority to sign such obligation, must be impressed with the corporate seal and attached behind the Payment Bond in each contract.

This form has been approved by the ATTORNEY GENERAL OF TEXAS & TEXAS DEPARTMENT OF INSURANCE.



**EXHIBIT 12**

**FORM OF WARRANTY BOND**

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

**LOOP 1604 WESTERN EXTENSION PROJECT**

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

WHEREAS, the Texas Department of Transportation ("Obligee"), has awarded to Williams Brothers Construction Co., Inc., a Texas corporation ("Principal"), a Design-Build Agreement for the Loop 1604 Western Extension Project, duly executed and delivered as of \_\_\_\_\_, 2013 (the "DBA"), on the terms and conditions set forth therein; and

WHEREAS, as a condition to Final Acceptance of the [Base Scope / Option] and release of the Performance Bond and Payment Bond for such Segment, Principal is required to furnish a bond (this "Bond") guaranteeing the faithful performance of its obligations under the DBA Documents after Final Acceptance, including payment of claims by Subcontractors and Suppliers.

NOW, THEREFORE, Principal and \_\_\_\_\_, a \_\_\_\_\_ ("Surety"), an admitted surety insurer in the State of Texas, are held and firmly bound unto Obligee in the amount of \$\_\_\_\_\_ ***[Insert amount that is 20% of the Price allocable to the applicable Segment]*** (the "Bonded Sum"), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS BOND IS SUCH THAT, if Principal shall promptly and faithfully perform all of its obligations under the DBA Documents, as they may be amended or supplemented, including without limitation the fulfillment of all Warranties, and payment of claims by Subcontractors and Suppliers, then the obligations under this Bond shall be null and void; otherwise this Bond shall remain in full force and effect, it being expressly understood and agreed that the liability of Surety for any and all claims hereunder shall in no event exceed the Bonded Sum.

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

1. The DBA Documents are incorporated by reference herein. Capitalized terms not separately defined herein have the meanings assigned such terms in the DBA.
2. This Bond shall inure to the benefit of all Subcontractors and Suppliers with respect to the Work, other than entities having an equity interest in

Principal, so as to give a right of action to such persons and their assigns in any suit brought upon this Bond.

3. The guarantees contained herein shall survive Final Acceptance.

4. Whenever Principal shall fail to pay the lawful claims of any of the persons identified in Paragraph 2 above with respect to the Work, excluding entities having an equity interest in Principal, then Surety shall pay for the same in an amount not to exceed the Bonded Sum.

5. Whenever Principal shall be, and is declared by the Obligor to be, in default with respect to its obligations under the DBA Documents, provided that the Obligor is not then in material default thereunder, Surety shall promptly take one of the following actions with the consent of the Obligor:

a. arrange for Principal to perform and complete the DBA;

b. complete the Work in accordance with the terms and conditions of the DBA Documents then in effect, through its agents or through independent contractors;

c. obtain bids or negotiated proposals from qualified contractors acceptable to the Obligor for a contract for performance and completion of the Work (as defined in the DBA), through a procurement process approved by the Obligor, arrange for a contract to be prepared for execution by the Obligor and the contractor selected with the Obligor's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the DBA, and pay to the Obligor the amount of damages as described in Paragraph 7 of this Bond in excess of the unpaid balance of the Price incurred by the Obligor resulting from the Principal's default; or

d. waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances, (i) after investigation, determine the amount for which it may be liable to the Obligor and, as soon as practicable after the amount is determined, tender payment therefore to the Obligor, or (ii) deny liability in whole or in part and notify the Obligor citing reasons therefore.

6. If Surety does not proceed as provided in Paragraph 5 of this Bond with reasonable promptness, Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Obligor to Surety demanding that Surety perform its obligations under this Bond, and the Obligor shall be entitled to enforce any remedy available to the Obligor. If Surety proceeds as provided in Subparagraph 5.d of this Bond, and the Obligor refuses the payment tendered or Surety has denied liability, in whole or in part, without further notice the Obligor shall be entitled to enforce any remedy available to the Obligor.

7. After the Obligee has terminated the Principal's right to complete the DBA, and if Surety elects to act under Subparagraph 5.a, 5.b, or 5.c above, then the responsibilities of Surety to the Obligee shall not be greater than those of the Principal under the DBA, and the responsibilities of the Obligee to Surety shall not be greater than those of the Obligee under the DBA. To the limit of the Bonded Sum, but subject to commitment of the unpaid balance of the Price to mitigation costs and damages on the DBA, Surety is obligated without duplication for:

a. the responsibilities of the Principal for correction of defective work and completion of the Work;

b. actual damages, including additional legal, design professional and delay costs resulting from Principal's default, and resulting from the actions or failure to act of Surety under Paragraph 5 of this Bond; and

c. Liquidated Damages under the DBA.

8. No alteration, modification or supplement to the DBA Documents or the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Surety under this Bond, provided that the aggregate dollar amount of TxDOT-Directed Changes, without the Sureties' prior written consent thereto having been obtained, does not increase the Price by more than \$\_\_\_\_\_ ***[Insert amount that is 20% of the applicable Price]***. Surety waives notice of any alteration, modification, supplement or extension of time other than Change Orders for TxDOT-Directed Changes in excess of such amount.

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

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

Principal:

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

Surety:

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

**[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]**

### **SURETY**

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

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

# **SUBSEQUENT SEGMENT RIDER**

[optional]

To be attached to and form a part of

Bond No.

