



**DESIGN-BUILD AGREEMENT  
SH 99 GRAND PARKWAY SEGMENT B-1 DESIGN-BUILD PROJECT**

**between**

**TEXAS DEPARTMENT OF TRANSPORTATION**

**and**

**[DB CONTRACTOR]**

**Dated as of: \_\_\_\_\_, 20\_\_**

**BRAZORIA COUNTY AND GALVESTON COUNTY**

**DESIGN-BUILD AGREEMENT  
GRAND PARKWAY SEGMENT B-1 DESIGN-BUILD PROJECT**

**Table of Contents**

	Page
SECTION 1. CONTRACT .....	2
1.1 Abbreviations.....	2
1.2 Definitions.....	3
1.3 Contract Documents and Order of Precedence.....	11
1.4 Reference Information Documents .....	13
SECTION 2. SCOPE OF WORK.....	13
2.1 Project Scope; Special Terms and Conditions .....	13
2.2 Proposal Commitments .....	14
2.3 DB Contractor's ATCs .....	14
2.4 Completion Deadlines .....	14
2.5 Job Training Plan.....	18
2.6 DBE Goals.....	18
2.7 DBE Open Ended Performance Plan .....	18
2.8 Prevailing Wages.....	19
2.9 Project-Specific NTPs.....	19
SECTION 3. APPROVALS AND THIRD PARTY AGREEMENTS .....	19
3.1 TxDOT-Provided Approvals.....	19
3.2 Project Specific Third Party Agreements .....	20
3.3 TIFIA Loan Agreement .....	20
3.4 Amendments to General Conditions relating to Project Financing .....	22
SECTION 4. COMPENSATION .....	24
4.1 Price .....	24
4.2 Limitations on Payments .....	26
4.3 Price Adjustment Due to Delay in NTPs.....	27
4.4 Price Adjustments Due to Changes in CCI.....	28
4.5 Change Order for Price Adjustments Due to Delay in NTPs and Changes in CCI .....	30
4.6 Milestone Payment.....	30
4.7 Early Completion Incentive.....	30
4.8 Payments for Mobilization, Bond and Insurance Premiums and Contract Administration .....	31
SECTION 5. PERFORMANCE SECURITY .....	32
5.1 Bonds .....	32
5.2 Guaranty.....	32
5.3 Insurance Special Provisions .....	33
SECTION 6. CHANGE ORDERS.....	34
6.1 Differing Site Conditions .....	34
6.2 Relief Events .....	34
6.3 Hazardous Materials.....	34
6.4 Utilities .....	35
6.5 Access to Right of Way .....	36
6.6 Necessary Basic Configuration Changes .....	37
6.7 Form of Change Order and Related Records.....	37
6.8 DB Contractor Reimbursement for Eminent Domain Assistance.....	38
6.9 SH 6 Lane Closure and Work Restrictions Delay .....	38
6.10 Railroad Agreements.....	38
6.11 Delay Deductible Aggregate Cap .....	40
6.12 Escrowed Proposal Documents .....	40

SECTION 7.	FEES; LIQUIDATED DAMAGES.....	40
7.1	Reserved .....	40
7.2	Liquidated Damages and Fees Respecting Delays.....	40
7.3	Lane Rental Charges and Liquidated Damages for Lane Closures.....	41
7.4	Key Personnel Change Fees; Key Personnel Unavailability Liquidated Damages .....	41
7.5	Additional Acknowledgements Regarding Liquidated Damages, Key Personnel Change Fees and Lane Rental Charges.....	43
7.6	Noncompliance Points.....	44
7.7	Amendments to the General Conditions Concerning Liquidated Damages and Fees.....	44
SECTION 8.	IDENTIFIED SUBCONTRACTORS AND KEY PERSONNEL.....	44
8.1	Identified Subcontractors.....	44
8.2	Key Personnel .....	45
SECTION 9.	NOTICE AND AUTHORIZED REPRESENTATIVES .....	45
9.1	Notices and Communications.....	45
9.2	Designation of Representatives.....	46
SECTION 10.	REPRESENTATIONS AND WARRANTIES.....	46
10.1	Representations and Warranties .....	46
10.2	Survival of Representations and Warranties .....	48
10.3	Certification Under Family Code.....	48
SECTION 11.	MISCELLANEOUS PROVISIONS.....	49
11.1	Dispute Resolution Procedures .....	49
11.2	Electronic Signatures and Transactions .....	49
11.3	Entire Agreement.....	49
11.4	Severability .....	49
11.5	Survival.....	49
11.6	Counterparts.....	49
11.7	[Joint and Several Liability].....	50

## LIST OF EXHIBITS

Exhibit 1	Project Scope
Exhibit 2	Proposal Commitments
	Appendix 1 Proposal Commitments
	Appendix 2 ATCs
Exhibit 3	Portions of Reference Information Documents Incorporated in the Contract Documents for Purposes of DB Contractor Relief
Exhibit 4	CMC Amendments
Exhibit 5	Job Training Plan
Exhibit 6	DBE Open Ended Performance Plan
Exhibit 7	Prevailing Wage Rates
Exhibit 8	DB Contractor Obligations Related to Project-Specific Third Party Agreements
Exhibit 9	Allowances
Exhibit 10	Maximum Payment Schedules
	Appendix 1 SH 99 Maximum Payment Schedule
	Appendix 2 SH 35 Bypass Maximum Payment Schedule
Exhibit 11	Maximum Reimbursement Amounts for Eminent Domain Assistance
Exhibit 12	Forms of Bonds
	Appendix 1 Form of Performance Bond
	Appendix 2 Form of Payment Bond
Exhibit 13	Form of Guaranty
Exhibit 14	Change Order and Delay Deductible Determination Forms
	Appendix 1 Form of Request for Change Order
	Appendix 2 Form of Change Order
	Appendix 3 Form of Request for Delay Deductible Determination
	Appendix 4 Form of Delay Deductible Determination
Exhibit 15	Lane Rental Charges and Liquidated Damages for Lane Closures
Exhibit 16	Not used
Exhibit 17	Identified Subcontractors
Exhibit 18	Key Personnel
Exhibit 19	Initial Designation of Authorized Representatives
Exhibit 20	Disputes Resolution Requirements
Exhibit 21	Operating Procedures
Exhibit 22	Disputes Review Panel Agreement
[Exhibit 23	Pre-Proposal Utility Commitments]
Exhibit 24	Amendments to Completion Deadlines Provisions

- Exhibit 25 TIFIA Disclosure Requirements
- Exhibit 26 Form of Draw Request and Requirements
- Exhibit 27 Amendments to Right of Way Provisions

## DESIGN-BUILD AGREEMENT

### SH 99 GRAND PARKWAY SEGMENT B-1 DESIGN-BUILD PROJECT

This Design-Build Agreement (this “**DBA**”), dated as of [●] (the “**Effective Date**”), is entered into by and between:

**TxDOT** Texas Department of Transportation, a public agency of the State of Texas

And

**DB Contractor:** [●], a:

*[Insert appropriate bracketed text, and delete all bracketed text that is not applicable]*[corporation organized and existing under the laws of the State of [●]]

[limited liability company (“LLC”) organized and existing under the laws of the State of [●]]

[partnership, consisting of *[insert partner names and any organizational form]*]

[joint venture, consisting of [●] and [●]]

[an individual or sole proprietorship owned by [●]]

the location of whose principal office is:

[Address]

[Address].

## **RECITALS**

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

**B.** TxDOT wishes to enter into an agreement with DB Contractor to design and construct 14.0 miles of new tolled roadway from south of FM 2403 to FM 646 and approximately 5.9 miles of non-tolled operational improvements to the existing SH 35, including 1.4 miles of non-tolled operational improvements to SH 35 around the SH 35/SH 99 interchange in various cities in Brazoria and Galveston counties (the “**Project**”). In addition, TxDOT wishes to enter into an agreement with DB Contractor to maintain the Project for an initial specified mandatory term, as well as for specified additional optional terms.

**C.** Pursuant to the Code and subchapter I in Chapter 9 of Title 43, Texas Administrative Code (the “**Rules**”), TxDOT issued a Request for Qualifications (as amended, the “**RFQ**”) on January 3, 2025.

**D.** TxDOT received 3 qualification statements on March 13, 2025 and subsequently shortlisted 3 proposers.

**E.** On September 5, 2025 TxDOT issued to the shortlisted proposers a Request for Proposals (as amended, the “**RFP**”) to design and construct and maintain the Project.

F. [Include appropriate option.][On or before [●] (the “**Proposal Due Date**”), TxDOT received [●] responses to the RFP, including the response of DB Contractor (the “**Proposal**”).] [On or before [●] (the “**Proposal Due Date**”), TxDOT received one response to the RFP, and that response of DB Contractor (the “**Proposal**”) was independently evaluated to confirm and validate that (1) the project procurement delivered value for the public investment; and (2) no anticompetitive practices were involved in the procurement.]

G. An RFP evaluation committee comprised of TxDOT personnel determined that DB Contractor was the proposer that best met the selection criteria set forth in the RFP and that the Proposal provided the best value to the State of Texas.

H. On [●] the Texas Transportation Commission accepted the recommendation of the Executive Director and the RFP evaluation committee and authorized TxDOT staff to negotiate this DBA.

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

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

K. The Executive Director of TxDOT has been authorized to enter into this DBA pursuant to the Code, the Rules and the Texas Transportation Commission Minute Order, dated [●].

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

M. TxDOT anticipates that the Grand Parkway Transportation Corporation (“**GPTC**”), a transportation corporation created under the Texas Transportation Corporation Act to develop, finance and operate the Grand Parkway System, including the SH 99 portion of the Project, will be responsible for financing SH 99 costs with revenue bonds and a loan under the Transportation Infrastructure Finance and Innovation Act (“**TIFIA**”) program.

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

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

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

## **SECTION 1. CONTRACT**

### **1.1 Abbreviations**

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

<b>DBA</b>	Design-Build Agreement
<b>CMA</b>	Capital Maintenance Agreement
<b>CMC</b>	the Capital Maintenance Agreement and the CMA General Conditions, including all exhibits attached thereto, as such may be amended, supplemented, amended and restated or otherwise modified from time to time in accordance with the terms of the CMC.
<b>ETCS</b>	Electronic Toll Collection System
<b>SI</b>	Systems Integrator

Abbreviations used in the Contract Documents but not otherwise defined in this DBA shall have the meaning set forth in Section 1.1 of the General Conditions. If any abbreviation set forth above is also included in Section 1.1 of the General Conditions, to the extent such definitions conflict, the abbreviation in Section 1.1 of the General Conditions is hereby amended by the abbreviation set forth above.

## 1.2 Definitions

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

<b>Adjustment Date</b>	has the meaning set forth in <u>Section 4.4.3</u> of this DBA.
<b>Adjustment Period</b>	has the meaning set forth in <u>Section 4.4.1</u> of this DBA.
<b>Aesthetics and Landscape Plan</b>	means the plan DB Contractor prepares in conformance with the Project's aesthetics concepts as more particularly described in Section 23.1.2 of the Design-Build Specifications.
<b>Allowance</b>	shall have the meaning set forth in <u>Exhibit 9</u> to this DBA.
<b>Available for Construction Date</b>	means, (a) for each parcel of Schematic ROW that is not listed in Table 15-1 of the DB Specifications, the date NTP1 is issued, and (b) for each parcel of Schematic ROW that is listed in Table 15-1 of the DB Specifications, the corresponding date in the column labelled "Available for Construction Date" in Table 15-1.
<b>Basic Configuration</b>	has the meaning set forth in <u>Exhibit 1</u> to this DBA.
<b>Bond Trustee</b>	means the Person or Persons acting as bond trustee, paying agent or other designated representative of the bondholders under any bond indenture or resolution for the bonds or any other indebtedness issued by TxDOT or the Grand Parkway Transportation Corporation to finance the Project, its legal successor, or any other commercial bank or trust company duly organized and existing under the laws of any state or the United States of America, which is authorized under the laws of the State to exercise corporate trust powers and is subject to examination by federal authority, appointed pursuant to the Project finance documents as its successor or its successors.



<b>C&amp;M Agreement</b>	means the construction and maintenance agreement between TxDOT and a railroad that provides TxDOT license and permission to perform work within railroad right of way.
<b>Capital Maintenance Agreement</b>	means that certain Capital Maintenance Agreement executed by TxDOT and DB Contractor for DB Contractor to perform maintenance for the Project.
<b>Capital Maintenance Contract or CMC</b>	means the Capital Maintenance Agreement and the CMA General Conditions, including all exhibits attached thereto, as such may be amended, supplemented, amended and restated or otherwise modified from time to time in accordance with the terms of the CMC.
<b>Capital Maintenance Contract Documents or CMC Documents</b>	has the meaning set forth in Section 1.2 of the Capital Maintenance Agreement.
<b>Certificate of SH 35 FR Milestone Completion</b>	means the certificate issued by TxDOT indicating that DB Contractor has achieved the conditions for SH 35 FR Milestone Completion.
<b>Certificate of Toll Zone Completion</b>	means the certificate issued by TxDOT indicating that DB Contractor has achieved the conditions for Toll Zone Completion.
<b>Chargeable Lane Closure</b>	has the meaning set forth in Section A.2 of <u>Exhibit 15</u> to this DBA.
<b>CMA General Conditions</b>	has the meaning set forth in Section 1.3.2 of the Capital Maintenance Agreement.
<b>Code</b>	has the meaning set forth in <u>Recital A</u> to this DBA.
<b>Completion Deadlines</b>	means the SH 35 FR Milestone Completion Deadline, the Toll Zone Completion Deadline, the Substantial Completion Deadline and the Final Acceptance Deadline.
<b>Contract Documents</b>	has the meaning set forth in <u>Section 1.3</u> of this DBA.
<b>Critical Path</b>	means each critical path on the Project Schedule, which ends on a Completion Deadline (i.e., the term shall apply only following consumption of all available Float in the schedule). The lowercase term “critical path” means the activities and durations associated with the longest chains of logically connected activities through the Project Schedule with the least amount of positive slack or the greatest amount of negative slack.
<b>DB Contractor or Design-Build Contractor</b>	means _____, a _____, together with its successors and assigns.
<b>Delay Deductible Aggregate Cap</b>	has the meaning set forth in <u>Section 6.11</u> of this DBA.
<b>Design-Build Agreement</b>	has the meaning set forth in the preamble hereof.
<b>Design-Build Specifications or DB Specifications</b>	means the Design-Build Specifications, items 10-29 included in the RFP.

<b>Differing Site Conditions</b>	means (a) man-made subsurface or man-made latent conditions of an unusual nature, (b) subsurface or surface natural physical conditions of an unusual nature, differing materially from those ordinarily encountered in the area and generally recognized as inherent in the type of work provided for in the Contract Documents, (c) an Abandoned Utility that is a water or wastewater Utility 18 inches in diameter or greater; or (d) an Abandoned Utility that is a Utility duct bank with 4 or more conduits. This term shall specifically exclude all such conditions of which DB Contractor had actual or constructive knowledge as of the Proposal Due Date. The foregoing definition specifically excludes: (i) changes in surface topography; (ii) variations in subsurface moisture content and variations in the water table; (iii) Utility facilities, including Abandoned Utilities (other than as described in clause (c) or (d) above); (iv) Hazardous Materials, including contaminated groundwater; (v) acquisition of real property for drainage purposes; (vi) any conditions which constitute or are caused by a Relief Event; (vii) any subsurface or surface conditions that are ascertainable from the information included in the RIDs prior to the Proposal Due Date.
<b>Differing Site Conditions Deductible</b>	has the meaning set forth in <u>Section 6.1</u> of this DBA.
<b>Differing Site Conditions Deductible Cap</b>	has the meaning set forth in <u>Section 6.1</u> of this DBA.
<b>Dispute Resolution Procedures</b>	means the formal process for resolving Disputes described in <u>Section 11.1</u> and <u>Exhibit 20</u> to this DBA. None of the Disputes Review Panel Process and Informal Resolution Procedures are included in the Dispute Resolution Procedures.
<b>Draw Request</b>	means a draw request and required certificates in the form of <u>Exhibit 26</u> to this DBA.
<b>DRP Rules</b>	means, as of the Effective Date, the administrative rules promulgated in accordance with Section 201.112(a) of the Code, adopted by TxDOT in accordance with the Texas Administrative Procedure Act, and effective under Rule §9.2 of Subchapter A, Chapter 9, Part 1, Title 43 of the Texas Administrative Code on or before the Effective Date regarding procedures applicable to the resolution of all claims and disputes of every kind or character arising under agreements such as and including the Contract Documents.
<b>Early Completion Incentive</b>	has the meaning set forth in <u>Section 4.7</u> of this DBA.
<b>Effective Date</b>	has the meaning set forth in the preamble to this DBA.
<b>Eminent Domain Delay</b>	has the meaning set forth in <u>Section 6.5</u> of this DBA.
<b>Electronic Toll Collection System (ETCS)</b>	means the toll collection system to be provided by Systems Integrator, in connection with which DB Contractor coordinates and provides design and construction of the Toll Zone Work.
<b>Electronic Toll Collection System (ETCS) Element</b>	means an individual component, system, or subsystem of the ETCS to be provided by Systems Integrator and shall include all equipment and cabinetry to be installed by Systems Integrator including the following: overhead equipment in Toll Zones, lane side equipment mounted in Toll Zones, roadside equipment cabinet at Toll Zones, backup power and fuel source at Toll Zones.
<b>Extended Roadway Closure</b>	has the meaning set forth in Section B.1 of <u>Exhibit 15</u> to this DBA.