Type of  
Bond: **Warranty Bond**

dated  
effective

(MONTH-DAY-YEAR)

**Williams Brothers Construction Co., Inc.**

, as Principal,

(PRINCIPAL)

and by

, as Surety,

in favor of **Texas Department of Transportation**

(OBLIGEE)

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

**The Bonded Sum hereunder shall increase by \$\_\_\_\_\_ (TWENTY PERCENT (20%) of the Price allocable to the Segment last to reach Final Acceptance) to the amount of \$\_\_\_\_\_ (TWENTY PERCENT (100%) of Price of the Project) effective upon issuance of this Subsequent Segment Rider to the Warranty Bond.**

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

This rider  
is effective

(MONTH-DAY-YEAR)

Signed and Sealed

(MONTH-DAY-YEAR)

(PRINCIPAL)

By: \_\_\_\_\_  
(PRINCIPAL)

\_\_\_\_\_  
(SURETY)

By: \_\_\_\_\_  
**Attorney in fact**

## **EXHIBIT 13**

### **FORM OF GUARANTY**

#### **GUARANTY**

THIS GUARANTY (this "Guaranty") is made as of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, a \_\_\_\_\_ ("Guarantor"), in favor of the TEXAS DEPARTMENT OF TRANSPORTATION, an agency of the State of Texas ("TxDOT").

#### **R E C I T A L S**

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

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

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

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

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

2. **Unconditional Obligations.** This Guaranty is a guaranty of payment and performance and not of collection. Except as provided in Section 21, this Guaranty is an absolute, unconditional and irrevocable guarantee of the full and prompt payment and performance when due of all of the Guaranteed Obligations, whether or not from time to time reduced or extinguished or hereafter increased or incurred, and whether or not enforceable against the DB Contractor. If any payment made by the DB Contractor or any other Person and applied to the Guaranteed Obligations is at any time annulled, set aside, rescinded, invalidated, declared to be fraudulent or preferential or otherwise required to be repaid or refunded, then, to the extent of such payment or

repayment, the liability of Guarantor will be and remain in full force and effect as fully as if such payment had never been made. Guarantor covenants that this Guaranty will not be fulfilled or discharged, except by the complete payment and performance of the Guaranteed Obligations, whether by the primary obligor or Guarantor under this Guaranty. Without limiting the generality of the foregoing, Guarantor's obligations hereunder will not be released, discharged or otherwise affected by: (a) any change in the DBA Documents or the obligations thereunder, or any insolvency, bankruptcy or similar proceeding affecting the DB Contractor, Guarantor or their respective assets, and (b) the existence of any claim or set-off which the DB Contractor has or Guarantor may have against TxDOT, whether in connection with this Guaranty or any unrelated transaction, provided that nothing in this Guaranty will be deemed a waiver by Guarantor of any claim or prevent the assertion of any claim by separate suit. This Guaranty will in all respects be a continuing, absolute, and unconditional guaranty irrespective of the genuineness, validity, regularity or enforceability of the Guaranteed Obligations or any part thereof or any instrument or agreement evidencing any of the Guaranteed Obligations or relating thereto, or the existence, validity, enforceability, perfection, or extent of any collateral therefor or any other circumstances relating to the Guaranteed Obligations, except as provided in Section 21.

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

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

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

c. The Guaranteed Obligations are not conditional or contingent upon the genuineness, validity, regularity or enforceability of any of the DBA



Documents or the pursuit by TxDOT of any remedies which TxDOT either now has or may hereafter have with respect thereto under any of the DBA Documents.

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

#### **4. Liability of Guarantor.**

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

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

c. TxDOT, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability of this Guaranty or giving rise to any reduction, limitation, impairment, discharge or termination of Guarantor's liability hereunder, from time to time may (i) with respect to the financial obligations of the DB Contractor, if and as permitted by the DBA, renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment of financial obligations that are Guaranteed Obligations, and/or subordinate the payment of the same to the payment of any other obligations, (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto, (iii) request and accept other guarantees of the Guaranteed Obligations and take and hold security for the payment and performance of this Guaranty or the Guaranteed Obligations, (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for performance of the Guaranteed Obligations, any other guarantees of the Guaranteed Obligations, or any other obligation of any Person with respect to the Guaranteed Obligations, (v) enforce and apply any security hereafter held by or for the benefit of TxDOT in respect of this Guaranty or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that TxDOT may have against any such security, as TxDOT in its discretion may determine, and (vi) exercise any other rights available to it under the DBA Documents.

d. This Guaranty and the obligations of Guarantor hereunder will be valid and enforceable and will not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than infeasible

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

**5. Waivers.** To the fullest extent permitted by law, Guarantor hereby waives and agrees not to assert or take advantage of: (a) any right to require TxDOT to proceed against the DB Contractor or any other Person or to proceed against or exhaust any security held by TxDOT at any time or to pursue any right or remedy under any of the DBA Documents or any other remedy in TxDOT's power before proceeding against Guarantor; (b) any defense that may arise by reason of the incapacity, lack of authority, death or disability of, or revocation hereby by Guarantor, the DB Contractor or any other Person or the failure of TxDOT to file or enforce a claim against the estate (either in administration, bankruptcy or any other proceeding) of any such Person; (c) any defense that may arise by reason of any presentment, demand for payment or performance or otherwise, protest or notice of any other kind or lack thereof; (d) any right or defense arising out of an election of remedies by TxDOT even though the election of remedies, such as nonjudicial foreclosure with respect to any security for the Guaranteed Obligations, has destroyed the Guarantor's rights of subrogation and reimbursement against the DB Contractor by the operation of law or otherwise; (e) all notices to Guarantor, to the Purchasers, to any Purchaser or to any other Person, including, but not limited to, notices of the acceptance of this Guaranty or the creation, renewal, extension, modification, accrual of any of the obligations of the DB Contractor under any of the DBA Documents, or of default in the payment or performance of any such obligations, enforcement of any right or remedy with respect thereto or notice of any other matters relating thereto, except the notice required in Section 16.1.3 of the DBA; (f) any defense based upon any act or omission of TxDOT which directly or indirectly results in or aids the discharge or release of the DB Contractor, Guarantor or any security given or held by TxDOT in connection with the Guaranteed Obligations; and (g) any and all suretyship defenses under applicable law.

**6. Waiver of Subrogation and Rights of Reimbursement.** Until the Guaranteed Obligations have been indefeasibly paid in full, Guarantor waives any claim, right or remedy which it may now have or may hereafter acquire against the DB Contractor that arises from the performance of Guarantor hereunder, including, without limitation, any claim, right or remedy of subrogation, reimbursement, exoneration,

contribution, or indemnification, or participation in any claim, right or remedy of TxDOT against the DB Contractor, or any other security or collateral that TxDOT now has or hereafter acquires, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise. All existing or future indebtedness of DB Contractor or any shareholders, partners, members, joint venturers of DB Contractor to Guarantor is subordinated to all of the Guaranteed Obligations. Whenever and for so long as the DB Contractor shall be in default in the performance of a Guaranteed Obligation, no payments with respect to any such indebtedness shall be made by DB Contractor or any shareholders, partners, members, joint venturers of DB Contractor to Guarantor without the prior written consent of TxDOT. Any payment by DB Contractor or any shareholders, partners, members, joint venturers of DB Contractor to Guarantor in violation of this provision shall be deemed to have been received by Guarantor as trustee for TxDOT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

i. no consent, authorization, approval, order, license, certificate, or permit or act of or from, or declaration or filing with, any governmental authority or any party to any contract, agreement, instrument, lease, or license to which Guarantor is a party or by which Guarantor is bound, is required for the execution,

delivery, or compliance with the terms hereof by Guarantor, except as have been obtained prior to the date hereof; and

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

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

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

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

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

If to TxDOT:

Texas Department of Transportation  
Strategic Projects Division  
South/Central Texas Strategic Projects Office  
814 Arion Parkway, Suite 401  
San Antonio, Texas 78216  
Attention: Mr. Frank P. Holzmann, P.E., Director  
Telephone: (210) 610-4800  
Email: frank.holzmann@txdot.gov

With copies to:

Texas Department of Transportation  
Office of General Counsel  
125 East 11<sup>th</sup> Street  
Austin, Texas 78701  
Attention: Jim Bailey, Esq.  
Telephone: (512) 463-8630  
E-mail: jim.bailey@txdot.gov

If to Guarantor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Email: \_\_\_\_\_

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

All notices and other communications required or permitted under this Guaranty which are addressed as provided in this Section 13 are effective upon delivery, if delivered personally or by overnight mail, and, are effective five (5) days following deposit in the United States mail, postage prepaid if delivered by mail.

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

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

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

**17. No Waiver.** Any forbearance or failure to exercise, and any delay by TxDOT in exercising, any right, power or remedy hereunder will not impair any such

right, power or remedy or be construed to be a waiver thereof, nor will it preclude the further exercise of any such right, power or remedy.

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

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

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

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

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

**21. Defenses.** Notwithstanding any other provision to the contrary, Guarantor shall be entitled to the benefit of all defenses available to the DB Contractor under the DBA except (a) those expressly waived in this Guaranty, (b) failure of consideration, lack of authority of the DB Contractor and any other defense to formation

of the DBA, and (c) defenses available to the DB Contractor under any federal or state law respecting bankruptcy, arrangement, reorganization or similar relief of debtors. Action against Guarantor under this Guaranty shall be subject to no prior notice or demand except for the notice provided in Section 16.1.3 of the DBA.

[SIGNATURES ON NEXT PAGE]



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

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

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

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

## **EXHIBIT 14**

### **INSURANCE COVERAGE REQUIREMENTS**

#### **1. Builder's Risk Insurance During Construction**

At all times during the period from the commencement of Construction Work until Final Acceptance, DB Contractor shall procure and keep in force a policy of builder's risk insurance as specified below.

(a) The policy shall provide coverage for "all risks" of direct physical loss or damage to the portions or elements of the Project under construction, excluding terrorism but including the perils of earthquake, earth movement, flood, storm, tempest, windstorm, hurricane, and tornado and subsidence; shall contain extensions of coverage that are typical for a project of the nature of the Project; and shall contain only those exclusions that are typical for a project of the nature of the Project.

(b) The policy shall cover (i) all property, roads, buildings, structures, fixtures, materials, supplies, foundations, pilings, machinery and equipment that are part of or related to the portions or elements of the Project under construction, and the works of improvement, including permanent and temporary works and materials, and including goods intended for incorporation into the works located at the Site, in storage, including off-site storage, or in the course of inland transit on land to the Site, and (ii) unless covered by commercial general liability insurance pursuant to Section 2 of this Exhibit 14, all existing property and improvements that are within the construction work zone or are or will be affected by the construction Work, including a sublimit not less than \$2,500,000 for existing property in the construction work zone.

(c) The policy shall provide coverage per occurrence up to the full replacement cost of the covered property loss, including a sublimit acceptable to TxDOT for demolition and debris removal, without risk of co-insurance; provided, however, that the policy may also include the following sublimits: (i) for earth movement and flood, not less than \$5,000,000 per occurrence and \$10,000,000 aggregate; (ii) for the peril of Named Windstorm, not less than \$10,000,000; (iii) for building ordinance compliance, not less than \$5,000,000; (iv) for "soft cost expense," not less than \$5,000,000; and (v) for professional fees, a sublimit acceptable to TxDOT but not less than \$1,000,000.

(d) TxDOT shall be named as additional insured on the policy. DB Contractor also may, but is not obligated to, include other Subcontractors as insureds. The policy shall be written so that no act or omission of any insured shall vitiate coverage of the other insureds. DB Contractor shall be named as the named insured under the policy.

(e) The policy shall include coverage for (i) foundations, including pilings, but excluding normal settling, shrinkage, or expansion; (ii) physical damage resulting from machinery accidents but excluding normal and natural wear and tear,

corrosion, erosion, inherent vice or latent defect in the machinery; (iii) plans, blueprints and specifications; (iv) physical damage resulting from faulty work or faulty materials, but excluding the cost of making good such faulty work or faulty materials; (v) physical damage resulting from design error or omission but excluding the cost of making good such design error or omission; (vi) demolition and debris removal coverage; (vii) the increased replacement cost due to any change in applicable codes or other Laws; (viii) expense to reduce loss; (ix) building ordinance compliance, with the building ordinance exclusion deleted; and (x) “soft cost expense” (including costs of Governmental Approvals, mitigation costs, attorneys’ fees, and other fees and costs associated with such damage or loss or replacement thereof).