<b>Final Acceptance Deadline</b>	has the meaning set forth in <u>Section 2.4.1</u> of this DBA.
<b>Full Roadway Closure</b>	has the meaning set forth in Section A.7 of <u>Exhibit 15</u> to this DBA.
<b>General Conditions</b>	has the meaning set forth in <u>Section 1.3.2</u> of this DBA.
<b>Grand Parkway Transportation Corporation or GPTC</b>	has the meaning set forth in <u>Recital M</u> to this DBA.
<b>Indemnified Parties</b>	means TxDOT, the State, the Texas Transportation Commission, FHWA, the Grand Parkway Transportation Corporation, TxDOT consultants, and their respective successors, assigns, officeholders, officers, directors, agents, representatives, consultants and employees.
<b>Ineligible Matters</b>	<ul style="list-style-type: none"> <li>(i) Any matters that the Contract Documents expressly state are final, binding or not subject to dispute resolution;</li> <li>(ii) Any claim or dispute that does not arise under the Contract Documents;</li> <li>(iii) Any claim that is not actionable against TxDOT by DB Contractor on its own behalf or on behalf of its Subcontractors in accordance with Section 4.9 of the General Conditions and <u>Exhibit 20</u> hereof;</li> <li>(iv) Any claim for indemnity under Section 7.12 of the General Conditions;</li> <li>(v) Any claim for injunctive relief;</li> <li>(vi) Any claim against an insurance company, including any Subcontractor Dispute that is covered by insurance;</li> <li>(vii) Any claim arising solely in tort or that is covered by the Texas Tort Claims Act;</li> <li>(viii) Any claim arising out of or relating to any Utility Adjustment where the Utility Owner is a necessary party (unless, and only to the extent that, the applicable Utility Agreement provides for resolution of claims as set forth in Section 4.9 of the General Conditions and <u>Exhibit 20</u> hereof);</li> <li>(ix) Any claim or dispute that is the subject of litigation in a lawsuit filed in court to which the procedures established in Section 4.9 of the General Conditions and <u>Exhibit 20</u> hereof do not apply, including any effort to interplead a Party into such a lawsuit in order to make the procedures established in Section 4.9 of the General Conditions and <u>Exhibit 20</u> hereof apply;</li> <li>(x) Any claim for, or dispute based on, remedies expressly created by statute; and</li> <li>(xi) Any Dispute that is actionable only against a Surety.</li> </ul>
<b>Initial Maintenance Term Commencement Date</b>	has the meaning set forth in Section 1.2 of the CMA.
<b>Instructions to Proposers</b>	means the Instructions to Proposers issued by TxDOT on September 5, 2025, as part of the RFP with respect to the Project, including all exhibits, forms and attachments thereto and any subsequent addenda.
<b>Key Personnel</b>	means the positions identified in <u>Exhibit 18</u> to this DBA.

<b>Lane Closure</b>	means closure of any traffic lane, or the reduction in width of any traffic lane to less than (i) 12 feet, (ii) 11 feet when the existing condition is less than 12 feet, or (iii) 11 feet for cross street intersections and existing bridges, in any portion of the Project or a connecting highway, as applicable, and for any duration, including mainlanes, ramps, direct connectors, frontage roads, access roads and cross roads.
<b>Lane Closure Notice</b>	has the meaning set forth in Section B.1 of <u>Exhibit 15</u> to this DBA.
<b>Limited NTP2</b>	has the meaning set forth in <u>Section 2.9</u> of this DBA.
<b>Liquidated Damages</b>	means the liquidated damages, including Liquidated Damages for Delay, Key Personnel Unavailability Liquidated Damages, Liquidated Damages for Lane Closures, and Liquidated Damages related to TIFIA obligations specified in <u>Sections 3.3, 7.2, 7.3, 7.4 and 7.5</u> of this DBA, and General Conditions Sections 8.3.1, 8.7.1.1, 8.7.2 and 3.8.1.2.2, respectively.
<b>Maintenance Management System (MMS)</b>	has the meaning set forth in Section 27.6 of the Design-Build Specifications.
<b>Maintenance Performance Bond</b>	has the meaning set forth in Section 1.2.2 of the CMA General Conditions.
<b>Maintenance Security</b>	has the meaning set forth in Section 1.2 of the CMA.
<b>Maintenance Services</b>	has the meaning set forth in Section 1.2 of the CMA.
<b>Maximum Payment Schedule(s)</b>	means each or both of the SH 99 Maximum Payment Schedule and the SH 35 Bypass Maximum Payment Schedule, as the context requires.
<b>Milestone Payment</b>	has the meaning set forth in <u>Section 4.6.1</u> of this DBA.
<b>Milestone Work</b>	has the meaning set forth in <u>Section 2.4.2.1</u> of this DBA.
<b>Minimum Tangible Net Worth Requirement</b>	means the amount set forth in <u>Section 5.2.3</u> of this DBA, which represents the minimum amount required for the total combined Tangible Net Worth of DB Contractor, [its joint venture members][ <i>include if DB Contractor is a joint venture</i> ] [its partners] [ <i>include if DB Contractor is a partnership</i> ] and any Guarantors.
<b>Mobilization Payment Activity Amount</b>	means the sum of the "SH 99 Mobilization Payment Activity Amount" included in <u>Exhibit 10, Appendix 1</u> to this DBA and the "SH 35 Bypass Mobilization Payment Activity Amount" included in to <u>Exhibit 10, Appendix 2</u> to this DBA and subsequently allocated to the mobilization activity in the Schedule of Values. Such amount shall not exceed 10% of the Price, payable in installments according to Section 9.5.1 of the General Conditions.
<b>Non-Chargeable Lane Closure</b>	has the meaning set forth in Section B.1 of <u>Exhibit 15</u> to this DBA.
<b>NTP1 Maximum Payment Amount</b>	means the amount set forth in <u>Section 4.2.2</u> of this DBA as it may be revised in accordance with Section 4.6 of the General Conditions.
<b>NTP1 Payment Bond Amount</b>	means the amount set forth in <u>Section 5.1.2</u> of this DBA.
<b>NTP1 Performance Bond Amount</b>	means the amount set forth in <u>Section 5.1.1</u> of this DBA.
<b>NTP2 Payment Bond Amount</b>	means the amount set forth in <u>Section 5.1.4</u> of this DBA.

<b>NTP2 Performance Bond Amount</b>	means the amount set forth in <u>Section 5.1.3</u> of this DBA.
<b>Office of the Attorney General</b>	means the Office of the Texas Attorney General or, in connection with ROW acquisition and eminent domain proceedings, any outside legal counsel procured by TxDOT and approved by the Office of the Attorney General to provide legal counsel on TxDOT eminent domain matters.
<b>[Pre-Proposal Utility Commitment]</b>	<i>[include if there are any Pre-Proposal Utility Commitments]</i> [means each commitment made by a Utility Owner that is included in <u>Exhibit 23</u> to this DBA.
<b>Price</b>	means the price set forth in <u>Section 4.1</u> of this DBA, which is the sum of the SH 99 Price and the SH 35 Bypass Price, as it may be modified from time to time in accordance with the express provisions of the DBC.
<b>Project</b>	has the meaning set forth in <u>Recital B</u> to this DBA.
<b>Project Overhead Percentage</b>	means 8.5 percent.
<b>Project Right of Way or Project ROW</b>	means the Schematic ROW and the Additional Properties.
<b>Proposal</b>	has the meaning set forth in <u>Recital F</u> to this DBA.
<b>Proposal Due Date</b>	has the meaning set forth in <u>Recital F</u> to this DBA.
<b>Reference Information Documents (RID)</b>	means the documents posted to the RID folders for the Project, located at [https://ftp.txspd.com/] as of the Effective Date. Except as otherwise expressly provided in <u>Exhibit 3</u> to this DBA, the Reference Information Documents are not considered Contract Documents and were provided to DB Contractor for informational purposes only and without representation or warranty by TxDOT.
<b>Request for Proposals (RFP)</b>	has the meaning set forth in <u>Recital E</u> to this DBA.
<b>Retained Security Amount</b>	has the meaning set forth in Section 5 of <u>Exhibit 4</u> to this DBA.
<b>RFP Documents</b>	means all of the information and materials supplied to DB Contractor in connection with the issuance of the RFQ, the RFP, including Instructions to Proposers, the Contract Documents, the CMC Documents, the Reference Information Documents and any addenda issued in connection therewith.
<b>Request for Qualifications (RFQ)</b>	has the meaning set forth in <u>Recital C</u> to this DBA.
<b>Right of Way Project Delivery Manager or ROW Project Delivery Manager</b>	means TxDOT's representative from the Houston District responsible for the supervision of the Right of Way Project Manager.
<b>Rules</b>	has the meaning set forth in <u>Recital C</u> to this DBA.
<b>Safety Allowance</b>	means the allowance for use by TxDOT to request enhancements to the work zone as more particularly described in <u>Exhibit 9</u> to this DBA.
<b>Schematic ROW</b>	means any real property (which term is inclusive of all estates and interests in real property), including detention ponds as well as improvements and fixtures, within the proposed ROW lines established on the Schematic Design. The term specifically includes all air space, surface rights, and subsurface rights within the limits of the ROW.

<b>SH 35 Bypass Maximum Payment Schedule</b>	means the table of aggregate amounts included in <u>Appendix 2</u> to <u>Exhibit 1</u> to this DBA and the earliest date by which each such aggregate amount shall become due to DB Contractor, which constitute a cap on the aggregate amount of payments that may be made to DB Contractor for the SH 35 Bypass Work hereunder at any specified time.
<b>SH 35 Bypass NTP1 Maximum Payment Amount</b>	means the maximum amount for which TxDOT may be liable to DB Contractor for the SH 35 Bypass Work unless and until NTP2 is issued.
<b>SH 35 Bypass Price</b>	means the price set forth in <u>Section 4.1</u> of this DBA for the Work for the SH 35 Bypass portion of the Project, as such price may be modified from time to time in accordance with the express provisions of the DBC.
<b>SH 35 Bypass Work</b>	means all Work to be performed by DB Contractor for the SH 35 Bypass portion of the Project described in <u>Exhibit 1</u> to this DBA.
<b>SH 35 FR Milestone</b>	means the design and construction of the work items for the SH 35 FR Milestone identified in <u>Appendix 1</u> to <u>Exhibit 1</u> to this DBA.
<b>SH 35 FR Milestone Completion</b>	means the occurrence of all of the events and satisfaction of all of the criteria set forth in <u>Section 2.4.2.1</u> of this DBA, as and when confirmed by TxDOT's issuance of a Certificate of SH 35 FR Milestone Completion.
<b>SH 35 FR Milestone Completion Early Deadline</b>	means the date that is NTP1 plus 1,375 days.
<b>SH 35 FR Milestone Completion Deadline</b>	has the meaning set forth in <u>Section 2.4.1</u> of this DBA.
<b>SH 35 Opening</b>	means the date that construction/reconstruction of the SH 35 mainlanes, SH 35 mainlane ramps, the SH 35 frontage roads, and all the cross street intersections and driveways connecting to SH 35 are complete and open to traffic in their final configuration and with final pavement structure from FM 2403 Connector to Victory Ln.
<b>SH 99 Maximum Payment Schedule</b>	means the table of aggregate amounts included in <u>Appendix 1</u> to <u>Exhibit 10</u> to this DBA and the earliest date by which each such aggregate amount shall become due to DB Contractor, which constitute a cap on the aggregate amount of payments that may be made to DB Contractor for the SH 99 Work hereunder at any specified time.
<b>SH 99 NTP1 Maximum Payment Amount</b>	means the maximum amount for which TxDOT may be liable to DB Contractor for the SH 99 Work unless and until NTP2 is issued.
<b>SH 99 Price</b>	means the price set forth in <u>Section 4.1</u> of this DBA for the Work for the SH 99 scope component of the Project, as such price may be modified from time to time in accordance with the express provisions of the DBC.
<b>SH 99 Work</b>	means all Work to be performed by DB Contractor for the SH 99 portion of the Project described in <u>Exhibit 1</u> to this DBA.
<b>Subcontractor Dispute</b>	has the meaning set forth in <u>Exhibit 20</u> to this DBA.
<b>Substantial Completion Deadline</b>	has the meaning set forth in <u>Section 2.4.1</u> of this DBA.

<b>Systems Integrator (SI)</b>	means the contractor, under separate contract to TxDOT, which shall design, construct, furnish, install, integrate, test and commission the ETCS for the Project, including ETCS Elements necessary for the ETCS to be fully operational.
<b>Systems Integrator Coordination Work</b>	means the DB Contractor coordination responsibilities with the Systems Integrator listed in Item 29 of the Design-Build Specifications, Attachment 29-1 (Toll Facility Responsibility Matrix) of the Design-Build Specifications, which shall apply through Final Acceptance.
<b>TIFIA</b>	has the meaning set forth in <u>Recital M</u> to this DBA.
<b>TIFIA Baseline</b>	has the meaning set forth in <u>Section 3.3.1.2</u> of this DBA.
<b>TIFIA Environmental Laws</b>	has the meaning set forth in <u>Exhibit 25</u> to this DBA.
<b>TIFIA Lender</b>	has the meaning set forth in <u>Section 3.3.1</u> to this DBA.
<b>TIFIA Loan Agreement</b>	has the meaning set forth in <u>Section 3.3.1</u> to this DBA.
<b>TIFIA MAE</b>	has the meaning set forth in <u>Exhibit 25</u> to this DBA.
<b>TIFIA Parties</b>	has the meaning set forth in <u>Section 3.3.1.2</u> of this DBA.
<b>Toll Avoidance</b>	has the meaning set forth in Section 29.2 of the Design-Build Specifications.
<b>Toll Avoidance Evaluation Report</b>	means the report prepared by DB Contractor and submitted for TxDOT review and approval, identifying opportunities for Toll Avoidance along a toll facility at Toll Zones and including design elements necessary to mitigate against Toll Avoidance as described in further detail in Section 29.2 of the Design-Build Specifications.
<b>Toll Zone</b>	means the zone within which a toll transaction takes place at a single geographic location in one direction of traffic, and in connection with which DB Contractor shall provide required infrastructure for the ETCS and coordination services with Systems Integrator and TxDOT.
<b>Toll Zone Work</b>	means all Work which is required in accordance with <u>Section 2.4.3</u> of this DBA or identified as the responsibility of DB Contractor in Item 29, Attachment 29-1 (Toll Facility Responsibility Matrix), Attachment 29-2 (Typical Toll Zone Layout), Attachment 29-3 (Toll Zone Pavement Details), Attachment 29-4 (Toll Gantry Requirements), Attachment 29-5 (Toll Zone Equipment Pad Details), and Attachment 29-6 (Typical Lightning Protection System Details) of the Design-Build Specifications.
<b>Toll Zone Completion</b>	means the completion of all Toll Zone Work in accordance with the requirements of the Contract Documents, except for System Integrator Coordination Work that is required to be performed during the 180-day period prior to Substantial Completion as described in Item 29 of the DB Specifications, as and when confirmed by TxDOT's issuance of a Certificate of Toll Zone Completion.
<b>Toll Zone Completion Deadline</b>	has the meaning set forth in <u>Section 2.4.1</u> of this DBA.

<b>TxDOT-Directed Changes</b>	means (a) any changes in the scope of the Work or terms and conditions of the Contract Documents (including changes in the standards applicable to the Work, which TxDOT has directed DB Contractor to perform as described in and subject to the limitations in Section 4.6.1.2 of the General Conditions), (b) suspensions of the Work by TxDOT for more than 48 hours per suspension or 96 hours total in accordance with Section 8.4.1 of the General Conditions, (c) any changes in the Work due to Errors in the Signed and Sealed Engineering Data, unless such Errors were known to the DB Contractor prior to the Effective Date, and (d) any material differences between the actual location of a Utility and the location of the Utility shown on a level A SUE report identified in <u>Exhibit 3</u> of the DBA, unless such Error was known to DB Contractor prior to the Effective Date. Notwithstanding the foregoing, TxDOT shall not be liable for any changes in the scope of Work that result in less than \$10,000 in increased costs and such changes shall not be considered TxDOT-Directed Changes.
<b>TxDOT-Provided Approvals</b>	means the approvals set forth in the table in <u>Section 3.1</u> of this DBA.
<b>Ultimate Project Configuration</b>	means the planned future extension and improvements described in Section 5 of <u>Exhibit 1</u> to this DBA and the Schematic Design.
<b>Unidentified Utilities Deductible</b>	has the meaning set forth in <u>Section 6.4</u> of this DBA.
<b>Unidentified Utilities Deductible Cap</b>	has the meaning set forth in <u>Section 6.4</u> of this DBA.
<b>Unobstructed Access</b>	means a safe and unrestricted passageway, whether temporary or permanent, that provides continuous access to and through each Toll Zone Work Section for all TxDOT authorized project personnel, that is readily traversable in all weather conditions and kept free of obstructions that would impede vehicular passage such as vehicles, trailers, equipment and construction materials.
<b>USACE Standard 404 Permit(s)</b>	means the individual permit(s) issued by the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act (33 U.S.C. §1344) for the placement of dredged and fill material into waters of the United States, based upon the Schematic Design and the Schematic ROW.

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

### **1.3 Contract Documents and Order of Precedence**

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

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

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



1. Amendments and Change Orders to the Design-Build Contract, including all exhibits and attachments thereto;
2. This DBA, including all exhibits hereto, except Exhibit 2 (Proposal Commitments and ATCs);
3. TxDOT's Design-Build Agreement General Conditions, Items 1-9 dated as of [●] (the "**General Conditions**");
4. Change Orders to the Design-Build Specifications;
5. Exhibit 2 (Proposal Commitments and ATCs) to this DBA;
6. The Design-Build Specifications;
7. Released for Construction Documents to be developed in accordance with the Contract Documents, provided that (a) specifications contained therein shall have precedence over plans; (b) no conflict shall be deemed to exist between the Released for Construction Documents and the other Contract Documents with respect to requirements of the Released for Construction Documents that TxDOT determines are more beneficial than the requirements of the other Contract Documents; and (c) any Deviations contained in the Released for Construction Documents shall have priority over conflicting requirements of other Contract Documents to the extent that the conflicts are specifically identified to TxDOT by DB Contractor and such Deviations are approved by TxDOT in writing; and
8. TxDOT Standard Specifications, 100 Items through 700 Items except for the articles entitled "Measurement" or "Payment."

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

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

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

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

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

## **1.4 Reference Information Documents**

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

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

**1.4.3** TxDOT shall not be responsible or liable in any respect for any causes of action, claims or Losses whatsoever suffered by any DB Contractor-Related Entity by reason of any use of information contained in, or any action or forbearance in reliance on, the Reference Information Documents, except any schedule or monetary relief available under the Contract Documents as set forth in Section 4.6 of the General Conditions. Except as provided in Section 1.4.1, TxDOT does not represent or warrant that the information contained in the Reference Information Documents is complete or accurate or that such information is in conformity with the requirements of the Contract Documents, Governmental Approvals or Laws. DB Contractor shall have no right to additional compensation or time extension based on any incompleteness or inaccuracy in the Reference Information Documents.

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

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

#### **2.1.1 Project Scope**

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

## **2.1.2 Special Terms and Conditions**

### **2.1.2.1 Responsibilities of the Parties for Right of Way Acquisition**

TxDOT is responsible for acquiring the Schematic ROW in accordance with Section 4.4 of the General Conditions and Item 15 of the DB Specifications, provided that, DB Contractor shall provide expert witnesses in connection with condemnation proceedings in accordance with Exhibit 11 to this DBA. The Parties' responsibilities for right of way acquisition for parcels that are Additional Properties are set forth in Section 4.4 of the General Conditions and Item 15 of the DB Specifications.

### **2.1.2.2 Amendments to General Conditions regarding Right of Way Acquisition**

Exhibit 27 sets forth certain amendments to the General Conditions that address acquisition of Project Right of Way.