(f) The policy shall provide a deductible or self-insured retention not exceeding \$1,000,000 per occurrence.

## 2. Commercial General Liability Insurance

At all times during the performance of the Work, DB Contractor shall procure and keep in force, or cause to be procured and kept in force, commercial general liability insurance as specified below. During any period in which DB Contractor, at its election, maintains in effect builder’s third party liability insurance pursuant to Section 3 of this Exhibit 14, the commercial general liability insurance policy need not duplicate the builder’s third party liability insurance coverage.

(a) The policy shall be in form reasonably acceptable to TxDOT, and shall be an occurrence form. The policy shall contain extensions of coverage that are typical for a project of the nature of this Project, and shall contain only those exclusions that are typical for a project of the nature of this Project.

(b) The policy shall insure against the legal liability of the insureds named in Section 2(d), relating to claims by third parties for accidental death, bodily injury or illness, property damage, personal injury and advertising injury, and shall include the following specific coverages:

(i) Contractual liability;

(ii) Premises/operations;

(iii) Independent contractors;

(iv) Products and completed operations (with acknowledgement that the Project constitutes the premises and not a product), with coverage to remain in place post-completion for 10 years or through the applicable statute of limitations or repose period;

(v) Broad form property damage, providing the same coverage as ISO form CG 00 01 04 13 provides;

(vi) Hazards commonly referred to as “XCU”, including explosion, collapse and underground property damage;

(vii) Fellow employee coverage for supervisory personnel;

(viii) Incidental medical malpractice;

(ix) No exclusion for work performed within 50 feet of a railroad;

(x) Except with regard to indemnifying a professional advisor, consultant, sub-consultant, Supplier or manufacturer engaged by DB Contractor, no application of any limitation or exclusion for bodily injury or property damage arising out of professional services, including engineering, architecture and surveying, in any manner to (A) coverage respecting DB Contractor’s supervision, coordination, management, scheduling or other similar services or (B) the products and completed operations coverage;

(xi) Broad named insured endorsement; and

(xii) Non-owned automobile liability, unless covered by the automobile liability policy pursuant to Section 4 of this Exhibit 14.

(c) The policy shall have limits of not less than \$50,000,000 per occurrence and in the aggregate per policy period. Such limits may be provided through umbrella insurance and shall be shared by all insured and additional insured parties and shall reinstate annually, and may be included in an umbrella insurance combined with such other insurance that this Exhibit 14 stipulates may be similarly included.

(d) TxDOT and the Indemnified Parties shall be named as additional insureds, using ISO Forms CG 20 33 07 04 and CG 20 37 07 04 or their equivalents. The policy shall be written so that no act or omission of a named insured shall vitiate coverage of the other additional insureds.

(e) The policy shall provide one of the following, as DB Contractor selects:

(i) A deductible or self-insured retention not exceeding \$100,000 per occurrence;

(ii) A deductible or self-insured retention not exceeding \$250,000 per occurrence with an aggregate of \$2,000,000 per policy period; or

(iii) A deductible (but not self-insured retention) of \$1,000,000 per occurrence but only if the primary policy and any excess policy are written to obligate the insurers to compensate the claimant on a first dollar basis.

### 3. Builder's Third Party Liability Insurance

During any period in which Construction Work is performed, DB Contractor, at its election, may procure and keep in effect builder's third party liability insurance, as specified below, in lieu of commercial general liability insurance coverage for construction activities (but DB Contractor shall maintain commercial general liability insurance coverage for all non-construction-related activities).

(a) The policy shall insure against liability to third parties for accidental death, bodily injury or illness, property damage, personal injury and advertising injury, arising out of the construction work or other work of construction or the improvements under construction. The policy shall contain extensions of coverage that are typical for a project of the nature of the Project, and shall contain only those exclusions that are typical for a project of the nature of the Project.

(b) DB Contractor shall continue the policy in effect for not less than the applicable Warranty Term.

(c) The policy shall otherwise include the same provisions as described for the commercial general liability insurance under Sections 2(b) through (e) of this Exhibit 14.

### 4. Automobile Liability Insurance

At all times during the performance of the Work, DB Contractor shall procure and keep in force comprehensive, business, or commercial automobile liability insurance as specified below.

(a) Each policy shall cover accidental death, bodily injury and property damage liability arising from the ownership, maintenance or use of all owned, non-owned and hired vehicles connected with performance of the Work, including loading and unloading. The policy shall contain extensions of coverage that are typical for a project of the nature of the Project, and shall contain only those exclusions that are typical for a project of the nature of the Project.

(b) DB Contractor shall be the named insured under its automobile liability policy.

(c) DB Contractor's policy shall have a single limit per policy period of not less than \$50,000,000 any one claim and in the aggregate, and may be included in an umbrella insurance combined with such other insurance that this Exhibit 14 stipulates may be similarly included.

(d) Each policy shall provide a deductible or self-insured retention not exceeding \$50,000 per occurrence.

## 5. Pollution Liability Insurance

DB Contractor shall procure and maintain during the Term insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by DB Contractor, its agents, representatives, employees or subcontractors. Coverage shall be at least broad as:

(a) Contractors Pollution Liability with coverage for losses caused by pollution conditions that arise from the operations of the DB Contractor described under the scope of services of this DBA:

(i) Bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death; medical monitoring,

(ii) Property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, clean up costs, and the loss of use of tangible property that has not been physically injured or destroyed;

(iii) Defense including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages;

(iv) Non-owned Disposal Site coverage for specified sites (by endorsement) if contractor is disposing of waste(s).

(b) Coverage shall apply to sudden and non-sudden pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, provided such conditions are not naturally present in the environment in the concentration or amounts discovered, unless such natural condition(s) are released or dispersed as a result of the performance of Covered Operations.

(c) Contractor's Pollution Liability (occurrence form): DB Contractor shall maintain limits no less than \$10,000,000 per occurrence/\$10,000,000 aggregate for the term of the DBA.

(d) The policy shall provide a deductible or self-insured retention not exceeding \$250,000 per occurrence.

(e) TxDOT shall be named as an additional named insured on the policy. The specific scope of services required under the DBA shall be listed on the certificate of insurance.

## 6. Professional Liability Insurance

At all times that Professional Services are rendered under the DBA respecting design and construction of the Project until five years after the Professional Services have concluded for the Project, DB Contractor shall procure and keep in force, or cause

others to procure and keep in force, professional liability insurance as specified in subparagraphs (a), (b) and (c) below; provided, however, that the total term of such professional liability coverage need not extend beyond ten (10) years. Such policy need not be Project-specific. DB Contractor may satisfy such insurance coverage requirement via a practice policy covering all firms providing Professional Services valued at \$500,000 or more and/or by showing that all of the foregoing providers of Professional Services each has a practice policy with coverages satisfying subparagraphs (a), (b) and (c) below.

(a) The insurance policy provide coverage of liability of the party performing the Professional Services arising out of any negligent act, error or omission in the performance of Professional Services, including coverage for contingent bodily injury or property damage.

(b) The insurance policy shall have a limit of not less than \$10,000,000 per claim and in the aggregate. The aggregate limit need not reinstate annually.

(c) The insurance policy shall provide a deductible or self-insured retention not exceeding \$1,000,000 per occurrence.

In addition, DB Contractor shall cause each other Subcontractor that provides Professional Services for the Project to procure and keep in force professional liability insurance covering its professional services practice with a limit of not less than \$2,000,000 per claim and in the aggregate per annual policy period. Such policy need not be Project-specific or include a tail period for making claims, and shall include a commercially reasonable deductible.

## 7. Workers' Compensation Insurance

At all times when Work is being performed by any employee of DB Contractor, DB Contractor shall procure and keep in force, or cause to be procured and kept in force, a policy of workers' compensation insurance for the employee in conformance with applicable Law. DB Contractor shall be the named insured on these policies. The workers' compensation insurance policy shall contain the following endorsements:

- (a) A voluntary compensation endorsement;
- (b) An alternative employer endorsement; and
- (c) An endorsement extending coverage to all states operations on an "if any" basis.

## 8. Employer's Liability Insurance

At all times during the performance of the Work, DB Contractor shall procure and keep in force, or cause to be procured and kept in force, employer's liability insurance as specified below.

(a) The policy shall insure against liability for death, bodily injury, illness or disease for all employees of DB Contractor working on or about any Site or otherwise engaged in the work.

(b) DB Contractor shall be the named insured.

(c) The policy shall have a limit of not less than \$25,000,000 per accident and in the aggregate during the period of insurance, and may be included in an umbrella insurance combined with such other insurance that this Exhibit 14 stipulates may be similarly included.

#### 9. Railroad Protective Liability Insurance

DB Contractor shall procure and keep in force, or cause to be procured and kept in force, railroad protective liability insurance as may be required by any railroad in connection with any Work performed across, under or adjacent to the railroad's tracks or railroad right-of-way. All insurance policies shall be in a form acceptable to the operating railroad and shall name the railroad as named insured. Copies of all insurance policies shall be submitted to TxDOT prior to any entry by DB Contractor upon operating railroad property. In the event any agreement between TxDOT and a railroad includes railroad protective insurance requirements applicable to the Work, DB Contractor shall procure and keep in force or cause to be procured and kept in force, insurance meeting such requirements.

#### 10. Subcontractors' Insurance

(a) At all times during the performance of the Work, DB Contractor shall cause each Subcontractor that performs work on the Site to provide commercial general liability insurance that complies with Section 9 of the DBA, with commercially reasonable limits and deductibles or self-insured retentions, in circumstances where the Subcontractor is not covered by DB Contractor-provided liability insurance. DB Contractor shall cause each such Subcontractor that provides such insurance to include each of the Indemnified Parties as additional insureds under such Subcontractor's liability insurance policies. Such insurance need not be Project-specific. TxDOT shall have the right to contact the Subcontractors directly in order to verify the above coverage.

(b) At all times during the performance of the Work, DB Contractor shall cause each Subcontractor that has vehicles on the Site or uses vehicles in connection with the work to procure and keep in force, comprehensive, business, or commercial automobile liability insurance meeting the requirements as specified below.

(i) Each policy shall cover accidental death, bodily injury and property damage liability arising from the ownership, maintenance or use of all owned, non-owned and hired vehicles connected with performance of the Work. The policy shall contain extensions of coverage that are typical for a project of the nature of the Project, and shall contain only those exclusions that are typical for a project of the nature of the Project.



(ii) Each such Subcontractor shall be the named insured under its respective automobile liability policy.

(iii) Each policy shall have a combined single limit per policy period of not less than \$1,000,000.

(iv) Each policy shall include each of the Indemnified Parties as additional insureds.

(c) At all times when Work is being performed by any employee of a Subcontractor, DB Contractor shall cause subcontractor to procure and keep in force, or cause to be procured and kept in force, a policy of workers' compensation insurance for the employee in conformance with applicable Law. Subcontractor shall be the named insured on these policies. The workers' compensation insurance policy shall contain the following endorsements:

(i) A voluntary compensation endorsement;

(ii) An alternative employer endorsement; and

(iii) An endorsement extending coverage to all states operations on an "if any" basis.

(d) At all times during the performance of the Work, DB Contractor shall cause each Subcontractor to procure and keep in force employer's liability insurance as specified below.

(i) The policy shall insure against liability for death, bodily injury, illness or disease for all employees of subcontractor working on or about any Site or otherwise engaged in the work.

(ii) Subcontractor shall be the named insured.

(iii) The policy shall have a limit of not less than \$1,000,000 per accident and in the aggregate during the period of insurance, and may be included in an umbrella insurance combined with such other insurance that this Exhibit 14 stipulates may be similarly included.