## **2.1.3 Special Utility Provisions**

DB Contractor acknowledges that the Price includes the following cost responsibility for Utility Adjustments in accordance with Texas Transportation Code § 203.092 as determined by the project type. Specifically on toll roads, the following applies: (a) where the Utility Owner does not have a compensable property interest in the land occupied by the facility to be relocated, DB Contractor and the Utility Owner shall share equally (50% each) the cost of Utility Adjustments for both owner-managed and DB Contractor-managed Utility Agreements, and (b) where the Utility Owner has a compensable property interest in the land occupied by the facility to be relocated or where the Utility Adjustment is required due to the improvement of an interstate highway, DB Contractor is responsible for 100% of eligible cost of Utility Adjustments for both owner-managed and DB Contractor managed Utility Agreements.

## **2.1.4 Obligations After Final Acceptance**

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

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

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

## **2.2 Proposal Commitments**

Proposal Commitments are as set forth in Exhibit 2, Appendix 1.

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

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

## **2.4 Completion Deadlines**

### **2.4.1 Deadlines for Project Completion**

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

MILESTONE	COMPLETION DEADLINE
SH 35 FR Milestone Completion Deadline	NTP1 plus 1,527 Days
Toll Zone Completion Deadline	180 Days prior to the Substantial Completion Deadline
Substantial Completion Deadline	NTP1 plus [●] Days
Final Acceptance Deadline	Date of Substantial Completion plus 120 Days

## 2.4.2 Completion of SH 35 FR Milestone

### 2.4.2.1. SH 35 FR Milestone Completion

In determining whether SH 35 FR Milestone Completion has occurred, TxDOT will require satisfaction of the following criteria:

- (a) DB Contractor has completed the Work with respect to the SH 35 FR Milestone described in Appendix 1 to Exhibit 1 to this DBA ("**Milestone Work**"), in accordance with the Contract Documents and the Released for Construction Documents;
- (b) All lanes of traffic with respect to the Milestone Work set forth in the Released for Construction Documents are in their final configuration and available for public use;
- (c) The Milestone Work is in a condition that it can be used for normal and safe vehicular travel in all lanes and at all points of entry and exit, subject only to Punch List items and other items of work that do not affect the ability to safely open for such normal use by the traveling public;
- (d) All major safety features for the subject Milestone Work are installed and functional, including, but not limited to, guard rails, striping and delineations, concrete traffic barriers, bridge railings, metal beam guard fences, safety end treatments, terminal anchor sections and crash attenuators;
- (e) All required utility services for the subject Milestone Work are provided for signage and illumination; and
- (f) All associated drainage, signage, and illumination for the subject Milestone Work are installed and functional.

**2.4.2.2.** The process for determining that SH 35 FR Milestone Completion has been achieved shall be substantially similar to the process for determining the achievement of Substantial Completion as set forth in Section 5.11.2 of the General Conditions, except that TxDOT shall deliver a Certificate of SH 35 FR Milestone Completion rather than a Certificate of Substantial Completion.

**2.4.2.3.** SH 35 FR Milestone Completion will occur on the date that (a) TxDOT has issued a Certificate of SH 35 FR Milestone Completion and (b) all of the criteria set forth in Section 2.4.2.1 have been satisfied.

#### **2.4.2.4. Amendments to General Conditions Completion Deadline Provisions**

Exhibit 24 sets forth certain amendments to the General Conditions that address Completion Deadlines.

### **2.4.3 Completion of Toll Zone Work**

#### **2.4.3.1. General Requirements and Scheduling**

- (a) DB Contractor shall achieve Toll Zone Completion no later than the Toll Zone Completion Deadline and shall perform Systems Integrator Coordination Work required to be performed after Toll Zone Completion through Final Acceptance. Section 5.11.1.2 of the General Conditions is hereby amended by adding the following as a new subsection (h) thereto: "Whether DB Contractor has achieved Toll Zone Completion for all Toll Zones no later than 180 days prior to Substantial Completion."
- (b) In addition to the other activities required to be included in the Project Schedule pursuant to Section 8.5.2 of the General Conditions, DB Contractor shall incorporate the Toll Zone Completion date into the Project Baseline Schedule. DB Contractor acknowledges and agrees that it is responsible for the Systems Integrator Coordination Work. DB Contractor shall meet with Systems Integrator to ensure Systems Integrator's scheduled tasks, dependencies, and durations are accurately incorporated. DB Contractor shall share the Project Schedule with Systems Integrator so that Systems Integrator can incorporate the Project Schedule and track the Project progress.
- (c) In addition to meeting the other requirements set forth in the Contract Documents, the PBS2 narrative described in Section 8.5.3.2 of the General Conditions shall describe the plan and approach to tolling, including interfaces and coordination with Systems Integrator for Toll Zone Work.
- (d) The minimum work breakdown structure requirements for the Project Baseline Schedule set forth on Attachment 8-1 to the General Conditions shall include the Toll Zone Completion date and the following milestones:
  - (i) Toll Zone progress milestones:
    - Toll gantry foundation constructed
    - Toll gantry column constructed
    - Toll gantry trusses installed
    - Barrier installed
    - Maintenance driveways constructed
    - Pavement for Toll Zone locations constructed
    - Lane striping within the Toll Zone limits complete
    - Support infrastructure for toll operation constructed in accordance with System Integrator's specifications
    - Electrical conductor and tolling communication conduit installed

- Electrical conductor and tolling communication ground boxes installed
  - Grounding systems installed at each gantry as soon as gantry construction is complete
  - Lightning protection installed at each gantry as soon as gantry construction is complete and lightning protection certification submitted to TxDOT
  - Pads and riprap for equipment cabinets, generators, and fuel tanks installed
  - Site construction complete including the completion of all activities illustrated as the responsibility of the DB Contractor in Item 29 of the Design-Build Specifications, Attachment 29-1 (Toll Facility Responsibility Matrix), Attachment 29-2 (Typical Toll Zone Layout), Attachment 29-3 (Toll Zone Pavement Details), Attachment 29-4 (Toll Gantry Requirements), Attachment 29-5 (Toll Zone Equipment Pad Details), Attachment 29-6 (Typical Lightning Protection System Details)
  - Electrical Service installed, commercial power to each Toll Zone and ETCS Element complete and operational
- (ii) Tolling communication cable installed and tested to support tolling network
- (iii) Systems Integrator testing period described in Section 29.3.2 of the DB Specifications successfully completed

#### **2.4.3.2. Notification and Completion of Toll Zone Work**

- (a) DB Contractor shall complete all Work necessary (excluding work to be performed by the Systems Integrator as described in Item 29 of the DB Specifications) to allow TxDOT to open the Project for revenue operations by the applicable Substantial Completion Deadline. Further, DB Contractor acknowledges and agrees that it is responsible for coordinating the performance of the Work with the work to be performed by the Systems Integrator and allowing such contractor(s) sufficient time in advance of the Substantial Completion Deadline to install and test such facilities. DB Contractor shall provide written notice to TxDOT and the Systems Integrator no later than 270 days prior to the scheduled date of Substantial Completion based on and consistent with the most current Project Schedule Update so that the Systems Integrator can coordinate its work in the Toll Zones.
- (b) All Toll Zone Work, except for Systems Integrator Coordination Work to be performed after Toll Zone Completion, shall be completed in all Toll Zones in accordance with Item 29 of the DB Specifications, including the 30-day confirmation testing period described in Sections 29.3.2 and 29.3.3 of the DB Specifications, no later than 180 days prior to Substantial Completion. DB Contractor shall coordinate and provide full and Unobstructed Access to the Systems Integrator so that the Systems Integrator is able to perform its work for each ETCS Element prior to Substantial Completion. Work to be completed by the Systems Integrator after DB Contractor's completion of its Toll Zone Work shall consist of (i) placement of loops in the pavement, (ii) installation of equipment cabinetry, and (iii) installation and testing of toll systems.
- (c) DB Contractor shall provide written notice to TxDOT of DB Contractor's scheduled date for Toll Zone Completion 20 days prior to the completion of all Toll Zone Work, except for Systems Integrator Coordination Work to be performed after Toll Zone Completion. During this 20-day period, DB Contractor and TxDOT shall meet and confer and exchange information on a regular cooperative basis with the goal being TxDOT's orderly, timely inspection and review of the Toll Zone Work and

the applicable Final Design Documents and Construction Documents, and TxDOT's issuance of a Certificate of Toll Zone Completion.

- (d) During the 20-day time period under Section 2.4.3.2(c) TxDOT shall conduct (i) an inspection of the Toll Zone Work and its components, (ii) a review of the applicable Final Design Documents and Construction Documents and (iii) such other investigation as may be necessary to evaluate whether Toll Zone Completion is achieved. DB Contractor shall provide TxDOT a second written notification when DB Contractor determines it has completed all Toll Zone Work, except for Systems Integrator Coordination Work to be performed after Toll Zone Completion, in accordance with Item 29 of the DB Specifications. Within five days after expiration of such 20-day period and TxDOT's receipt of the second notification, TxDOT shall either: (a) issue the Certificate of Toll Zone Completion, or (b) notify DB Contractor in writing setting forth, as applicable, why the Toll Zone Work has not reached Toll Zone Completion. This process will continue until Toll Zone Completion is achieved. If TxDOT and DB Contractor cannot agree as to the date of Toll Zone Completion, such Dispute shall be resolved according to the Dispute Resolution Procedures set forth in Section 4.9 and 4.10 of the General Conditions and Section 11.1 of this DBA.

#### **2.4.4 Time is of the Essence**

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

#### **2.4.5 No Time Extension**

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

### **2.5 Job Training Plan**

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

### **2.6 DBE Goals**

The Parties acknowledge that the Project is (or may be) funded with federal funds and the approved DBE participation goals for the Project are established as 14% of the Price allocable to Professional Services less the cost of Professional Services performed by Utility Owners and 12% of the Price allocable to Construction Work less the cost of Construction Work performed by Utility Owners.

### **2.7 DBE Open Ended Performance Plan**

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

## 2.8 Prevailing Wages

DB Contractor shall pay, or cause to be paid, to all applicable workers employed by it or its Subcontractors performing the Work not less than the prevailing rates of wages, as provided in the statutes and regulations applicable to public work contracts, including Chapter 2258 of the Texas Government Code and the Davis-Bacon Act, and as provided in Exhibit 7 to this DBA. In accordance with Chapter 2258 of the Texas Government Code and in addition to any other remedies TxDOT may have under this Design-Build Contract, if DB Contractor or a Subcontractor fails to pay a worker or workers the prevailing wage rates stipulated in this Design-Build Contract, then the party that failed to pay the required amount shall pay TxDOT the amount stipulated under Chapter 2258 of the Texas Government Code for each worker employed for each calendar day or part of the day that the worker is paid less than such wage rates.

## 2.9 Project-Specific NTPs

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

DB Contractor may request that prior to issuance of NTP2, TxDOT authorize the performance of additional Work not previously authorized by issuance of NTP1 by issuing a limited notice to proceed ("**Limited NTP2**") for such Work. DB Contractor's request for issuance of a Limited NTP2 shall specify the proposed scope of the additional Work, schedule for such Work and portion of the Price allocable to such Work. In addition, DB Contractor shall confirm satisfaction of all of the conditions described in Section 8.1.1.4 of the General Conditions relating to the Work proposed to be performed pursuant to the Limited NTP2, including TxDOT approval of the applicable portions of the PSQMP, submittal to TxDOT of insurance certificates, obtaining and maintaining in effect the bonds described in Section 8.1.2.1(d) of the General Conditions, and receipt of TxDOT approval of that portion of the Schedule of Values identifying the Work to be performed. DB Contractor shall not be permitted to commence any other Construction Work on any portion of the Project until all the conditions to the commencement of Construction Work described in Section 8.1.2 of the General Conditions have been satisfied, including issuance of NTP2. Issuance of a Limited NTP2 shall be in TxDOT's sole discretion. The Limited NTP2 shall describe the Work authorized by the Limited NTP2 and the corresponding portion of the Price allocable to such Work in accordance with the approved Schedule of Values. DB Contractor and TxDOT shall enter into a Change Order to revise the applicable Maximum Payment Schedule(s) and increase the SH 99 NTP1 Payment Amount and the SH 35 Bypass NTP1 Payment Amount, as necessary, to account for the additional Work authorized. Notwithstanding Sections 3.4.3 and 3.4.4 of the General Conditions, upon issuance of Limited NTP2 the amount of the Payment Bond and Performance Bond shall increase automatically to the NTP2 Payment Bond Amount and NTP2 Performance Bond Amount, respectively.

## SECTION 3. APPROVALS AND THIRD PARTY AGREEMENTS

### 3.1 TxDOT-Provided Approvals

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

APPROVAL	DATE
Record of Decision for the Project	Issued in November 2016
Re-evaluation No. 1 to Record of Decision	May 2025
Re-evaluation No. 2 to Record of Decision	Prior to Proposal Due Date



APPROVAL	DATE
USACE Standard 404 Permit	Prior to Final Award
Categorical Exclusion for SH35 Bypass	November 2024

**3.1.1** TxDOT retains responsibility for obtaining all TxDOT-Provided Approvals (based on the Schematic Design) that TxDOT has not obtained as of the Effective Date.

**3.1.2** All conditions and requirements of the TxDOT-Provided Approvals shall automatically be deemed included in the scope of the Work.

**3.1.3** The following TxDOT-Provided Approvals had not yet been obtained as of the Proposal Due Date – the USACE Standard 404 Permit and the Re-evaluation No. 2 to Record of Decision. Section 6.2.1 sets forth DB Contractor’s right to receive a Change Order in connection with any TxDOT-Provided Approvals not obtained as of the Proposal Due Date.

### **3.2 Project Specific Third Party Agreements**

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

**3.2.2** The following draft Third Party Agreements that have not been fully executed as of the Proposal Due Date are included in the RIDs: *[list any draft Third Party Agreements included in the RIDs]*. [DB Contractor’s obligations with respect to such Third Party Agreements are set forth in Exhibit 8 to this DBA. In the event changes in a final, executed Third Party Agreement from the draft Third Party Agreement that was included in the RIDs prior to the Proposal Due Date includes terms and conditions resulting in a material change to DB Contractor’s obligations, DB Contractor shall be entitled to a Change Order to the extent set forth in Section 4.6.9.3.2(h) of the General Conditions.][*include the immediately preceding language if there are draft Third Party Agreements in the RID that will be executed after the Proposal Due Date. Insert “None” if there are no draft Third Party Agreements included in the RID that will be executed after the Proposal Due Date.*]

### **3.3 TIFIA Loan Agreement**

**3.3.1** Without limiting the obligations set forth in Section 3.1 of the General Conditions and elsewhere in Contract Documents, in the event TxDOT elects to negotiate with the United States Department of Transportation, or any successor governmental entity (the “**TIFIA Lender**”) to enter into a loan agreement and related documents with the TIFIA Lender pursuant to TIFIA for the purpose of funding all or a portion of the Project (the “**TIFIA Loan Agreement**”), the following provisions shall apply.

**3.3.1.1.** DB Contractor shall reasonably cooperate with TxDOT to facilitate a TIFIA Loan Agreement, and shall promptly provide any additional information, certifications or requested material in accordance with Exhibit 25.

**3.3.1.2.** Exhibit 25 sets forth certain covenants, representations and warranties applicable to DB Contractor and the Equity Members and Guarantors or any other guarantor of any of the obligations of the foregoing with respect to the Project (collectively, the “**TIFIA Parties**”) that TxDOT anticipates will be required by the TIFIA Lender in a TIFIA Loan Agreement. Further, additional covenants, representations, warranties and other obligations applicable to DB Contractor and the TIFIA Parties also may be required by the TIFIA Lender in a TIFIA Loan Agreement. TxDOT shall inform DB Contractor of all additional obligations at least 30 days prior to entering into any TIFIA Loan Agreement, or as soon as practicable during the negotiation process, and TxDOT shall deliver to the TIFIA Lender any concerns or suggested revisions related to such requirements that are provided promptly to TxDOT by DB Contractor, but no later than 10 days after notice of such obligations are received by DB Contractor. The requirements set forth in Exhibit 25 and any additional obligations included in the final TIFIA Loan Agreement applicable to DB Contractor or the TIFIA Parties and for which DB Contractor shall have agreed to be responsible are collectively referred to as the “**TIFIA Baseline**.” If any additional obligations, representations or warranties applicable to DB Contractor or the TIFIA Parties are included in the final TIFIA Loan Agreement, DB Contractor agrees to reasonably cooperate with TxDOT to mitigate any limit on TxDOT’s ability to access TIFIA funds, including the inability of TxDOT to obtain the TIFIA loan, caused by DB Contractor’s failure to comply with these additional requirements.

**3.3.1.3.** On or prior to the date of execution of the TIFIA Loan Agreement, and thereafter within 30 days of a request by TxDOT, which request may not be made more frequently than twice per calendar year, DB Contractor shall deliver to TxDOT a certificate in a form approved by TxDOT to the effect that: (i) the representations and warranties applicable to DB Contractor in the TIFIA Baseline are true and accurate as of the date of such certificate; (ii) DB Contractor is not in breach of any covenants applicable to DB Contractor included in the TIFIA Baseline; and (iii) to the best of DB Contractor’s knowledge after reasonable and diligent inquiry and investigation, (A) the representations and warranties applicable to the TIFIA Parties included in the TIFIA Baseline are true and accurate and (B) the TIFIA Parties are not in breach of any covenants applicable to such TIFIA Parties included in the TIFIA Baseline, in each case as of the date of such certificate.

**3.3.1.4.** DB Contractor shall not violate any of the representations, warranties and covenants or conditions precedent to accessing TIFIA funds applicable to DB Contractor included in the TIFIA Baseline and shall not knowingly permit the TIFIA Parties to violate any of the representations, warranties and covenants or conditions precedent to accessing TIFIA funds applicable to the respective TIFIA Party included in the TIFIA Baseline.

**3.3.1.5.** TxDOT and DB Contractor covenant to use reasonable efforts to negotiate reasonable limitations on any third party representations, warranties, covenants or other obligations in the TIFIA Loan Agreement applicable to DB Contractor and the TIFIA Parties with the TIFIA Lender. In particular, TxDOT covenants to negotiate with the TIFIA Lender to exclude all Sureties related to the Project from all representations, warranties, covenants and conditions precedent in the final TIFIA Loan Agreement. However, in the event TxDOT and/or DB Contractor are unsuccessful in negotiating this limitation, the representations, warranties and covenants relating to the Sureties included in the final TIFIA Loan Agreement that are consistent with the representations, warranties and covenants set forth in Exhibit 25 shall be included in the TIFIA Baseline for which DB Contractor is responsible hereunder.

**3.3.1.6.** The obligations set forth in this Section 3.3 shall apply to DB Contractor and any applicable TIFIA Party until the earlier of the date on which (i) the TIFIA Loan Agreement is no longer in effect, or (ii) the respective agreement identified in the TIFIA Loan Agreement to which DB Contractor or a TIFIA Party is a party is no longer in effect.

**3.3.1.7.** Notwithstanding any other provision of the Contract Documents, except where DB Contractor’s failure to comply with its obligations under this Section 3.3 is an independent default under a separate provision of the Contract Documents, TxDOT’s remedies for DB Contractor’s failure to comply with its obligations under this Section 3.3 shall be limited to the following:

(a) DB Contractor shall be liable for payment of a liquidated amount as compensation for damages equal to \$27,000,000 solely in the event TxDOT is unable to obtain the TIFIA Loan or is otherwise prevented from timely accessing TIFIA funds under the TIFIA Loan Agreement pursuant to the schedule in the TIFIA Loan Agreement, directly due to DB Contractor's failure to comply with its obligations under this Section 3.3 regarding the TIFIA Baseline. DB Contractor agrees that inability to timely access TIFIA funds will cause significant losses to TxDOT and that it is impracticable and difficult to ascertain and determine the actual losses that would accrue to TxDOT in such event. DB Contractor understands and agrees that any damages payable in accordance with this Section 3.3.1.7(a) are in the nature of liquidated damages and not a penalty and that such sums are reasonable under the circumstances existing as of the Effective Date. TxDOT shall have the right to deduct any amount owed by DB Contractor to TxDOT hereunder from any amounts owed by TxDOT to DB Contractor, or to collect from any letter of credit, bond or Guaranty furnished under this DBC for such liquidated damages.

(b) TxDOT shall have the right to terminate this DBC in the manner set forth in Section 8.9 of the General Conditions where TxDOT is unable to obtain the TIFIA Loan or otherwise timely access TIFIA funds pursuant to the schedule in the TIFIA Loan Agreement, directly due to (i) DB Contractor's failure to comply with its obligations under this Section 3.3 or (ii) the occurrence of a "bankruptcy-related event" (as such term is defined in the final TIFIA Loan Agreement) that is caused by a DB Contractor-Related Entity, and, in each case, solely where termination would cure the event and reinstate TxDOT's access to TIFIA funds.

(c) In addition, where the final TIFIA Loan Agreement has been executed and TxDOT has received all disbursements thereunder, TxDOT shall have the right to terminate this Design-Build Agreement in the manner set forth in Section 8.9 of the General Conditions in the event DB Contractor is in breach of the covenant set forth in Section (b) of Exhibit 25 and such breach is not cured within 60 days.

(d) TxDOT shall have the right to withhold any amounts owed by TxDOT to DB Contractor hereunder during any periods when DB Contractor is in violation of the covenant set forth in Section (b) of Exhibit 25, if required to do so by the TIFIA Loan Agreement.

**3.3.1.8.** Prior to TxDOT exercising any remedies available solely pursuant to Sections 3.3.1.7(a)-(b), TxDOT will reasonably consult with DB Contractor for up to five Business Days after TIFIA funds have become unavailable to identify alternative ways to address the impact of DB Contractor's failure to comply with its requirements under this Section 3.3, which may include working with TxDOT to identify alternative financing. TxDOT, however, retains the right at any time to seek the remedies set forth in Sections 3.3.1.7(a)-(b).

**3.3.1.9.** TxDOT's obligations under a TIFIA Loan Agreement will not be secured by any of DB Contractor's assets, including its rights and interests under this DBC.

### **3.4 Amendments to General Conditions relating to Project Financing**

**3.4.1** Section 7.8.1 of the General Conditions is hereby amended, provided the underlined text is hereby added to and the language stricken through is deleted from Section 7.8.1, as follows:

#### **7.8.1 Successors and Assigns**

**7.8.1.1** The Contract Documents shall be binding upon and inure to the benefit of TxDOT and DB Contractor and their permitted successors, assigns and legal representatives.

7.8.1.2 TxDOT may transfer and assign all or any portion of its rights, title and interests in and to the Contract Documents, including rights with respect to the Payment and Performance Bonds, Guarantees, letters of credit and other security for payment or performance:

(a) without DB Contractor's consent, to any other public agency or public entity as permitted by Law;

(b) without DB Contractor's consent, to any other Person that succeeds to the governmental powers and authority of TxDOT;

(c) without DB Contractor's consent, to any Person as permitted by Law for purposes of developing, financing, constructing, operating or maintaining the Project, including the Grand Parkway Transportation Corporation; and

~~(e)~~(d) to any other Person with the prior written approval of DB Contractor.

7.8.1.3 In the event of an assignment to the Grand Parkway Transportation Corporation, the Grand Parkway Transportation Corporation, as assignee, shall have all rights accorded to TxDOT and assigned to Grand Parkway Transportation Corporation, including the right to assign, in whole or in part to the extent of its interests therein, the Contract Documents and the Payment and Performance Bonds, Guarantees, letters of credit and other security for payment or performance to the Bond Trustee, as security for the performance of obligations under the Contract Documents. Any Bond Trustee may, in connection with any default under any financing document, assign any rights assigned to it hereunder:

(a) without DB Contractor's consent, to any other Person that succeeds to the governmental powers and authority of TxDOT; or

(b) to any other Person with the prior written approval of DB Contractor.

~~7.8.1.3~~7.8.1.4 In the event of TxDOT's assignment of all of its rights, title and interests in the Contract Documents as permitted hereunder, DB Contractor shall have no further recourse to TxDOT under the Contract Documents or otherwise except as specifically provided by other contractual agreement or by statute. In the event of a partial assignment by TxDOT of its rights, title and interests in the Contract Documents, DB Contractor shall have no further recourse to TxDOT under the Contract Documents with respect to such rights and interests, including any related obligations, under the Contract Documents that are assigned.

**3.4.2** Section 7.15 of the General Conditions is hereby amended, provided the underlined text is hereby added to Section 7.15, as follows:

#### 7.15 TxDOT Monetary Obligations

Notwithstanding anything to the contrary set forth in the Contract Documents, all TxDOT monetary obligations under the Contract Documents (or in the event the Design-Build Agreement is assigned, in whole or in part, to GPTC, all monetary obligations of GPTC under the Contract Documents other than those payable from revenue bond proceeds) are subject to appropriation by the Texas Legislature. This Section 7.15 applies to all monetary obligations of TxDOT and GPTC, as applicable, set forth in the Contract Documents, notwithstanding any contrary provisions of the Contract Documents. The Contract Documents do not create a debt under the Texas Constitution.

## SECTION 4. COMPENSATION

### 4.1 Price

As full compensation for performance of the Work and all other obligations of DB Contractor under the Contract Documents, TxDOT shall pay DB Contractor the lump sum price of \$[●] ("**Price**"), which shall equal the sum of \$[●] ("**SH 99 Price**") and \$[●] ("**SH 35 Bypass Price**"), and which shall be subject to adjustment in accordance with the Design-Build Contract. The Price, the SH 99 Price and the SH 35 Bypass Price shall be increased or decreased only by a Change Order issued in accordance with Section 4.6 of the General Conditions and Section 6 of this DBA. Payments shall be made in accordance with the terms and conditions of the Design-Build Contract.

#### 4.1.1 Allowances

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

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

#### 4.1.2 Draw Requests

**4.1.2.1.** DB Contractor shall submit Draw Requests that segregate costs for the SH 99 Work and the SH 35 Bypass Work in the form included in Exhibit 26 to this DBA and in accordance with the invoicing and payment process set forth in Section 9.3 of the General Conditions, as amended by this Section 4.1.2.

#### **4.1.2.2.** Amendments to Sections 9.3 and 9.4 of the General Conditions

Sections 9.3 and 9.4 of the General Conditions is amended as follows: (i) underlined text is hereby added to the applicable section of the General Conditions and (ii) stricken text is hereby deleted therefrom.

(a) Section 9.3.1 of the General Conditions is hereby amended as follows:

On or about the fifth Business Day of each month following NTP1 and continuing through the last date of the Maximum Payment Schedules shown on Exhibit 10 to the DBA, DB Contractor shall deliver to TxDOT an electronic copy and, if requested by TxDOT, one hard copy of a Draw Request in the form of ~~Attachment 9-4~~ Exhibit 26 to the DBA, meeting all requirements specified herein except as otherwise approved in writing by TxDOT. Each Draw Request shall be executed by DB Contractor's Authorized Representative. DB Contractor acknowledges that TxDOT will obtain funding for portions of the Work from the Grand Parkway Transportation Corporation, the federal government, local agencies and other third parties, and DB Contractor agrees to segregate Draw Requests for all such Work in a format reasonably requested by TxDOT and with detail and information as reasonably requested by TxDOT. Each Draw Request shall be organized to account for applicable reimbursement requirements and to facilitate the reimbursement process.

(b) Section 9.3.2 of the General Conditions is hereby amended as follows:

Each Draw Request must include, at a minimum, all items required by ~~Exhibit~~ Attachment 3 to Attachment 9-4 DBA Exhibit 26.

A Draw Request shall be considered complete and ready for further processing if it includes all of the items required by ~~Exhibit Attachment 3 to Attachment 9-1~~ DBA Exhibit 26.

(c) Section 9.3.3 of the General Conditions is hereby amended as follows:

The Draw Request cover sheet shall include the following:

- (a) ~~Project~~ CSJ numbers and Project title;
- (b) Request number (numbered consecutively starting with "1");
- (c) Total amount earned to date for the SH 99 Work, SH 35 Bypass Work and the Project; and
- (d) Authorized signature, title of signer, and date of signature.

(d) Section 9.3.6 of the General Conditions is hereby amended as follows:

Within 10 Business Days after TxDOT's receipt of a Draw Request, TxDOT shall notify DB Contractor whether the Draw Request is complete and, if not complete, the reasons the Draw Request is considered to be incomplete. DB Contractor may correct the errors in an incomplete Draw Request and resubmit the Draw Request for payment. Within 10 Business Days after TxDOT's receipt of a complete Draw Request, TxDOT shall notify DB Contractor of the amount approved for payment and the reason for disapproval of any remaining invoiced amounts or of any other information set forth in the Draw Request. DB Contractor may include such disapproved amounts in the next month's Draw Request after correction of the deficiencies noted by TxDOT and satisfaction of the requirements of the Contract Documents related thereto. Within five Business Days after TxDOT's approval of a Draw Request, TxDOT will pay DB Contractor the amount of the Draw Request approved for payment less any amounts that TxDOT is entitled to withhold or deduct. In no event shall DB Contractor be entitled to (a) payment for any Payment Activity in excess of the value of the Payment Activity times the completion percentage of such activity (for non-unit-priced Work), (b) aggregate payments hereunder in excess of (i) the overall completion percentage for the Project times the Price (for non-unit-priced Work) or (c) aggregate payments for the SH 99 Work or SH 35 Bypass Work in excess of the applicable Maximum Payment Schedule for the month to which the Draw Request applies, plus amounts allowed by Change Orders not included in the applicable Maximum Payment Schedule.

(e) The reference to "Exhibit 2 to Attachment 9-1" in Section 9.3.4 of the General Conditions shall be deemed to refer to "Attachment 2 to Exhibit 26 to the DBA."

(f) The reference to "Appendix 2 to Exhibit 1 to Attachment 9-1" in Sections 9.4.1 of the General Conditions shall be deemed to refer to "Attachments 1A-3 and 1B-3 to Exhibit 26 to the DBA."

(g) References to "Appendix 1 to Exhibit 1 to Attachment 9-1" in Section 9.4.2.2 of the General Conditions shall be deemed references to "Attachment 1A-2 and Attachment 1B-2 to Exhibit 26 to the DBA."

(h) The reference to "Exhibit 1 to Attachment 9-1" in Section 9.4.2.2 of the General Conditions shall be deemed to refer to "Attachment 1A-1 and 1B-1 to Exhibit 26 to the DBA."

#### **4.1.3 Right to Stop Work for Failure by TxDOT to Make Undisputed Payment**

Section 8.8.4 of the General Conditions hereby amended, provided the underlined text is hereby added to and the language stricken through is deleted from Section 8.8.4, as follows:

DB Contractor shall have the right to stop Work if TxDOT fails to make an undisputed payment due hereunder within 20 days~~15 Business Days~~ after TxDOT's receipt of written notice delivered by certified mail of nonpayment and intent

to suspend performance from DB Contractor. Any such work stoppage shall be considered a suspension for convenience under Section 8.4.1 and shall be considered a TxDOT-Directed Change. DB Contractor shall not be required to resume the Work until the undisputed amount, plus DB Contractor's reasonable costs for mobilization and demobilization, is paid, at which time DB Contractor shall promptly recommence the Work. DB Contractor shall not have the right to terminate this Design-Build Contract for default as the result of any failure by TxDOT to make an undisputed payment due hereunder. However, if such nonpayment continues for more than 180 days, upon written notice from DB Contractor to TxDOT, the nonpayment may be deemed a Termination for Convenience pursuant to Section 8.9. Upon such termination, the Parties' rights and obligations shall be as set forth in Section 8.9.

## **4.2 Limitations on Payments**

### **4.2.1 Maximum Payment Schedules**

**4.2.1.1.** The SH 99 Maximum Payment Schedule is set forth in Appendix 1 to Exhibit 10 to this DBA.

**4.2.1.2.** The SH 35 Bypass Maximum Payment Schedule is set forth in Appendix 2 to Exhibit 10 to this DBA.

**4.2.1.3.** Section 9.2 of the General Conditions is hereby deleted in its entirety and replaced with the following:

### **9.2 Maximum Payment Schedules**

The Project Schedule shall provide for payment to be made solely on the basis of progress by DB Contractor, subject to a cap on payments shown on the Maximum Payment Schedules established for the Project. In other words, at no time shall DB Contractor's cumulative total progress payments (including mobilization payments and payments for Change Order Work) (a) for the SH 99 Work exceed the cumulative total expenditure permitted by the SH 99 Maximum Payment Schedule, and (b) for the SH 35 Bypass Work exceed the cumulative total expenditure permitted by the SH 35 Bypass Maximum Payment Schedule. The Maximum Payment Schedules are set forth in Exhibit 10 to the Design-Build Agreement and shall only be revised by a Change Order issued in accordance with Section 4.6. At no time shall the total amount of cumulative draws set forth in the SH 99 Maximum Payment Schedule exceed the SH 99 Price or the total amount of cumulative draws set forth in the SH 35 Bypass Maximum Payment Schedule exceed the SH 35 Bypass Price, as they may be adjusted in accordance with Section 4.6. The Maximum Payment Schedules shall be revised to account for any Change Orders or amendments, at a minimum, (a) each time cumulative adjustments to the Price through one or more Change Orders or amendments issued since the later of the Effective Date or any previous revision of the Maximum Payment Schedules exceed five percent of the original Price, and (b) at DB Contractor's request, provided DB Contractor demonstrates to TxDOT's satisfaction that its progress payments will exceed the Maximum Payment Schedules within 60 days of the date of DB Contractor's request. DB Contractor and TxDOT may mutually agree to revise the Maximum Payment Schedules more frequently through Change Orders issued in accordance with Section 4.6. The aggregate amount of progress payments to DB Contractor hereunder shall not exceed the amount allowed by the Maximum Payment Schedules at any time.

### **4.2.2 NTP1 Maximum Payment Amount**

**4.2.2.1.** The "**NTP1 Maximum Payment Amount**" is \$[●], which is the sum of the SH 99 NTP1 Maximum Payment Amount of \$[●] and the SH 35 Bypass NTP1 Maximum Payment Amount of \$[●].

**4.2.2.2.** Section 9.1.3 of the General Conditions is hereby deleted in its entirety and replaced with the following:

DB Contractor acknowledges and agrees that the amount of funds available to pay for Work prior to issuance of NTP2 is limited to the NTP1 Maximum Payment Amount, and further, that prior to NTP2, the amount of funds available to pay for the SH 99 Work is limited to the SH 99 NTP1 Maximum Payment Amount and the amount of funds available to pay for the SH 35 Bypass Work is limited to the SH 35 Bypass NTP1 Maximum Payment Amount. TxDOT has no obligation to make any payments to DB Contractor in excess of such amounts until such time (if any) as NTP2 is issued.

#### **4.3 Price Adjustment Due to Delay in NTPs**

##### **4.3.1 Delay in NTP1**

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

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

where:

“Δ” is the adjustment amount distributed on a *pro rata* basis over the remaining payments on the Maximum Payment Schedule;

“N” is the number of days in the period starting 180 days after the Proposal Due Date and ending on the effective date of NTP1;

“A” is the ENR Construction Cost Index (CCI) value published for the effective date of NTP1;

“B” is the CCI published for the month that contains the day that is N +15 days prior to the 15th day of the month that contains the effective date of the NTP1; and

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

**4.3.1.2.** If a Change Order is issued during the period starting 180 days after the Proposal Due Date and ending on the effective date of NTP1, the price of the Change Order, if any, shall be adjusted based on the date that the Change Order is approved to the effective date of NTP1 using the formula set forth in Section 4.3.1.1 above, with “B” being the CCI for the month in which the Change Order is approved.

**4.3.1.3.** If NTP1 has not been issued on or before 365 days after the Effective Date, the Parties may mutually agree to terms allowing an extension in time for issuance of NTP1 and adjustment of the Price. DB Contractor shall provide evidence satisfactory to TxDOT, meeting the requirements of Section 4.6.5 of the General Conditions, justifying the amount of any Price increase. If the delay in issuance of NTP1 was not caused in whole or in part by the acts, omissions, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental Approval of any DB Contractor-Related Entity, and DB Contractor does not wish to negotiate an extension, or if the Parties fail to reach agreement in accordance with this Section 4.3.1.3, then DB Contractor’s sole remedy shall be to terminate this Design-Build Contract in accordance with Section 8.9.9 of the General Conditions.

**4.3.1.4.** DB Contractor shall not be entitled to any increase in the Price or extension of the Completion Deadlines, nor shall DB Contractor have a right to terminate this Design-Build Contract, with respect



to any delay in issuance of NTP1 due to the acts, omissions, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental Approval of any DB Contractor-Related Entity.

#### 4.3.2 Delay in NTP2

**4.3.2.1.** If NTP2 has not been issued by the later of 270 days after the Proposal Due Date or 90 days following issuance of NTP1, and this delay is not caused in whole or in part by an act, omission, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental Approval by any DB Contractor-Related Entity (including DB Contractor's failure to satisfy any particular condition to NTP2), the Price shall be subject to adjustment, as described in this Section 4.3.2.

**4.3.2.2.** The Price adjustment shall apply to the period beginning on the date of issuance of NTP2.

**4.3.2.3.** The Price for Work performed on and after the date of issuance of NTP2 will be adjusted by adding the product of the following to the Price:

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

where:

" $\Delta$ " is the adjustment amount distributed on a *pro rata* basis over the remaining payments on the Maximum Payment Schedule;

"C" is the amount of the Price for Work authorized by any notices to proceed issued prior to issuance of NTP2;

"N" is the number of days in the period starting on the later of the 91<sup>st</sup> day after issuance of NTP1 and the 271<sup>st</sup> day after the Proposal Due Date and ending on the effective date of NTP2;

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

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

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

#### 4.4 Price Adjustments Due to Changes in CCI

**4.4.1** In the event construction cost volatility occurs above or below normally expected values during the period between the Proposal Due Date and the Adjustment Date (the "**Adjustment Period**"), the Price may be subject to an upward or downward adjustment, as described in this Section 4.4. If the Price is subject to adjustment in accordance with this Section 4.4, the Maximum Payment Schedule will be revised to reflect the adjusted Price on a pro rata basis.