## EXHIBIT 15

### FORM OF DRAW REQUEST AND CERTIFICATE

Draw Request # \_\_\_\_\_

Date: \_\_\_\_\_  
month/day/year

Texas Department of Transportation  
[Address]

"Entry Required in Cell"

A. Draw Request for Work performed for the period: \_\_\_\_\_ to \_\_\_\_\_  
month/day/year month/day/year

B. Original DBA Amount

C. Approved Change Order Amounts

D. Revised DBA Amount (B+C)

E. Cumulative Amount Earned to Date

F. Cumulative Maximum Payment Schedule Allowance (this period from Exhibit 5)

G. Cumulative Amount of Previous Draw Requests

H. Amount Qualified for Payment this Period (Lesser of "E-G" or "F-G ") (includes Electronic Communications Allowance and Landscaping allowance work described below)

I. Retainage Percentage this Draw Request for Record Drawings (1% of "H")

J. Deduction from progress payment per Section 12.3.2 of the DBA (this Draw Request)

K. Total deductions ("I" + "J")

L. Current Amount Due ("H" - "K" )

	\$0.00
	\$0.00
	\$0.00
\$	
\$	
\$	

Printed Name DB Contractor's Project Manager	Signature	month/day/year
Printed Name TxDOT Program Manager	Signature	month/day/year
Printed Name Texas Department of Transportation	Signature	month/day/year

(Note: See Sheet 4 of 4 for Draw Request Checklist)

## DRAW REQUEST NO. \_\_\_\_\_ CERTIFICATION

The undersigned hereby certifies that (choose applicable bracketed language):

- ◆ Except as specifically noted in this certification, all Work, including that of designers, Subcontractors, and Suppliers, which is the subject of this Draw Request has been checked and/or inspected by [the Design Quality Assurance Manager with respect to Professional Services] [the Construction Quality Acceptance Manager with respect to construction Work];
- ◆ Except as specifically noted in this certification, all [Professional Services] [construction Work] which is the subject of this Draw Request conforms to the requirements of the DBA Documents;
- ◆ [The Design Quality Management Plan] [The Construction Quality Management Plan] and all of the measures and procedures provided therein are functioning properly and are being followed; and
- ◆ [The Professional Services percentages and construction percentages indicated are accurate and correct.] [All quantities for which payment is requested on a unit price basis are accurate.]

Exceptions:

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Name: \_\_\_\_\_  
[DQAM] [CQAM] Representative

\_\_\_\_\_ Date

Seal:

## **DRAW REQUEST CHECKLIST**

**Enclosed with this cover sheet are the following:**

- ☐ Monthly progress report as described in Section 2.1.1.2.4 of the Technical Provisions
- ☐ Certifications by the Design Quality Assurance Manager and the Construction Quality Acceptance Manager;
- ☐ Monthly report of personnel hours;
- ☐ Draw Request data sheet(s) and documents that support and substantiate the amount requested;
- ☐ An approved Schedule of Values or an approved revised Schedule of Values as described in Section 2.1.1.2.3 of the Technical Provisions
- ☐ DBE utilization reports;
- ☐ Cash flow curves and comparison to the Maximum Payment Schedule;
- ☐ An approved Project Status Schedule Update as described in Section 2.1.1.2.2 of the Technical Provisions

**EXHIBIT 16**

**FORM OF CHANGE ORDER**

CHANGE ORDER REQUEST NO. \_\_\_\_\_ CONTRACT NO. \_\_\_\_\_

**SECTION I**

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

• Title: \_\_\_\_\_

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

• Company Name: \_\_\_\_\_

**DESCRIPTION:**

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**SCOPE:**

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**REASON FOR REQUEST FOR CHANGE ORDER:**

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\_\_\_\_\_  
DB Contractor Project Manager  
Date

## **SECTION II**

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

Payment Schedule Items Added/Deducted:

<u>Activity No.</u>	<u>Description</u>	<u>Amount</u>
_____	_____	_____

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

- \_\_\_\_\_ A lump sum, negotiated price Change Order (provide information in Section IIA below)
- \_\_\_\_\_ A unit price/quantities Change Order (provide information in Section IIB below)
- \_\_\_\_\_ A Time and Materials Change Order (provide information in Section IIC below)

### **Section IIA**

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

### **Section IIB**

UNIT PRICE ITEM	UNIT PRICE	QUANTITY	PRICE (Unit Price x Quantity)

Total of all items in above Table: \$ \_\_\_\_\_

### **Section IIC**

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

- A. DB Contractor Labor (construction)
- 1. Wages<sup>1</sup> \$ \_\_\_\_\_
  - 2. Labor benefits<sup>2</sup> (55% of A.1) \$ \_\_\_\_\_
- B. DB Contractor and Subcontractor Labor (professional services)
- 1. Wages (Raw) \$ \_\_\_\_\_
  - 2. Labor benefits<sup>1</sup> (145% of B.1, which includes

	overhead and profit)	\$ _____
3.	Off-duty peace officers and patrol cruisers <sup>1</sup>	\$ _____
C.	Materials (with taxes, freight and discounts)	\$ _____
D.	Equipment <sup>2</sup>	\$ _____
E.	Subcontracts (Time and Materials cost)	\$ _____
F.	Utility Direct Costs	\$ _____
G.	Overhead and Profit	
1.	Labor (25% of A.1)	\$ _____
2.	Traffic Control (5% of B.3)	\$ _____
3.	Materials (15% of C)	\$ _____
4.	Subcontracts (5% of E)	\$ _____
5.	Utility Direct Costs (5% of F)	\$ _____
H.	Grand Total	\$ _____

<sup>1</sup> Premiums on public liability and workers' compensation insurance, Social Security and unemployment insurance taxes.

<sup>2</sup> Equipment Costs (estimated or actual) based on Blue Book Equipment Rental Rates calculated in accordance with Section 13.7.3 of the DBA.

### **SECTION III**

The status of Substantial Completion is as follows:

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

The status of Final Acceptance is as follows:

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

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

1. Substantial Completion: \_\_\_\_\_  
(+ or - \_\_\_\_\_ days from base of \_\_\_\_\_ calendar days after NTP1)
2. Final Acceptance: \_\_\_\_\_  
(+ or - \_\_\_\_\_ days from base of \_\_\_\_\_ calendar days after NTP1)
3. Number of days of Project Float \_\_\_\_\_



Justification for Change Order with reference to the DBA:

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The above three sections represent a true and complete summary of all aspects of this Request for Change Order.