**4.4.2** The Price will be increased, or decreased, subject to a cap, if the change in the ENR Construction Cost Index (CCI) during the Adjustment Period:

- (a) Increases by more than 0.04 (i.e., 4%) per annum; or
- (b) Does not increase or increases by less than 0.01 (i.e., 1%) per annum (including if CCI decreases).

**4.4.3** The per annum change in CCI (“ΔCCI”) during the Adjustment Period shall be calculated as follows:

$$\Delta CCI = [(A-B)/B] / (N/365)$$

- (a) If ΔCCI is greater than 0.04 (i.e., 4%), then the Daily Price increase (Δ Price Daily1) during the Adjustment Period shall be calculated using the following formula; provided, however, for the purposes of the following formula, ΔCCI shall not exceed 0.08 (i.e., 8%):

$$\Delta \text{ Price Daily1} = (\text{Construction Price}) * ((\Delta CCI - 0.04) / 365)$$

- (b) If ΔCCI is less than 0.01 (i.e., 1%), then the Daily Price decrease (Δ Price Daily2) during the Adjustment Period shall be calculated using the following formula; provided, however, for the purposes of the following formula, ΔCCI shall be no less than -0.01 (i.e., -1%):

$$\Delta \text{ Price Daily2} = (\text{Construction Price}) * ((0.01 - \Delta CCI) / 365)$$

- (c) Price Adjustment

(i) If ΔCCI is greater than 0.04 (i.e., 4%) the Price shall be increased by the following amount:  
 $\Delta \text{ Price} = (\Delta \text{ Price Daily1}) * (N - T1 - T2 - T3)$

(ii) If ΔCCI is less than 0.01 (i.e., 1%) the Price shall be decreased by the following amount:  $\Delta \text{ Price} = (\Delta \text{ Price Daily2}) * (N - T1 - T2 - T3)$

Any adjustments in the Price for periods of delay in the issuance of NTP1 or NTP2 as described in Section 4.3 (i.e., periods T1 and T2) shall be calculated in accordance with Sections 4.3.1 or 4.3.2, respectively.

where:

“ΔCCI” is the per annum change in CCI during the Adjustment Period, which, for purposes of determining the Daily Price adjustment in (a) and (b) above, shall be no more than 0.08 (i.e., 8%) and no less than -0.01 (i.e., -1%);

“Δ Price” is the adjustment amount to the Price;

“N” is the number of days in the Adjustment Period;

“T1” is the number of days of delay in the issuance of NTP1 governed by Section 4.3.1;

“T2” is the number of days of delay in the issuance of NTP2 governed by Section 4.3.2 that occur during the Adjustment Period;

“T3” is the number of days of delay in the issuance of NTP1 due to the acts, omissions, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental Approval of any DB Contractor-Related Entity;

“Construction Price” is \$ \_\_\_\_\_; *[insert the lesser of (a) the sum of Line 53 from Form P-2.1 “Subtotal Construction Work” plus Line 50 from Form P-2.2 “Subtotal Construction Work” and (b) 70% of the Price]*

“A” is the CCI value in effect on the Adjustment Date; and

“B” is the CCI value in effect at the time of the Proposal Due Date.

“**Adjustment Date**” means the Effective Date + 120 days

**4.4.4** If issuance of NTP1 is delayed by more than 365 days after the Effective Date, the provisions set forth in Section 4.3.1.3 shall apply, and no adjustment to the Price shall be made in accordance with this Section 4.4 except as mutually agreed by the Parties.

**4.4.5** Section 4.6.11(g) of the General Conditions is hereby amended as follows:

- (g) untimely delivery of equipment or material, or unavailability or defectiveness or increases in costs of material, equipment or products specified by the Contract Documents, except as permitted by Section 4.6.9.7 and DBA Section 4.4;

#### **4.5 Change Order for Price Adjustments Due to Delay in NTPs and Changes in CCI**

Any Price adjustments made pursuant to Section 4.3 and Section 4.4 will be added together and combined in a single Change Order that will be issued following the end of the Adjustment Period or the end of the period of delay to NTP2 described in Section 4.3.2.1, whichever is later. Except as set forth in Section 4.3 and Section 4.4, DB Contractor shall not be entitled to any adjustment in Price for changes in CCI during the Adjustment Period.

#### **4.6 Milestone Payment**

**4.6.1** As an inducement to DB Contractor to achieve SH 35 FR Milestone Completion on or before the SH 35 FR Milestone Completion Early Deadline, TxDOT agrees to pay DB Contractor a no excuse bonus (“**Milestone Payment**”) for achieving the SH 35 FR Milestone before the SH 35 FR Milestone Completion Early Deadline. Any Milestone Payment shall be in addition to the Price and shall not be subject to the Maximum Payment Schedule.

**4.6.2** If DB Contractor achieves SH 35 FR Milestone Completion on or before the SH 35 FR Milestone Completion Early Deadline, DB Contractor shall be entitled to receive a Milestone Payment in the amount of \$6,840,000, which shall be documented through a Change Order.

**4.6.3** DB Contractor shall not be entitled to the Milestone Payment in the event DB Contractor fails to achieve SH 35 FR Milestone Completion on or before the SH 35 FR Milestone Completion Early Deadline. The SH 35 FR Milestone Completion Early Deadline is not subject to adjustment for any reason whatsoever.

#### **4.7 Early Completion Incentive**

**4.7.1** As an inducement to DB Contractor to achieve Substantial Completion prior to the Substantial Completion Deadline, TxDOT agrees to pay DB Contractor a per-day bonus (“**Early Completion Incentive**”) for achieving Substantial Completion prior to the Substantial Completion Deadline. Any such Early Completion Incentive shall be paid in addition to the Price and shall not be subject to the Maximum Payment Schedules. In accordance with Section 2.4.3.1, Substantial Completion shall occur no earlier than 180 days after Toll Zone Completion. For the avoidance of doubt, DB Contractor shall not be entitled to receive an Early Completion Incentive unless and until all conditions to Substantial Completion have been fully satisfied, including achievement of Toll Zone Completion no later than 180 days prior to Substantial Completion.

**4.7.2** If DB Contractor achieves Substantial Completion prior to the Substantial Completion Deadline, DB Contractor shall be entitled to receive an Early Completion Incentive in the amount of \$135,000 per day commencing on the day after the achievement of Substantial Completion through the date of the Substantial Completion Deadline not to exceed 180 days.

**4.7.3** Upon TxDOT's issuance of a Certificate of Substantial Completion, DB Contractor may submit a Request for Change Order to increase the Price by the amount of the Early Completion Incentive earned by DB Contractor.

#### **4.8 Payments for Mobilization, Bond and Insurance Premiums and Contract Administration**

**4.8.1** Section 9.5.1 of the General Conditions is hereby amended, provided the underlined text is hereby added to and the language stricken through is deleted from Section 9.5.1, as follows:

##### **9.5.1 Payments for Mobilization**

Subject to the limitations on payment imposed by the Maximum Payment Schedules, DB Contractor shall be entitled to payment for mobilization in installments in an amount equal to the Mobilization Payment Activity Amounts. The first payment for mobilization for each of the SH 99 Work and the SH 35 Bypass Work shall be in an amount not to exceed 5% of the applicable Mobilization Payment Activity Amount, payable as part of the first Draw Request following NTP1. The second payment for mobilization for each of the SH 99 Work and the SH 35 Bypass Work shall be in an amount not to exceed 20% of the applicable Mobilization Payment Activity Amount, payable as part of the first Draw Request following NTP2. The third payment for mobilization for each of the SH 99 Work and the SH 35 Bypass Work shall be in an amount not to exceed 50% of the applicable Mobilization Payment Activity Amount, payable when at least 10% of the SH 99 Price (less the Mobilization Payment Activity Amount) or SH 35 Bypass Work, as applicable, is earned for Work performed without counting any payments for mobilization. The fourth payment for mobilization for each of the SH 99 Work and the SH 35 Bypass Work shall be in the remaining amount of the applicable Mobilization Payment Activity Amount, payable when at least 25% of the SH 99 Price (less the Mobilization Payment Activity Amount) or SH 35 Bypass Work (less the Mobilization Payment Activity Amount), as applicable, is earned for Work performed without counting any payments for mobilization. The amounts calculated as due under this Section 9.5.1 shall be taken into account in assessing the amount to be paid under a Draw Request, which shall not be more than the amount in the applicable Maximum Payment Schedule.

**4.8.2** Section 9.5.2 of the General Conditions is hereby amended, provided the underlined text is hereby added to and the language stricken through is deleted from Section 9.5.2, as follows:

##### **9.5.2 Payments for Bonds and Insurance Premiums**

The portion of the SH 99 Price and SH 35 Bypass Price allocable to bond and insurance premiums, as set forth in the Proposal, shall be payable to reimburse DB Contractor for bond and insurance premiums actually paid, without markup, not to exceed the line item for such premiums in the Proposal, as part of the first Draw Request following NTP1 for bonds and insurance required at NTP1 and as part of the applicable Draw Request following NTP2 for bonds and insurance required on or after NTP2. Any excess portion of the line item for such premiums set forth in the Proposal shall be payable following Substantial Completion. The amounts paid under this Section 9.5.2 shall be taken into account in assessing the maximum amount payable for the SH 35 Bypass Work and the SH 99 Work under a Draw Request through application of the applicable Maximum Payment Schedule.

**4.8.3** Section 9.5.4 of the General Conditions is hereby amended, provided the underlined text is hereby added to and the language stricken through is deleted from Section 9.5.4, as follows:

##### **9.5.4 Payment for Contract Administration**

DB Contractor shall be entitled to payment for the contract administration Payment Activity as part of each Draw Request following NTP1 in accordance with this Section 9.5.4. The payment for the contract administration Payment Activity for the SH 99 Work shall not exceed the total Price allocable to contract administration for the SH 99 Work multiplied by the percentage of SH 99 Work completed in each Draw Request period, and the payment for the contract

administration Payment Activity for the SH 35 Bypass Work shall not exceed the total Price allocable to contract administration for the SH 35 Bypass Work multiplied by the percentage of SH 35 Bypass Work completed in each Draw Request period. The percent of Work completed for purposes of determining the contract administration payments shall be calculated based on the percentage of Price earned excluding Price and Draw Request payments for contract administration, mobilization, bond premiums, and insurance premiums.

## **SECTION 5. PERFORMANCE SECURITY**

### **5.1 Bonds**

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

**5.1.1** The "NTP1 Performance Bond Amount" is \$65,000,000.

**5.1.2** The "NTP1 Payment Bond Amount" is \$65,000,000.

**5.1.3** The "NTP2 Performance Bond Amount" is \$[insert the portion of the Price allocable to Construction Work less the portion of the Price allocable to Construction Work performed by Utility Owners].

**5.1.4** The "NTP2 Payment Bond Amount" is \$[insert the portion of the Price allocable to Construction Work less the portion of the Price allocable to Construction Work performed by Utility Owners].

**5.1.5** Reserved.

**5.1.6** Each bond required pursuant to Section 3.4 of the General Conditions shall include the dual obligee riders and be provided in the applicable form set forth in Exhibit 12 to this DBA.

### **5.2 Guaranty**

**5.2.1** As of the Effective Date, a Guaranty:

☐

is not required; or

☐

in the form attached to this DBA as Exhibit 13 shall be delivered and maintained in accordance with this Section 5.2 and the requirements of the Design-Build Contract, and the following shall be the Guarantor(s): \_\_\_\_\_

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

**5.2.3** The Minimum Tangible Net Worth Requirement for this DBC is \$[●]. [Minimum Tangible Net Worth Requirement shall be calculated as 90% of the total combined Tangible Net Worth of the DB Contractor, its joint venture members (if DB Contractor is a joint venture), its partners (if DB Contractor is a partnership), and any Guarantors. Tangible Net Worth for each such entity shall be determined based on the most recent audited financial statements included with the Proposal, or to the extent included in the Proposal, any more recent quarterly financial statements.]

### 5.3 Insurance Special Provisions

Except as is otherwise specified in this Section 5.3, DB Contractor shall procure and keep in effect, or cause to be procured and kept in effect with DB Contractor as a named insured, as appropriate, insurance policies and coverage in accordance with Section 3.5 of the General Conditions, and in accordance with the deductibles and limits specified therein and in Sections 5.3.1 through 5.3.4.

**5.3.1** The builder's risk policy required in accordance with Section 3.5.4.1 of the General Conditions shall provide coverage per occurrence of no less than the greater of the maximum probable loss, as determined by the DB Contractor's insurance advisor and agreed to by TxDOT, or \$75,000,000, without risk of co-insurance. In addition to the coverages described in Sections 3.5.4.1.1 and 3.5.4.1.2 of the General Conditions, the builder's risk policy shall also provide coverage for delay in start-up/loss of toll revenue including extra expense. The builder's risk policy may include the following sublimits: (i) for the perils of earth movement, flood, and named windstorm, not less than \$75,000,000; (ii) for loss of toll revenue not less than 12 months projected revenues or \$35,000,000, whichever is less, (iii) for damage to existing property and improvements, not less than \$3,000,000; (iv) for "soft cost expense" not less than \$5,000,000; (v) for demolition and debris removal, not less than \$20,000,000; and (vi) for valuable papers and restoration of data, plans and drawings, not less than \$1,000,000. TxDOT and the Grand Parkway Transportation Corporation shall be named insureds on the policy as their interests may appear and shall also be named as co-loss payees. DB Contractor may, but is not obligated to, include other Subcontractors as insureds as their respective interests appear.

**5.3.2** The professional liability policy provided by DB Contractor in accordance with Section 3.5.4.5.1 of the General Conditions shall have minimum coverage limits of \$15,000,000 and may be provided through a Contractor's Professional Liability Insurance policy, including Contractor's Protective Professional Indemnity Insurance coverage. The professional liability insurance policy provided by the Lead Engineering Firm in accordance with Section 3.5.4.5.2 of the General Conditions shall have minimum limits of \$20,000,000. The professional liability insurance coverages required under Section 3.5.4.5.3 of the General Conditions for other Subcontractors performing Professional Services shall have minimum limits in accordance with the following table:

Estimated Total Contract Value	Minimum Limit of Insurance
>\$10 million	\$5 million per claim and aggregate
>\$5 million to \$10 million	\$3 million per claim and aggregate
>\$1 million to \$5 million	\$1 million per claim and aggregate
≤\$1 million	\$500,000 per claim and aggregate

Coverages required under this Section 5.3.2 are not required to be provided through project specific policies.

**5.3.3** The umbrella policy required in accordance with Section 3.5.4.7 of the General Conditions shall have a per occurrence and aggregate limit of no less than \$25,000,000.

**5.3.4** The pollution liability insurance described in Section 3.5.4.4 of the General Conditions shall have limits of no less than \$3,000,000 per occurrence and in the aggregate for the term of the Design-Build Contract.

**5.3.5** DB Contractor and Subcontractors shall include the Bond Trustee and the TIFIA Lender as additional insureds on all insurance policies on which TxDOT is required to be named an additional insured.

**5.3.6** Notwithstanding Sections 3.5.4.2.5 and 3.5.4.3.4 of the General Conditions, which are hereby deleted, there are no maximum deductible or SIR limitations on the Commercial General Liability Policy and the Automobile Liability policy required under Sections 3.5.4.2 and 3.5.4.3, respectively, of the General Conditions.

## **SECTION 6. CHANGE ORDERS**

### **6.1 Differing Site Conditions**

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

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

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

### **6.2 Relief Events**

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

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

### **6.3 Hazardous Materials**

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

#### **6.3.1 Reimbursable Amount**

In accordance with Section 4.6.9.4.1 of the General Conditions, and subject to Section 4.6 of the General Conditions, DB Contractor shall be entitled to an increase in the Price as compensation for (a) 50% of DB Contractor’s Reimbursable Hazardous Materials Management Costs for Pre-existing Hazardous Materials encountered by DB Contractor that exceed \$60,000 but do not exceed \$280,000, (b) 100% of Reimbursable Hazardous Materials Management Costs for Pre-Existing Hazardous Materials encountered by DB Contractor that exceed \$280,000, and (c) 100% of Reimbursable Hazardous Materials Management Costs for Pre-existing Hazardous Materials encountered on Additional Properties acquired as a result of a Necessary Basic Configuration Change or TxDOT-Directed Change. DB Contractor shall be responsible for all other costs related to Pre-existing Hazardous Materials.

### 6.3.2 Time Extensions

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

## 6.4 Utilities

### 6.4.1 Unidentified Utilities

The “**Unidentified Utilities Deductible**” for the Project is, for each facility, the first \$60,000 of Basic Costs for the Utility Adjustment due to an Unidentified Utility.

The “**Unidentified Utilities Deductible Cap**” for the Project is an aggregate \$240,000 for all Unidentified Utilities Deductibles borne by DB Contractor.

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

### 6.4.2 Reserved

### 6.4.3 [Pre-Proposal Utility Commitments]

*[[Include if there are any Pre-Proposal Utility Commitments for the Project]]* Exhibit 23 to the DBA includes Pre-Proposal Utility Commitments concerning certain Utility Adjustments that are necessary for the Project. If the final executed PUA or UAA for the adjustment of a Utility that is the subject of a Pre-Proposal Utility Commitment includes material changes to the scope of the work for the Utility Adjustment from the scope of the work agreed to by the Utility Owner in the Pre-Proposal Utility Commitment, DB Contractor may request a Change Order for certain costs and for delays to the Critical Path resulting from such changed scope of the work for the Utility Adjustment to the extent permitted by this Section 6.4.3. If TxDOT, in its good faith discretion, issues a Change Order, the Change Order shall be in the amount of the incremental increase in DB Contractor’s Direct Costs and disruption damages, if any, incurred as a result of the changed scope of work. For Change Orders that include an extension of a Completion Deadline, the amount of the Change Order shall also include Project Overhead to the extent permitted by Section 4.6.6.2.2 of the General Conditions. DB Contractor’s entitlement to a Change Order is subject to the following:

- (a) DB Contractor shall notify TxDOT immediately if DB Contractor reasonably believes that the Utility Owner would not undertake or permit the Utility Adjustment(s) in a manner consistent with the scope of work in the Pre-Proposal Utility Commitment and the timely completion of the Project, in order to provide TxDOT with a reasonable opportunity to assist in resolving the dispute or in otherwise obtaining the Utility Owner’s timely cooperation with the Pre-Proposal Utility Agreement.
- (b) DB Contractor’s Request for Change Order must document and prove the changes to the scope of work in the Pre-Proposal Utility Commitment and that the scope of work in the Pre-Proposal Utility Commitment was agreed to in good faith between DB Contractor and the Utility Owner.
- (c) DB Contractor shall not be entitled to a Change Order for any changes to the scope of work for a Utility Adjustment if the scope of work includes additional work or higher standards than are required by the Utility Accommodation Rules.



- (d) Any Change Order will be subject to the requirements and limitations in Section 4.6 of the General Conditions, including Section 4.6.6.
- (e) Any Request for Change Order submitted pursuant to this Section 6.4.3 shall be subject to approval by TxDOT in its good faith discretion.]

#### **6.4.4** Reserved

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

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

[(c) delays relating to Utilities, to the extent permitted by Sections 4.5.1, 4.5.5 and 4.6.9.2; and Section 6.4.3 of the Design-Build Agreement.]

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

[(c) certain additional costs relating to Utility Adjustment Work, as described in Section 4.5 and Section 4.6.9.2, to the extent provided therein; additional costs for Utility Adjustment Work directly attributable to Necessary Basic Configuration Changes, to the extent provided in Section 4.6.9; and certain additional costs relating to agreements with Utilities to the extent provided in Section 6.4.3 of the Design-Build Agreement.]

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

#### **6.5.1** Eminent Domain Delay

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

#### **6.5.2** Schematic ROW Delay

DB Contractor shall be entitled to a Change Order increasing the Price for certain costs and extending applicable Completion Deadlines for delays to the Critical Path directly attributable to the failure or inability of TxDOT to make available a portion of the Schematic ROW by the applicable Available for Construction Date (“**Schematic ROW Delay**”) to the extent permitted by this Section 6.5.2. Any Change Order extending a Completion Deadline shall exclude any delay caused in whole or in part by an act, omission, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental Approval by any DB Contractor-Related Entity. In the event DB Contractor is notified by TxDOT or otherwise becomes aware of a potential Schematic ROW Delay, DB Contractor shall immediately determine to what extent it might be possible to avoid such delay through resequencing, reallocation or other alternative construction methods or otherwise. DB Contractor shall promptly meet with TxDOT to determine the best course of action and prepare a written report setting forth its recommendations and potential cost impacts, which shall be subject to the written approval of TxDOT. DB Contractor shall be entitled to a Change Order increasing the Price for its Direct Costs attributable to mitigating the Schematic ROW Delay in accordance with the written report approved by TxDOT.

For Change Orders that include an extension of a Completion Deadline, the amount of the Change Order shall also include Project Overhead to the extent permitted by Section 4.6.6.2.2 of the General Conditions. Any Change Order will be subject to the requirements and limitations in Section 4.6 of the General Conditions, including Section 4.6.6.2.3 and Section 4.6.6.3. Change Orders under this Section 6.5.2 shall not include any other costs, including (except to the extent Project Overhead is permitted hereunder) compensation for delay or disruption damages.

### **6.5.3 Amendments to General Conditions Regarding ROW Change Orders**

**6.5.3.1.** Section 4.6.9.5 of the General Conditions is hereby amended, provided the underlined text is hereby added to and the language stricken through is deleted from Section 4.6.9.5, as follows:

Subject to the restrictions and limitations set forth in this Section 4.6, DB Contractor shall be entitled to a Change Order to extend the applicable Completion Deadlines as the result of any delay in a Critical Path directly caused by failure or inability of TxDOT to (a) deliver the petition for the parcel to the DB Contractor within 105 days from the date of the approved Condemnation Package, or (b) provide the payment for the parcel within 45 days from the date that the Special Commissioners' award is filed with the court, in either case in accordance with Section 4.4.5.2. In addition, subject to the limitations and risk sharing provisions in the Contract Documents, including Section 6.5 of the DBA and Section 4.6.9.11, DB Contractor shall be entitled to a Change Order to extend the applicable Completion Deadlines as a result of any Eminent Domain Delay and to increase the Price for certain costs and extend the applicable Completion Deadlines as a result of any Schematic ROW Delay. DB Contractor shall be entitled to a Change Order only to the extent the delay (i) materially adversely affects a Critical Path and (ii) is not due to an act, omission, negligence, recklessness, intentional misconduct, breach of contract or violation of Law or a Governmental Approval of or by any of the DB Contractor-Related Entities. For Change Orders that include an extension of a Completion Deadline in accordance with this Section 4.6.9.5 (other than for Eminent Domain Delay), DB Contractor shall be entitled to Project Overhead to the extent permitted in Section 4.6.6.2. Except to the extent that this Section 4.6.9.5 allows compensation for Project Overhead, Change Orders under this Section 4.6.9.5 shall not include compensation for delay or disruption damages.

**6.5.3.2.** The first sentence of Section 4.6.6.2.2 of the General Conditions is hereby amended, provided the underlined text is hereby added to and the language stricken through is deleted from Section 4.6.6.2.2 as follows:

DB Contractor shall be entitled to Project Overhead calculated in accordance with this Section 4.6.6.2.2 for each day that one or more Completion Deadline(s) are extended pursuant to Section 4.5.5.1(c) or (d), 4.5.5.2 (c) or (d), 4.6.9.1, 4.6.9.2.1, 4.6.9.2.2, 4.6.9.3.1.1, 4.6.9.4.2, 4.6.9.5, or 4.6.9.10.2, or Section 6.5.2 or 6.10 of the Design-Build Agreement.

### **6.6 Necessary Basic Configuration Changes**

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

### **6.7 Form of Change Order and Related Records**

Each Request for Change Order and Change Order shall meet the requirements of Section 4.6 of the General Conditions and shall be provided in the applicable form set forth in Exhibit 14 to this DBA. Each Change Order shall separately specify the scope of work and amounts of the Change Order that are applicable to the SH 99 Work and to the SH 35 Bypass Work. Notwithstanding anything to the contrary in the Contract Documents, DB Contractor's cost proposals and records respecting Change Orders, including Change Order records required under Section 4.6.10 of

the General Conditions and Change Order data required under Section 4.6.8.8 of the General Conditions, shall clearly segregate and specify costs attributable to SH 99 Work and SH 35 Bypass Work.

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

In accordance with Section 4.4.2.1 of the General Conditions, DB Contractor shall be responsible for the performance of support services for the condemnation proceedings described in Item 15 of the Design-Build Specifications for any parcels within the Additional Properties acquired as a result of a Necessary Basic Configuration Change or TxDOT-Directed Change that require acquisition by eminent domain. DB Contractor shall be entitled to reimbursement for DB Contractor's reasonable out-of-pocket costs of providing such services up to the maximum amounts set forth in Exhibit 11 to this DBA.

## **6.9 SH 6 Lane Closure and Work Restrictions Delay**

**6.9.1.1.** DB Contractor shall be entitled to a Change Order extending applicable Completion Deadlines for delays in the event of a hurricane evacuation where the hurricane does not fall within section (a) of the definition for Force Majeure Event only in accordance with this Section 6.9. The extension of applicable Completion Deadlines shall be for the number of days of delay to the Critical Path caused by DB Contractor's compliance with the requirements in Section C.3 of Exhibit 15 to (i) reopen Lane Closures on SH 6 and (ii) cease Work on or near SH 6 as notified by TxDOT. Delays due to a hurricane that qualifies as a Force Majeure Event shall be governed by Section 4.6.9.3.1 of the General Conditions and not this Section 6.9. Any Change Order under this Section 6.9 shall be subject to the requirements and limitations in Section 4.6 of the General Condition and shall not include any increase in the Price.

**6.9.1.2.** Section 4.6.3.1.1 of the General Conditions is hereby amended to add the following new subsection (k) after subsection (j):

(k) delays relating to SH 6 Lane Closure and Work restrictions to the extent permitted by Section 6.9.1.1. of the DBA.

## **6.10 Railroad Agreements**

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

DB Contractor shall perform the Work in compliance and conformity with the C&M Agreement for the Project, except to the extent the C&M Agreement requires modification due to an ATC included in Appendix 2 to Exhibit 2 or due to DB Contractor's design. In such event, DB Contractor shall be responsible for obtaining the required modifications to the C&M Agreement in accordance with Section 6.10.2.1. DB Contractor shall be responsible for the performance of all of TxDOT's obligations under the C&M Agreement, except for the payment of the amounts set forth in Article 2.c and Exhibit B to the C&M Agreement, which amounts shall be paid by TxDOT to the railroad. In the event of a conflict between the C&M Agreement and the DB Specifications, the C&M Agreement shall govern and control.

**6.10.1** Reserved.

**6.10.2** Reserved.

**6.10.3** Compliance with Railroad Agreements

The following agreement between TxDOT and the BNSF Railway Company was included in a folder labeled "Railroad Documents" in the Reference Information Documents prior to the Proposal Due Date: Highway Overpass Construction

& Existing Railroad Underpass Removal, BNSF Contract #BF-20573531, dated June 24, 2025. If a railroad fails to comply with any material terms and conditions of its C&M Agreement, and such breach by the railroad (a) has a material adverse impact on DB Contractor's obligations under the Contract Documents, and (b) were not caused by the acts or omissions of any DB Contractor-Related Entity, including modifications to the Schematic Design or the C&M Agreement that were initiated by DB Contractor, DB Contractor shall be entitled to a Change Order increasing the Price for certain costs and extending applicable Completion Deadlines for delays to the Critical Path directly attributable to the railroad's failure to comply with the C&M Agreement to the extent permitted by this Section 6.10.3. The Change Order shall be in the amount of the incremental increase in DB Contractor's Direct Costs for the material adverse changes to its obligations. For Change Orders that include an extension of a Completion Deadline, the amount of the Change Order shall also include Project Overhead to the extent permitted by Section 4.6.6.2.2 of the General Conditions. Any Change Order will be subject to the requirements and limitations in Section 4.6 of the General Conditions, including Sections 4.6.6.2.3 and 4.6.6.3, as amended herein.

#### **6.10.4 Amendments to General Conditions**

**6.10.4.1.** Section 4.6.6.2.1 of the General Conditions is hereby amended, provided the underlined text is hereby added to and the language stricken through is deleted from Section 4.6.6.2.1 as follows:

Acceleration Costs shall be compensable only as an alternative to allowing an extension of a Completion Deadline as contemplated by Sections 4.6.2.1.3 and 4.6.4.1. Project Overhead shall be compensable only in conjunction with an extension of Completion Deadline as contemplated by Section 4.6.6.2.2. Other delay and disruption damages shall be compensable only in the case of delays that entitle DB Contractor to an extension of a Completion Deadline pursuant to Section 6.10.2.1(b) of the Design-Build Agreement or for a TxDOT-Caused Delay.

**6.10.4.2.** Section 4.6.6.3 of the General Conditions is hereby amended, provided the underlined text is hereby added to and the language stricken through is deleted from Section 4.6.6.3 as follows:

Any extension of a Completion Deadline allowed hereunder shall exclude any delay to the extent that it: (a) did not impact a Critical Path, (b) was due to the fault or negligence, or act or failure to act of any DB Contractor-Related Entity, or (c) could reasonably have been avoided by DB Contractor, including by re-sequencing, reallocating or redeploying its forces to other portions of the Work (provided that if the time extension is pursuant to Section 4.6.9.1 or 4.6.9.5, Section 6.10 of the Design-Build Agreement or for a TxDOT-Caused Delay, DB Contractor shall be entitled to a time extension unless TxDOT shall have agreed, if requested to do so, to reimburse DB Contractor for its costs incurred, if any, in re-sequencing, reallocating or redeploying its forces). In addition, any extension of a Completion Deadline allowed under this Design-Build Contract other than pursuant to Section 6.10.2.1(b) of the Design-Build Agreement or for a TxDOT-Caused Delay, shall exclude any delay to the extent it is concurrent with any other unrelated delay to a Critical Path for which DB Contractor is responsible hereunder. In the event a delay for which the DB Contractor is responsible is concurrent with a TxDOT-Caused Delay, DB Contractor shall be entitled to a time extension for the TxDOT-Caused Delay but not to any increase in the Price due to the delay, including any delay or disruption damages. If a delay for which DB Contractor is entitled to a time extension is concurrent with another delay for which DB Contractor is also entitled to a time extension (or which otherwise counts towards a cap on DB Contractor's responsibility for such delay), only one of the delays shall be considered for purposes of the Change Order provisions in the Design-Build Contract. If the concurrent delays provide for different relief (i.e. one day of relief for one day of delay versus one day of relief for two days of delay), the delay providing the greater relief to DB Contractor shall apply. In no event shall DB Contractor receive a time extension or credit towards a time extension for more than one delay on a particular day. DB Contractor shall be required to demonstrate to TxDOT's satisfaction that the change in the Work or other event or situation that is the subject of the Request for Change Order seeking a change in a Completion Deadline has caused or will result in an identifiable and measurable disruption of the Work that has impacted the Critical Path activity (i.e., consumed all available Float and extended the time required to achieve SH 35 FR Milestone Completion, Toll Zone Completion, Substantial Completion or Final Acceptance beyond the applicable Completion Deadline).

## **6.11 Delay Deductible Aggregate Cap**

The “**Delay Deductible Aggregate Cap**” for the Project is [●][insert 14.5% of the number of days from NTP1 until the Substantial Completion Deadline] days for all Delay Deductibles borne by DB Contractor.

## **6.12 Escrowed Proposal Documents**

Section 5.13.1.4 of the General Conditions is hereby amended, provided the underlined text is hereby added to and the language stricken through is deleted from Section 5.13.1.4, as follows:

The EPDs shall, inter alia, clearly detail how each cost or price included in the Proposal has been determined and shall show cost or price elements in sufficient detail as is adequate to enable TxDOT to understand how DB Contractor calculated the SH 99 Price and the SH 35 Bypass Price, respectively. The EPDs provided in connection with quotations and Change Orders shall, inter alia, clearly detail how the total cost or price and individual components of that cost or price were determined. The EPDs shall itemize the estimated costs or price of performing the required work separated into cost or price categories identified in the Price breakdown form included with the Proposal to present a detailed estimate of costs and price, including at a minimum, direct labor, repair labor, equipment ownership and operation, expendable materials, permanent materials, supplies, Subcontract costs, plant and equipment, indirect costs, contingencies, markup, overhead and profit. The EPDs shall itemize the estimated payment and performance bonds costs and the annual costs of insurance premiums for each coverage required to be provided by DB Contractor under Section 3.5. The EPDs shall include all assumptions, detailed quantity takeoffs, price reductions and discounts, rates of production and progress calculations, and quotes from Subcontractors used by DB Contractor to arrive at the SH 99 Price and the SH 35 Bypass Price, and any adjustments to such prices~~the Price~~ under this Design-Build Contract.

## **SECTION 7. FEES; LIQUIDATED DAMAGES**

### **7.1 Reserved**

### **7.2 Liquidated Damages and Fees Respecting Delays**

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

- (a) \$25,000 per day for each day after the SH 35 FR Milestone Completion Deadline and through the earlier of the date of SH 35 FR Milestone Completion and the date of Substantial Completion;
- (b) \$135,000 per day for delays to Toll Zone Completion beyond the Toll Zone Completion Deadline, provided such amount shall be reduced by \$20,000 per day for each day after SH 35 Opening occurs;
- (c) \$135,000 for each day after the Substantial Completion Deadline and through the date of Substantial Completion, but not to exceed 365 days, provided such amount shall be reduced by \$20,000 per day for each day after SH 35 Opening occurs;
- (d) \$35,000 per day for each day after the Final Acceptance Deadline and through the date of Final Acceptance.

Amounts assessed under Section 7.2.1(b) are not intended to be duplicative of amounts assessed under Section 7.2.1(c) for delays to Substantial Completion caused solely by delays to Toll Zone Completion, and any amounts paid by DB Contractor under Section 7.2.1(b) for delays to Toll Zone Completion will be credited against liquidated damages for delays to Substantial Completion.

**7.2.2** The amounts of any Qualifying Delay Late Fees for which DB Contractor may be liable pursuant to Section 8.7.1.2 of the General Conditions shall be as follows:

- (a) \$80,000 for each day after the Substantial Completion Deadline and through the date of Substantial Completion, but not to exceed [●] days (the number of days in the Delay Deductible Aggregate Cap);
- (b) \$17,500 per day for each day after the Final Acceptance Deadline and through the date of Final Acceptance.

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

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

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

**7.3.1** Section 8.7.2.2 of the General Conditions is hereby amended as follows:

8.7.2.2 DB Contractor acknowledges and agrees that Liquidated Damages for Lane Closures and Lane Rental Charges are reasonable in order to compensate TxDOT for damages it will incur as a result of such Lane Closures. Such damages include (a) loss of use, enjoyment and benefit of the Project and connecting TxDOT transportation facilities by the general public, (b) loss of potential revenue for TxDOT, (c) injury to the credibility and reputation of TxDOT's transportation improvement program with policy makers and with the general public who depend on and expect availability of service, which injury to credibility and reputation may directly result in loss of ridership on the Project, resulting in further loss of revenue, and connecting TxDOT transportation facilities, and (d) additional costs of administering this Design-Build Contract (including engineering, legal, accounting, overhead and other administrative costs). DB Contractor further acknowledges that these damages are incapable of accurate measurement because of, among other things, the unique nature of the Project and the unavailability of a substitute for it and such amounts are in the nature of liquidated damages and not a penalty and that such sums are reasonable under the circumstances as of the Effective Date.

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

#### **7.4.1 Key Personnel Change Fees**

As deemed compensation to TxDOT for Losses described in Section 8.3.1.4 of the General Conditions, DB Contractor agrees to pay to TxDOT the following Key Personnel Change Fee amounts in accordance with such section for changes in Key Personnel during the applicable period set forth in the table below:

<b>POSITION</b>	<b>KEY PERSONNEL CHANGE FEES FROM NTP1 TO 40% PROGRESS</b>	<b>KEY PERSONNEL CHANGE FEES FROM 40% TO 80% PROGRESS</b>	<b>KEY PERSONNEL CHANGE FEES FROM 80% TO 100% PROGRESS</b>
Project Manager	\$340,000	\$340,000	\$170,000
Construction Manager	\$320,000	\$320,000	\$160,000
Design Manager	\$190,000	\$90,000	\$40,000
Lead Maintenance of Traffic (MOT) Design Engineer	\$160,000	\$80,000	\$40,000
Independent Quality Firm Manager	\$290,000	\$290,000	\$140,000
Professional Services Quality Assurance Manager	\$230,000	\$110,000	\$50,000
Construction Quality Control Manager	\$230,000	\$230,000	\$110,000
Utility Manager	\$150,000	\$150,000	\$30,000
Lead MOT Implementation Manager	\$180,000	\$180,000	\$90,000
Environmental Compliance Manager	\$110,000	\$110,000	\$50,000

#### **7.4.2 Key Personnel Unavailability Liquidated Damages**

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

<b>POSITION</b>	<b>KEY PERSONNEL UNAVAILABILITY LIQUIDATED DAMAGES (per day)</b>
Project Manager	\$31,000
Construction Manager	\$29,000
Design Manager	\$17,000
Lead Maintenance of Traffic (MOT) Design Engineer	\$15,000
Independent Quality Firm Manager	\$26,000
Professional Services Quality Assurance Manager	\$21,000
Construction Quality Control Manager (CQCM)	\$21,000
Utility Manager	\$14,000
Lead MOT Implementation Manager	\$16,000
Environmental Compliance Manager	\$10,000
CMA Maintenance Manager (CMC Contract only)	\$6,000

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

DB Contractor further agrees and acknowledges that:

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



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

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

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

## **7.6 Noncompliance Points**

The performance of the Work will not be subject to noncompliance points.