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

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

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

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

**SECTION IV (Reviewed by Program Manager)**

\_\_\_\_\_  
**Program Manager (Design-Build Agreement)**

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

**Comments:**

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**SECTION V (Reviewed by TxDOT Project Manager)**

**TxDOT Project Manager**

Date\_\_\_\_\_

**Comments:**

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**SECTION VII (Approval by TxDOT CDA Program Director and District Engineer)**

**TxDOT CDA Program Director**

Date \_\_\_\_\_

**TxDOT District Engineer**

Date \_\_\_\_\_

**Comments:**

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**EXHIBIT 17**

**INITIAL DESIGNATION OF AUTHORIZED REPRESENTATIVES**

**TxDOT Authorized Representative(s)**

TxDOT's Executive Director, Chief Planning and Projects Officer and their designees.

Phil Wilson

Russell Zapalac

Ed Pensock

Mario R. Jorge

**DB Contractor's Authorized Representative(s)**

James D. Pitcock, CEO

Robert C. Lanham, Jr., P.E., President

Jesse Khangura, P.E., Vice President

Seth Schulgen, Vice President

Randy T. Rogers, Vice President

**EXHIBIT 18**

**PROGRESS PAYMENT  
CERTIFICATE**

**WHEREAS**, the Texas Department of Transportation ("TxDOT") and Williams Brothers Construction Co., Inc., a Texas corporation ("DB Contractor") are parties to a Design-Build Agreement (the "DBA") to design and construct the Loop 1604 Western Extension Project (the "Project") in Bexar County, Texas; and

**WHEREAS**, TxDOT has issued to DB Contractor a Certificate of Final Acceptance for the design and construction of the Project; and

**WHEREAS**, pursuant to the Maximum Payment Schedule set forth in the DBA, TxDOT's payments to DB Contractor for design and construction of the Project must continue beyond the date of Final Acceptance of DB Contractor's design and construction work by TxDOT; and

**WHEREAS**, TxDOT has determined that there is no dispute that it owes \$\_\_\_\_\_ to DB Contractor, to be paid in accordance with the schedule described in Section 12.4.6 of the DBA; and

**NOW THEREFORE**, TxDOT acknowledges its obligation, subject to Texas law, to pay DB Contractor a total of \$\_\_\_\_\_, and hereby certifies that it will pay that obligation by monthly payments as set forth on Attachment A.

Executed as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

**TEXAS DEPARTMENT OF TRANSPORTATION**

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

**ATTACHMENT A TO EXHIBIT 18**

<b>PAYMENT DATE</b>	<b>PAYMENT AMOUNT</b>

## **EXHIBIT 19**

### **KEY SUBCONTRACTORS**

List of Key Subcontractors by discipline or role:

- Project Management: Williams Brothers Construction Co., Inc.
- Lead Design Firm: Parsons Brinckerhoff, Inc.
- Quality Control Management: Alliance Geotechnical Group, Inc.; Parsons Brinckerhoff, Inc.
- Quality Assurance Management: Raba Kistner Infrastructure, Inc.
- Key Task Leader – Geotechnical: Parsons Brinckerhoff, Inc.
- Key Task Leader – Hydraulics and Hydrology: Parsons Brinckerhoff, Inc.
- Key Task Leader – Structural: Parsons Brinckerhoff, Inc.
- Key Task Leader – Environmental: Parsons Brinckerhoff, Inc.
- Key Task Leader – Utilities: Parsons Brinckerhoff, Inc.

**EXHIBIT 20**

**WARRANTY PERFORMANCE AND MEASUREMENT TABLE BASELINE**

(Attached)



# **DESIGN-BUILD AGREEMENT**

## **LOOP 1604 WESTERN EXTENSION PROJECT**

### **EXHIBIT 20**

#### **WARRANTY PERFORMANCE AND MEASUREMENT TABLE BASELINE**

### Warranty Performance and Measurement Table Baseline

ELEMENT CATEGORY	REF	ELEMENT	WARRANTY TERM	TxDOT INSPECTION AND MEASUREMENT METHOD	PERFORMANCE REQUIREMENT
<b>1) ROADWAY</b>					
				<b>Unless stated otherwise, measurements shall be conducted using procedures, techniques, and measuring equipment consistent with TxDOT's <i>Pavement Management Information System Rater's Manual</i>.</b>	
	1.2	Pavement	5 years, except for mill and overlay sections having a 2-year performance Warranty Term per Note 1	<b>b) Ruts – Mainlanes, shoulders &amp; ramps</b> Depth as measured using an automated device in compliance with TxDOT Standards. 10ft straight edge used to measure rut depth for localized areas. <b>c) Ride quality</b> Measurement of International Roughness Index (IRI) according to TxDOT standard Tex-1001-S, Operating Inertial Profilers and Evaluating Pavement Profiles 3-ft straightedge used to measure discontinuities <b>d) Failures</b> Instances of failures exceeding the failure criteria set forth in the TxDOT PMIS Rater's Manual, including potholes, base failures, punchouts and jointed concrete pavement failures <b>f) Skid resistance</b> ASTM E274/E274M-11 Standard Test Method for Skid Resistance Testing of Paved Surfaces at 50 MPH using a full scale smooth tire meeting the requirements of ASTM E524-08 .	No wheel path length with ruts greater than 1/4" in depth  No length with depth of rut at any location greater than 0.5"  <ul style="list-style-type: none"> <li>• Mainlanes, ramps – no results greater than 95" per mile</li> <li>• Frontage roads – no results greater than 120" per mile</li> </ul> No individual discontinuities greater than 0.75"  No occurrence of failure  <ul style="list-style-type: none"> <li>• Mainlanes, shoulders and ramps – Number of sections investigated as to potential risk of skidding accident and appropriate remedial action taken where average Skid Number for 0.5-mile section of mainlanes, shoulders and ramps are in excess of 30.</li> <li>• Frontage roads –Number of sections investigated as to potential risk of skidding accident and appropriate remedial action taken where average Skid Number for 0.5-mile section of frontage roads is in excess of 30.</li> <li>• When the Skid Number is below 25 and/or when required by the Wet Weather Accident Reduction Program, areas categorized as high risk, the Concessionaire shall perform a site investigation and perform required corrective action.</li> </ul> Instances where road users warned of potential skidding hazard where remedial action is identified.