## **7.7 Amendments to the General Conditions Concerning Liquidated Damages and Fees**

**7.7.1** Section 8.7.1.3 of the General Conditions is hereby amended, provided the underlined text is hereby added to and the language stricken through is deleted from Section 8.7.1.3 as follows:

DB Contractor acknowledges that the liquidated damages described in this Section 8.7.1 are reasonable in order to compensate TxDOT for damages it will incur as a result of late completion of portions thereof as set forth in this Section 8.7.1. Such damages include (a) loss of use, enjoyment and benefit, of the Project and connecting TxDOT transportation facilities by the general public, (b) loss of potential revenues with respect to delays to Toll Zone Completion and Substantial Completion of the SH 99 portion of the Project, (c) injury to the credibility and reputation of TxDOT's transportation improvement program with policy makers and with the general public who depend on and expect availability of service by the Substantial ~~respective~~ Completion Deadlines (other than the Final Acceptance Deadline), which injury to credibility and reputation may directly result in loss of ridership on the Project, which may directly result in further loss of revenue, and connecting TxDOT transportation facilities, ~~and~~ (d) additional costs of administering this Design-Build Contract (including engineering, legal, accounting, overhead and other administrative costs). DB Contractor further acknowledges that these damages are incapable of accurate measurement because of, among other things, the unique nature of the Project and the unavailability of a substitute for it.

**7.7.2** Section 8.7.4.1 of the General Conditions is hereby amended, provided the underlined text is hereby added to and the language stricken through is deleted from Section 8.7.4.1 as follows:

DB Contractor shall pay any Liquidated Damages, Qualifying Delay Late Fees, Key Personnel Change Fees and Lane Rental Charges owing under this Section 8.7 and DBA Section 3.3 within 20 days after TxDOT delivers to DB Contractor TxDOT's invoice or demand therefor, such invoice or demand to be issued not more often than monthly. For clarification, this provision does not excuse DB Contractor from including all amounts of Liquidated Damages, Qualifying Delay Late Fees, Key Personnel Change Fees and Lane Rental Charges owed to TxDOT within its Draw Request in accordance with Section 9.3.2, regardless of whether DB Contractor has received TxDOT's invoice.

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

### **8.1 Identified Subcontractors**

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

## **8.2 Key Personnel**

Key Personnel positions for the Project, and the approved individuals filling such Key Personnel roles as of the Effective Date, are as set forth in Exhibit 18 to this DBA. TxDOT requires the ability to contact certain Key Personnel, as specified in Exhibit 18, 24 hours per day, seven days per week.

## **SECTION 9. NOTICE AND AUTHORIZED REPRESENTATIVES**

### **9.1 Notices and Communications**

**9.1.1** Notices under the Contract Documents shall be in writing and (a) delivered personally, (b) sent by certified mail, return receipt requested, (c) sent by a recognized overnight mail or courier service, with delivery receipt requested, or (d) sent by facsimile or email communication or posted to TxDOT's Electronic Content Management System (ECMS) for the Project with receipt confirmed by telephone and followed by a hard copy, to the addresses set forth in this Section 9.1, as applicable (or to such other address as may from time to time be specified in writing by such Person).

**9.1.2** All notices, correspondence and other communications to DB Contractor shall be delivered to the following address or as otherwise directed by DB Contractor's Authorized Representative:

[DB Contractor / Firm Name]  
[Address]  
[Address]  
Attention: [Name]  
Telephone: [●]  
E-mail: [●]

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

[Firm Name]  
[Address]  
[Address]  
Attention: [Name]  
Telephone: [●]  
E-mail: [●]

**9.1.3** All notices, correspondence and other communications to TxDOT shall be marked as regarding the SH 99 Grand Parkway Segment B-1 Design-Build Project and shall be delivered to the following address or as otherwise directed by TxDOT's Authorized Representative:

Texas Department of Transportation  
Houston District  
7600 Washington Ave.  
Houston, TX 77077  
Attention: Thomas G. Allbritton, P.E., District Engineer  
Telephone: (713) 866-7040  
E-mail: glenn.allbritton@txdot.gov

With a copy to:

Texas Department of Transportation  
Alternative Delivery Division  
6230 E. Stassney Ln  
Austin, Texas 78744  
Attention: Mr. Greg Snider  
Telephone: (512) 463-8611  
E-mail: greg.snider@txdot.gov

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

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

## **9.2 Designation of Representatives**

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

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

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

### **10.1 Representations and Warranties**

DB Contractor represents and warrants that:

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

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

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

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

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

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

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

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

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

**10.1.10** Each of the Contract Documents to which DB Contractor is (or will be) a party constitutes (or at the time of execution and delivery will constitute) the legal, valid and binding obligation of DB Contractor,

enforceable against DB Contractor and, if applicable, each member of DB Contractor, in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

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

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

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

**10.1.14** At any time a Guaranty is required to be in place pursuant to the Contract Documents, all required approvals have been obtained with respect to the execution, delivery and performance of such Guaranty, and performance of such Guaranty will not result in a breach of or a default under the applicable Guarantor's organizational documents or any indenture or loan or credit agreement or other material agreement or instrument to which the applicable Guarantor is a party or by which its properties and assets may be bound or affected.

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

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

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

## **10.3 Certification Under Family Code**

Under Section 231.006, Family Code, the DB Contractor certifies that the individual or business entity named in this Design-Build Contract is not ineligible to receive the specified payments and acknowledges that this Design-Build Contract may be terminated and payment may be withheld if this certification is inaccurate.

## **SECTION 11. MISCELLANEOUS PROVISIONS**

### **11.1 Dispute Resolution Procedures**

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

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

### **11.2 Electronic Signatures and Transactions**

TxDOT and DB Contractor agree to accept electronic signatures for the execution of this DBA, and further agree to conduct transactions related to or arising out of this DBA by electronic means to the extent possible.

### **11.3 Entire Agreement**

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

### **11.4 Severability**

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

### **11.5 Survival**

DB Contractor's representations and warranties, the dispute resolution provisions contained in Section 11.1 and Exhibit 20 hereof and Sections 4.9 and 4.10 of the General Conditions, the indemnifications and releases contained in Section 7.12 of the General Conditions, the express rights and obligations of the Parties following termination of this DBA under Section 8.8 and Section 8.9 of the General Conditions, the provisions regarding invoicing and payment under Section 9.3 of the General Conditions, the obligations regarding Final Reconciliation under Section 9.7 of the General Conditions and all other provisions which by their inherent character should survive termination of this DBA and completion of the Work, shall survive the termination of this DBA and completion of the Work. The provisions of Section 11.1 and Exhibit 20 hereof and Sections 4.9 and 4.10 of the General Conditions shall continue to apply after expiration or earlier termination of this DBA to all Claims and Disputes between the Parties arising out of the Contract Documents.

### **11.6 Counterparts**

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

## 11.7 [Joint and Several Liability]

*[This Section 11.7 to be included only if DB Contractor is a joint venture.]* Each of the [●], [●] and [●] agree that it is jointly and severally liable for the performance of DB Contractor's liabilities and obligations under the Contract Documents; and that such joint and several liability shall not in any way be reduced, diminished or released by any change to the constitution of DB Contractor. If any other Party or replacement Party to this DBA is or becomes a joint venture or a partnership, all members of such joint venture or partnership shall have joint and several liability for the obligations and liabilities of such Party under the Contract Documents, and such obligations and liabilities shall not in any way be reduced, diminished or released by any change in the constitution of such Party.]

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

**DB CONTRACTOR:**

*[DB Contractor]*

**TEXAS DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_

Name:     [●]

Title:     [●]

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

By: \_\_\_\_\_

Name:     Marc D. Williams, P.E.

Title:     Executive Director

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



## EXHIBIT 1

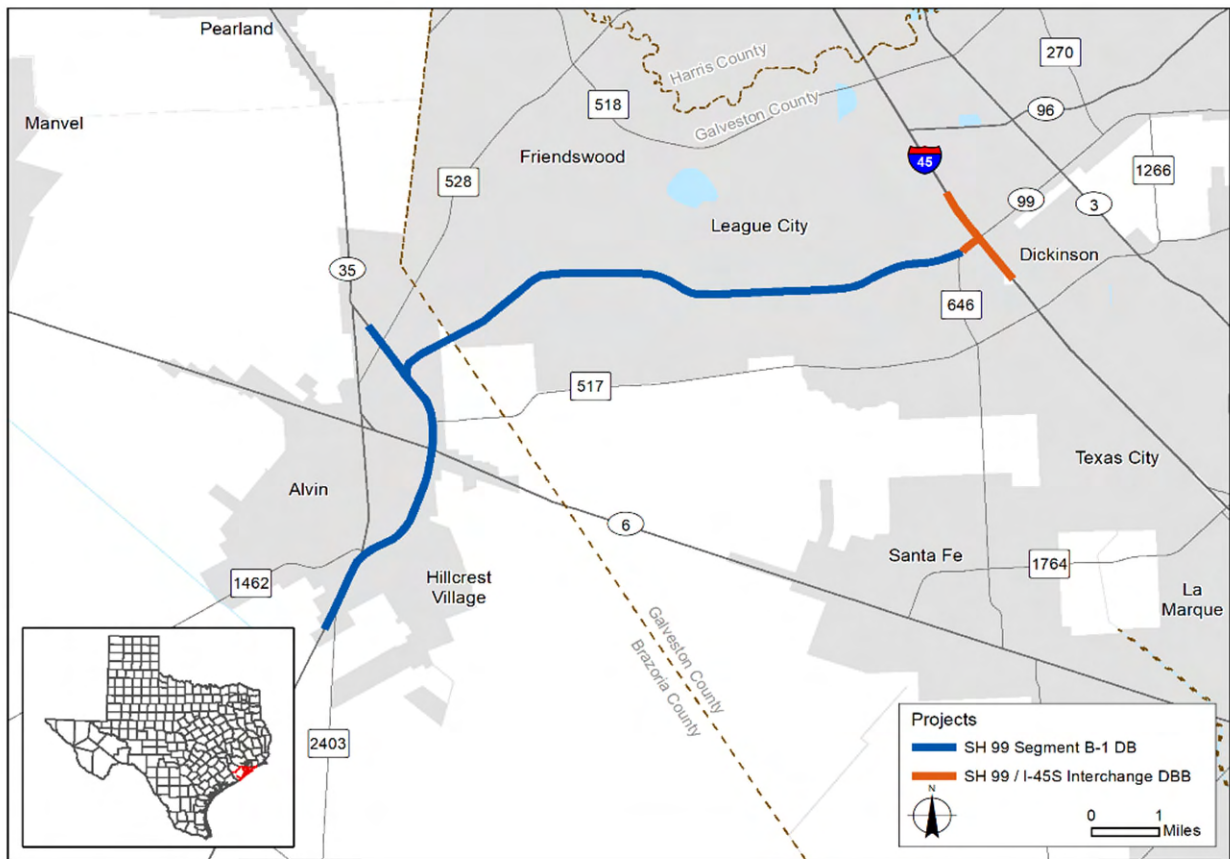
### PROJECT SCOPE

#### 1. Project Description

The Project, which is in Galveston and Brazoria counties, is part of a proposed 180-mile Grand Parkway system in the greater Houston area. The Project is broken up into two scope components.

The “SH 99” scope includes the design, construction and maintenance of 14.0 miles of new tolled roadway from south of FM 2403 to FM 646 and approximately 5.9 miles of non-tolled operational improvements to the existing SH 35.

The “SH 35 Bypass” scope includes 1.4 miles of non-tolled operational improvements to SH 35 from south of North Gordon Street (BS 35-C) to north of Steele Road.



**Figure 1-1: Project Map**

## 2. Project Scopes and Basic Configuration

DB Contractor shall be responsible for all Work required to design and construct all areas included within the SH 99 and SH 35 Bypass scope components of the Project. The Work shall conform to the Basic Configuration. DB Contractor shall design and construct the elements of the Work described below and shown in the Schematic Design.

All existing pavement within the Project limits not utilized as part of the Ultimate Project Configuration shall be demolished. Where existing frontage road or cross street pavement meets the plan/profile of the proposed improvements, DB Contractor shall replace the pavement structure to depths described in Item 16 of the Design-Build Specifications.

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

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

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

## 3. SH 99 Scope Component

### 3.1. Tolled Mainlanes

DB Contractor shall design and construct the tolled mainlanes consistent with the Schematic Design and as set forth below. The tolled mainlanes shall include:

- Northbound (NB) / Eastbound (EB):
  - One lane from beginning of the Project (STA 6041+11.48) to FM 1462/Childress exit ramp (approx. STA 6100+00)
    - From STA 6089+00 to the FM 1462/Childress exit ramp, NB pavement shall be constructed to accommodate, in plan and profile, the future NB/EB two-lane Segment B-2 depicted on the Schematic Design (SH 99 NB mainlane stub-out)
  - Two continuous through lanes from STA 6100+00 to adjacent project (I-45 Interchange DBB) tie-in at STA 6763+00
    - Two lane sections shall be increased to three lanes to accommodate the auxiliary lanes between entrance and exit ramps at locations depicted on the Schematic Design
    - Two lane sections shall be increased to three and four lane sections around the SH 99/SH 35 interchange direct connector ramps, at the approx. STAs depicted on the Schematic Design
- Southbound (SB) / Westbound (WB):
  - One lane from beginning of the project (STA 6041+11.48) to FM 2403/S. Johnson St. exit ramp at approx. STA 6112+00. Beginning at STA 6056+00, pavement location shall be constructed to accommodate, in plan and profile, the future SB/WB two-lane Segment B-2 depicted on the Schematic Design
  - Two continuous through lanes from STA 6112+00 to adjacent project (I-45 Interchange DBB) tie-in at STA 6763+00

- Two lane sections shall be increased to three lanes to accommodate the auxiliary lanes between entrance and exits ramps at locations depicted on the Schematic Design
- Two lane sections shall be increased to three and four lane sections around the SH 99/SH 35 interchange direct connector ramps, at the approx. STAs depicted on the Schematic Design

The NB/EB and SB/WB mainlanes shall be separated by a 48-foot median with single slope concrete barrier (or with bridge rail, as appropriate), except in the following locations:

- From the beginning of the project (STA 6041+11.48) to approx. STA 6085+00: Striping only; no inside shoulders/median required where bi-direction mainlanes share the future Segment B-2 SB/WB pavement as shown on the Schematic Design
- From approx. STA 6085+00 to STA 6099+00: Transition from striping only to the full 48-foot median. Single slope concrete barrier is required in the grass median through the transition
- From STA 6259+00 to the southern end of the Dickinson Bayou Tributary 4 mainlane overpass: Transition from full 48-foot median down to inside shoulder width plus concrete barrier separation and back to the full 48-foot median; single slope concrete barrier is required in the grass median through the transition

### 3.2. Frontage Roads

DB Contractor shall design and construct the discontinuous frontage roads and cross street connections (including driveways, maintenance driveways and access roads), consistent with the Schematic Design and as set forth below. The number of lanes including through lanes, auxiliary lanes, turn lanes, storage lanes, and u-turns shall be consistent with those shown on the Schematic Design.

Begin and end stations (STA) for each frontage road section through the greenfield shall generally match the proposed STA shown on the Schematic Design to not reduce potential access to future development along the frontage roads.

- NB/EB:
  - From STA 26046+00 to Steele Rd. (tie-in with SH 35 Bypass Scope)
    - From STA 26055+00 to FM 2403, the NB frontage road pavement shall be constructed to accommodate, in plan and profile, the future NB/EB Segment B-2 depicted on the Schematic Design (SH 99 NB frontage road stub-out)
  - From SH 35 (tie-in to SH 35 Bypass scope at STA 26305+30) to east of Dickinson Bayou Tributary 4, providing access at Clifford St.
- SB/WB:
  - From STA 16053+00 to Steele Rd. (tie-in with SH 35 Bypass Scope)
  - From SH 35 (tie-in to SH 35 Bypass scope at STA 16297+11) to east of Dickinson Bayou Tributary 4, providing access at Clifford St.
- Both directions:
  - From west of Galveston Water Canal to east of Georgetown Pkwy, providing access at Georgetown Pkwy
  - From west of West Blvd to east of Maple Leaf Dr. providing access at West Blvd, Longfellow Dr., McFarland Rd., Maple Leaf Drive and across Legacy Ditch
  - From east to west of Bay Area Blvd.
  - From east to west of Landing St.
  - From east of Magnolia Bayou to FM 646, providing access to Calder Rd and FM 646

### 3.3. Direct Connectors

DB Contractor shall design and construct direct connectors consistent with the Schematic Design and as set forth below:

- One-lane DC from WB SH 99 mainlanes to NB SH 35 mainlanes
- Two-lane DC from SB SH 35 mainlanes to EB SH 99 mainlanes

### 3.4. Ramps

DB Contractor shall design and construct ramps consistent with the Schematic Design and as set forth below.

- |   |   |
|---|---|
| <ul style="list-style-type: none"><li>• NB/EB:<ul style="list-style-type: none"><li>○ Exit to FM 1462/Childress</li><li>○ Entrance from Mustang Rd.</li><li>○ Exit to E. House St.</li><li>○ Entrance from E. South St.</li><li>○ Exit/Entrance braided pair between SH 6 and FM 517/Dickinson Rd.</li><li>○ Entrance from FM 517/Dickinson Rd.</li><li>○ Exit to SH 35 mainlanes (tie into SH 35 Bypass at STA 66294+33)</li><li>○ Entrance from Clifford St.</li><li>○ Exit to and Entrance from Georgetown Pkwy</li><li>○ Exit to and Entrance from West Blvd./Longfellow Dr./McFarland Rd./Maple Leaf Dr. frontage road</li><li>○ Exit to and entrance from Bay Area Blvd.</li><li>○ Exit to and entrance from Landing Blvd.</li><li>○ Exit to and entrance from Calder Rd.</li></ul></li></ul> | <ul style="list-style-type: none"><li>• SB/WB:<ul style="list-style-type: none"><li>○ Exit to S. Johnson St./FM 2403</li><li>○ Exit to Mustang Rd.</li><li>○ Entrance from E. House St.</li><li>○ Exit to E. South St.</li><li>○ Exit/Entrance braided pair between SH 6 and FM517/Dickinson Rd.</li><li>○ Exit to FM 517/Dickinson Rd.</li><li>○ Entrance from SH 35 mainlanes (tie into SH 35 Bypass at STA 56291+62)</li><li>○ Exit to Clifford St.</li><li>○ Entrance from and exit to Georgetown Pkwy</li><li>○ Entrance from and exit to West Blvd./Longfellow Dr./McFarland Rd./Maple Leaf Dr. frontage road</li><li>○ Entrance from and exit to Bay Area Blvd.</li><li>○ Entrance from and exit to Landing Blvd.</li><li>○ Entrance from and exit to Calder Rd.</li></ul></li></ul> |
|---|---|

### 3.5. Cross Streets

DB Contractor shall design and construct cross streets, intersections, and driveways (including maintenance driveways) with new pavement as shown in the Schematic Design. The number of lanes at each intersection including through lanes, turn lanes, storage lanes, and u-turns shall be consistent with those shown on the Schematic Design.