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	1.3	Crossovers and other paved areas	2 years	a) Potholes  b) Base failures	No potholes of low severity or higher  No base failures of low severity or higher
	1.4	Joints in concrete	5 years	Visual inspection of joints Measurement of joint width and level difference of two sides of joints	No length with unsealed joints greater than ¼" No joint width more than 1" or faulting more than ¼"
	1.5	Curbs	2 years	Visual inspection	No length out of alignment
<b>2) DRAINAGE</b>					
	2.2	Drainage treatment devices	2 years	Visual inspection	Devices functioning correctly with means of operation displayed
	2.3	Travel Way	2 years	Visual inspection of water on surface	The travel way is free from water to the extent that such water would represent a hazard by virtue of its position and depth.
	2.4	Discharge systems	2 years	Visual inspection and records	Surface water discharge systems perform their proper function and discharge to groundwater and waterways complies with the relevant permits and other legal requirements.
<b>3) STRUCTURES</b>					
	3.1	Structures having an opening measured along the centre of the roadway of more than 20 feet between undercopings of abutments or springlines of arches or extreme ends of openings or multiple boxes	5 years	Inspection and assessment in accordance with the requirements of federal National Bridge Inspection Standards (NBIS) of the Code of Federal Regulations, 23 Highways – Part 650, the TxDOT Bridge inspection Manual, and the Federal Administration's Bridge Inspector's Reference Manual	No occurrences of condition rating below seven for any deck, superstructure, substructure or components as required in the TxDOT Bridge Inspection Manual.
	3.3	Non-bridge class culverts	5 years	Visual inspection	Non-bridge-class culverts are free of: <ul style="list-style-type: none"> <li>defects in sealant to movement joints</li> <li>scour damage</li> </ul>
	3.4	Gantries and high masts	5 years	Visual inspection	Sign signal gantries, high masts are structurally sound and free of defects in surface protection systems

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	3.5	Load ratings	5 years	Load rating calculations in accordance with the Manual for Bridge Evaluation and the TxDOT Bridge Inspection Manual.  Load restriction requirements as per the TxDOT Bridge Inspection Manual	All structures maintain the design load capacity.
<b>4) PAVEMENT MARKINGS, OBJECT MARKERS, BARRIER MARKERS AND DELINEATORS</b>					
	4.1	Pavement markings	2 years	a) Markings General - Physical measurement  Profile Markings - Visual inspection	No Length with no more than 5% loss of area of material at any point  Length performing its intended function and compliant with relevant regulations
	4.2	Raised reflective markers	2 years	Visual inspection	Markings are functioning as intended
<b>5) GUARDRAILS, SAFETY BARRIERS AND IMPACT ATTENUATORS</b>					
	5.1	Guard rails and safety barriers	2 years	Visual inspection	All guardrails, safety barriers, concrete barriers, etc. are free of construction defects and remain at correct height.
	5.2	Impact attenuators	2 years	Visual inspection	All impact attenuators remain as installed.
<b>6) TRAFFIC SIGNS</b>					
	6.1	General – All Signs	2 years	a) <b>Retroreflectivity</b> Coefficient of retro reflectivity  b) <b>Face damage</b> Visual inspection  c) <b>Placement</b> Visual inspection	No signs with reflectivity below the requirements of TxDOT's TMUTCD and free from structural and electrical defects  No signs with face damage greater than 5% of area, unless caused by a third party  Sign mounting posts are structurally sound and rust free
<b>7) TRAFFIC SIGNALS</b>					
	7.2	Soundness	2 years	a) <b>Structural soundness</b> Visual inspection  b) <b>Electrical soundness</b>	Traffic Signals, Pedestrian Elements and Vehicle Detectors are structurally and electrically sound  Inspection records showing compliance
<b>8) LIGHTING</b>					
	8.1	Roadway Lighting – General	2 years		Columns are upright, correctly founded, visually acceptable and structurally sound
	8.3	Electrical Supply	2 years	Testing to meet NEC regulations, visual inspection	Electricity supply, feeder pillars, cabinets, switches and fittings are electrically, mechanically and structurally sound and functioning
	8.5	High Mast Lighting	2 years		All winch and safety equipment is correctly functioning. (for structural requirements refer to Element Category 3)

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<b>9) FENCES, WALLS AND SOUND ABATEMENT</b>					
	9.2	Construction	5 years	Structural assessment if visual inspection warrants	Integrity and structural condition of the fence is maintained
<b>12) EARTHWORKS, EMBANKMENTS AND CUTTINGS</b>					
	12.1	Slope Failure	5 years	Visual inspection by geotechnical specialist and further tests as recommended by the specialist	All structural failures of the embankment and cut slopes of the Facility are repaired
<b>13) ITS and ETCS EQUIPMENT</b>					
	13.5	Vehicle Detection Equipment	2 years	Defect measurement dependent on equipment  Traffic Detector Loops: Loop circuit's inductance to be > 50 and < 1,000 micro henries. Insulation resistance to be > 50 meg ohms.	All equipment free of defects and operational problems such as; <ul style="list-style-type: none"> <li>• Inoperable loops.</li> <li>• Malfunctioning camera controllers.</li> </ul>

Note 1: Where indicated, mill and overlay sections specified in Technical Provisions Section 1.2.1 for the Base Scope and Section 1.3.1 for the Option shall meet performance requirements for a period of 2 years from Final Acceptance of the applicable Segment (rather than for the 5-year Warranty Term generally applicable to the element category).