- FM 2403 realignment and reconstruction, including new location FM 2403 (Connector)
- S. Johnson Street realignment, reconstruction, and the repurposing of pre-existing S. Johnson St. pavement into a bicycle/pedestrian facility with restricted vehicle access.
- Briscoe Dr. reconstruction
- FM 1462/Childress Drive/Business SH 35 widening and reconstruction.
- Mustang Rd. reconstruction
- Jephson Lane reconstruction
- Fairway Dr. widening and reconstruction
- E South Street widening and reconstruction

- E House Street widening and reconstruction
- Delta Dr. reconstruction
- Conversion of Old Galveston Rd. at SH 35 (approx. STA 2622+00, Right) into a cul-de-sac
- Conversion of private driveway at SH 35 (approx. STA 2625+00, Right) into a cul-de-sac
- SH 6 widening and reconstruction
- FM 517/ Dickinson Road widening and reconstruction
- Steele Rd. reconstruction
- Future Thoroughfare (design only, at STA 6374+00 and as shown in Attachment 19-2 to the DB Specifications)
- Clifford St. widening and reconstruction
- Georgetown Parkway new construction
  - Access roads between and around the proposed Galveston Water Canal culverts
- West Blvd. new construction
- Longfellow Dr. new construction
- McFarland Rd. widening and reconstruction
- Maple Leaf Dr. widening and reconstruction
- Bay Area Blvd. new construction
- Landing Blvd. new construction
- Calder Rd. widening and reconstruction
- FM 646 widening and median cross over

### **3.6. Bridges**

DB Contractor shall design and construct bridges set forth below with spans to accommodate cross street improvements, railroad crossings, and canal/bayou crossings as depicted in the Schematic Design and Attachments 19-1 (Cross Street Design Criteria) and 19-2 (Cross Street Typical Sections) of the Design-Build Specifications. DB Contractor shall not reduce the limits of any bridge from the limits shown on the Schematic Design if the reduction results in negative impacts to Waters of the US.

- Mainlane overpasses (both directions):
  - FM 2403 (Connector)
  - Ditch near S. Johnson St.
  - FM 1462/Childress Dr.
  - Mustang Rd.
  - Fairway St./Mustang Bayou/E. South St.
  - E. House St./BNSF RR/SH 6 (These mainlane bridges shall be constructed to the full width shown on the Schematic Design, including the 24' inside shoulders in both directions.)
  - FM 517/Dickinson St.
  - SH 35 NB mainlanes/NB frontage road
  - Clifford St.
  - Dickinson Bayou Tributary 4
  - Future Thoroughfare at CL STA 6374+00/Dickinson Bayou Tributary 5/Dickinson Bayou
  - Galveston Water Canal/Georgetown Pkwy
  - West Blvd/Longfellow Dr./McFarland Rd/Maple Leaf Drive/Legacy Ditch
  - Bay Area Blvd.
  - Landing Blvd.

- Existing Drainage Pond/Hobbs Rd.
- Magnolia Bayou/Calder Rd./Unnamed Tributary Channel
- Frontage road bridges (both directions):
  - Ditch near S. Johnson St.
  - BNSF RR
  - Dickinson Bayou Tributary 4
  - Dickinson Bayou Tributary 5/Dickinson Bayou (entrance/exit ramp gores at approx. STA 6400+00, same structures as mainlane bridges noted above)
  - Magnolia Bayou
  - Unnamed Tributary Channel
  - Magnolia Bayou (approx. STA 6775+00, WB direction only)
- Ramp/DC bridges:
  - NB/EB:
    - Bridge to accommodate the braided ramp pair between SH 6 and FM 517
    - DC (from SB SH 35 mainlanes to EB SH 99 mainlanes) over SH 35 NB mainlanes and SH 35 NB frontage road
    - DC merge onto EB SH 99 mainlanes, bridge over Clifford St. (same structure as the mainlane overpass at Clifford Street noted above)
  - SB/WB:
    - Bridge to accommodate the braided ramp pair between SH 6 and FM 517
    - DC (from WB SH 99 mainlanes to NB SH 35 mainlanes) over SH 35 NB frontage road (This structure shall be built with a minimum traversable pavement width of 38 feet. Where the Schematic Design shows a single 24' lane, DB Contractor shall comply with the Item 19 roadway design criteria for a two-lane section.)
    - DC approach from WB SH 99 mainlanes, bridge over Clifford St.

### 3.7. Toll Zones

DB Contractor shall design and construct toll zones at the following locations in accordance with Item 29 of the DB Specifications and its associated attachments:

- NB exit ramp to FM 1462
- NB and SB mainlanes between Jephson Ln. and Brisco Dr.
- NB entrance ramp from and SB exit ramp to Mustang Rd.
- NB entrance ramp from and SB exit ramp to E South St.
- NB entrance ramp from and SB exit ramp to SH 6
- NB entrance ramp from and SB exit ramp to FM517/Dickinson Rd.
- EB exit ramp to and WB entrance ramp from Georgetown Pkwy
- EB exit ramp to and WB entrance ramp from and from West Blvd.
- EB and WB mainlane between the Maple Leaf Dr./Legacy Ditch frontage road section and the Bay Area Blvd. frontage road section
- EB entrance ramp from and WB exit ramp to Bay Area Blvd.
- EB entrance ramp from and WB exit ramp to Landing Blvd.
- EB entrance ramp from and WB exit ramp to Calder Rd.

### **3.8. Shared Use Path**

DB Contractor shall design and construct a shared use path from S. Johnson St. to the FM 2403 (Connector) as depicted in the Schematic Design and more particularly described in Item 28 of the Design-Build Specifications.

## **4. SH 35 Bypass Scope**

### **4.1. Mainlanes**

DB Contractor shall design and construct the mainlanes consistent with the Schematic Design and as set forth below. NB and SB mainlanes shall be separated by a 52-foot median with cable barrier (or bridge rail, as appropriate). The mainlanes shall include:

- NB:
  - One lane from approx. STA 3294+33 (tie-in to SH 99 scope) to approx. STA 3298+00 (entrance ramp gore); Functions as an exit ramp from the SH 99 toll lanes to the SH 35 mainlanes
  - Two lanes from approx. STA 3298+00 (entrance ramp gore) to STA 3318+00
  - Two lane full pavement/bridge width from STA 3318+00 to STA 3341+00, with stripping to accommodate the merge down to one lane at the Victory Ln. exit ramp
- SB:
  - One lane from approx. STA 2291+62 (tie-in to SH 99 scope) to approx. STA 2298+00 (exit ramp gore). Functions as an entrance ramp from the SH 35 mainlanes to the SH 99 toll lanes
  - Two lanes from approx. STA 2298+00 (exit ramp gore) to STA 2342+00

### **4.2. Bridge**

DB Contractor shall design and construct bridges set forth below with spans to accommodate cross street improvements as depicted in the Schematic Design and Attachments 19-1 (Cross Street Design Criteria) and 19-2 (Cross Street Typical Sections) of the Design-Build Specifications:

- Mainlane overpasses (both directions)
  - Wheeler Dr.
  - FM 528

### **4.3. Ramps**

DB Contractor shall design and construct ramps consistent with the Schematic Design at the following locations:

- |  |   |
|--|---|
| <ul style="list-style-type: none"><li>• NB:<ul style="list-style-type: none"><li>○ Entrance from Steele Rd.</li><li>○ Exit to FM 528</li><li>○ Exit to Victory Ln.</li></ul></li></ul> | <ul style="list-style-type: none"><li>• SB:<ul style="list-style-type: none"><li>○ Exit to Steele Rd.</li><li>○ Entrance from FM 528</li><li>○ Entrance from Victory Ln. to both the SH 35 SB mainlanes and to the SH 99 DC</li></ul></li></ul> |
|--|---|

#### **4.4. Frontage Roads**

DB Contractor shall be design and reconstruct continuous frontage roads and driveways consistent with the Schematic Design and as set forth below. The number of lanes including through lanes, auxiliary lanes, turn lanes, storage lanes, and u-turns shall be consistent with those shown on the Schematic Design:

- From Steele Rd. (tie-in with SH 99 scope) to Victory Ln.

#### **4.5. Cross Streets**

DB Contractor shall design and construct cross street intersections and driveways with new pavement. The limits of the cross street reconstruction (eastbound and westbound) and number of lanes at each intersection including through lanes, turn lanes, storage lengths, and u-turns shall be consistent with those shown on the Schematic Design:

- Steele Rd. reconstruction, including the removal/demolition of Steele Rd. cross over and the adjacent parking lot pavement between NB and SB SH 35
- Wheeler Dr. reconstruction, including the connection to the SH 99 EB frontage road
- FM 528 reconstruction
- Victory Ln. improvements at tie-in to NB and SB frontage road improvements

### **5. Ultimate Project Configuration**

The Work shall accommodate and be consistent with the improvements associated with the Ultimate Project Configuration. The Ultimate Project Configuration includes the future extension of SH 99 (Segment B-2) on the southern end of the project and the concurrent construction of the I-45 Interchange DBB on the eastern end of the project. Planned improvements for both locations are depicted in the Schematic Design (sheets 10 and 11).

Planned improvements for the I-45 Interchange DBB project are depicted in the Full Segment B-1 Schematic and in the Schematic Design (sheet 11). Planned improvements for Segment B-2 include the extension of Segment B-1's proposed typical section (2+2 toll lanes with 48' median and 2+2 frontage roads) to the south and the addition of entrance ramps in both the NB and SB directions in the vicinity of FM 2403/S. Johnson St. The location of the planned ramps and a graphical depiction of the future northbound mainlane pavement is depicted in the Schematic Design (sheet 10).

DB Contractor shall ensure that any Utilities that require relocation or adjustment to accommodate the Work shall also accommodate the Ultimate Project Configuration to the greatest extent possible within Schematic ROW.

The design documents furnished by DB Contractor shall be consistent and compatible with the improvements associated with the Ultimate Project Configuration and provide for a smooth transition from the Work to the Ultimate Project Configuration. The Work shall minimize "throwaway" costs associated with the Project and shall provide for minimal disruption to traffic during the construction of the Ultimate Project Configuration. Additionally, the Project shall be designed and constructed to minimize the cost associated with the Ultimate Project Configuration to the extent that DB Contractor costs to construct the Work are not unreasonably increased.



## **APPENDIX 1 TO EXHIBIT 1**

### **MILESTONE DESCRIPTION**

#### **1. SH 35 FR Milestone**

DB Contractor shall design and construct the SH 35 FR Milestone work items set forth below consistent with the Schematic Design:

- Two lanes of continuous frontage roads in each direction along SH 35 from FM 1462 to Steele Rd. in their final configuration and pavement structure; and
- SH 6 widening and reconstruction, including intersections with SH 35 NB and SB frontage road and completion of all associated through lanes, turn lanes, storage lanes, and u-turns in their final configuration and pavement structure.

## EXHIBIT 2

- Appendix 1: Proposal Commitments
- Appendix 2: ATCs

**APPENDIX 1 TO EXHIBIT 2**

**PROPOSAL COMMITMENTS**

**[To be inserted from Proposal]**

No.	Proposal Location	Proposal Commitment
1.		
2.		
3.		
4.		
5.		

## **APPENDIX 2 TO EXHIBIT 2**

### **ATCs**

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

<b>ATC No.</b>	<b>ATC Description</b>	<b>Section(s) of the Contract Documents from which Deviations are Permitted</b>	<b>Date of Approval Letter</b>
1.			
2.			
3.			
4.			

### **EXHIBIT 3**

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

- The Design-Build Contract references the following RIDs for purposes of granting a Price increase or extension of a Completion Deadline to DB Contractor:
  - The documents under the folder titled “Utility Strip Map” in the RIDs to the extent set forth in Section 4.5.1 of the General Conditions and Section 4.6.9.2 of the General Conditions.
  - The portions of the Schematic Design that define "Basic Configuration" for purposes of a Change Order for Necessary Basic Configuration Changes or for TxDOT's failure to make available a portion of the Schematic ROW, to the extent set forth in Section 4.6.9.6 of the General Conditions and Section 6.5 of this DBA, respectively.
- The following documents located in the RIDs constitute the Signed and Sealed Engineering Data for the Project for purposes of a TxDOT-Directed Change:
  - sh99-sh35-final -boring-logs.pdf
- The following level A subsurface utility engineering (SUE) documents are included in the RIDs:
  - 2024-11-18\_SH 99\_THDS.pdf

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

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

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

**4.6.5.6 Change Order Affecting Capital Maintenance Agreement**

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

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

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

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

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

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

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

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

**9.4.3 Withholding for Maintenance Security**

TxDOT shall retain from the Final Payment, and if it reasonably appears there will be insufficient funds at Final Payment, from progress payments, an amount equal to the initial penal sum of the Maintenance Performance Bond (regardless of whether DB Contractor intends to secure its maintenance obligations with letters of credit or bonds), calculated as of the date of Substantial Completion and in accordance with Section 3.2.3.2 of the CMA General Conditions (the "Retained Security Amount"), as security for the provision of the Maintenance Security required under Section 3.2 of the CMA General Conditions. DB Contractor shall have the option at any time to deliver an irrevocable letter of credit equal to the Retained Security Amount in lieu of the retained sums in a form and on terms acceptable to TxDOT in its sole discretion. TxDOT shall release the Retained Security Amount or letter of credit, as applicable, to DB Contractor upon the provision of the Maintenance Security required under Section 3.2 of the CMA General Conditions, which shall be no later than 14 days prior to the Initial Maintenance Term Commencement Date. In the event TxDOT does not receive the Maintenance Security required under Section 3.2 of the CMA General Conditions by the deadline set forth therein, DB Contractor shall forfeit as liquidated damages and not as a penalty such sums, or if a letter of credit is provided in lieu of retained amounts, TxDOT shall have the right to draw on the letter of credit.

**EXHIBIT 5**

**JOB TRAINING PLAN**

***[To be replaced by the TxDOT-approved DB Contractor Job Training Plan]***



**EXHIBIT 6**

**DBE OPEN ENDED PERFORMANCE PLAN**

***[To be inserted from Proposal (Form H - DB Contractor DBE Open Ended Performance Plan)]***

**APPENDIX 1 TO EXHIBIT 6**

**DBE OPEN ENDED PERFORMANCE PLAN BREAKDOWN**

***[Insert from Proposal (Form S – DBE Open Ended Performance Plan Breakdown)]***

**EXHIBIT 7**

**PREVAILING WAGE RATES**

The wage rates listed herein are those predetermined by the Secretary of Labor and State Statute and listed in the United States Department of Labor's (USDOL) General Decisions dated 01-03-2025 and are the minimum wages to be paid accordingly for each specified classification. To determine the applicable wage rate zone, a list entitled "TEXAS COUNTIES IDENTIFIED BY WAGE RATE ZONES" is provided in the contract. Any wage rate that is not listed in the USDOL's general decision, must be requested by the contractor through the completion of an Additional Classification and Wage Rate Request and be submitted for approval. A blank cell indicates that the classification and wage rate are not listed on the USDOL's general decision and therefore must be requested by the contractor through the completion of an Additional Classification and Wage Rate Request. IMPORTANT NOTICE FOR STATE PROJECTS: only the controlling wage rate zone applies to the contract. Effective 01-03-2025.

CLASS. #	CLASSIFICATION DESCRIPTION	ZONE TX02 *(TX20250002)	ZONE TX03 *(TX20250003)	ZONE TX04 *(TX20250004)	ZONE TX05 *(TX20250005)	ZONE TX06 *(TX20250006)	ZONE TX07 *(TX20250007)	ZONE TX08 *(TX20250008)	ZONE TX24 *(TX20250024)	ZONE TX25 *(TX20250025)	ZONE TX27 *(TX20250027)	ZONE TX28 *(TX20250028)	ZONE TX29 *(TX20250029)	ZONE TX30 *(TX20250030)	ZONE TX37 *(TX20250037)	ZONE TX38 *(TX20250038)	ZONE TX42 *(TX20250042)
1428	Agricultural Tractor Operator						\$12.69					\$12.35				\$11.75	
1300	Asphalt Distributor Operator	\$14.87	\$13.48	\$13.88	\$15.72	\$15.58	\$15.55	\$15.72	\$13.28	\$15.32	\$15.82	\$14.38	\$14.25	\$14.03	\$13.75	\$14.06	\$14.40
1303	Asphalt Paving Machine Operator	\$13.40	\$12.25	\$12.35	\$13.87	\$14.05	\$14.36	\$14.20	\$13.26	\$13.99	\$14.68	\$12.92	\$13.44	\$12.53	\$14.00	\$14.32	\$12.99
1106	Asphalt Raker	\$12.28	\$10.61	\$12.02	\$14.21	\$11.05	\$12.12	\$11.64	\$11.44	\$12.69	\$12.05	\$11.34	\$11.67	\$11.40	\$12.59	\$12.36	\$11.78
1112	Batching Plant Operator, Asphalt																
1115	Batching Plant Operator, Concrete																
1214	Blaster																
1615	Boom Truck Operator						\$18.36										
1444	Boring Machine Operator																
1305	Broom or Sweeper Operator	\$11.21	\$10.33	\$10.08	\$11.99		\$11.04	\$11.62		\$11.74	\$11.41	\$10.30		\$10.23	\$10.60	\$12.68	\$11.05
1144	Communications Cable Installer																
1124	Concrete Finisher, Paving and Structures	\$13.55	\$12.46	\$13.16	\$12.85	\$12.64	\$12.56	\$12.77	\$12.44	\$14.12	\$13.04	\$13.38	\$12.64	\$12.80	\$12.79	\$12.98	\$13.32
1318	Concrete Paving Machine Operator				\$16.05		\$15.48			\$16.05		\$19.31				\$13.07	
1315	Concrete Paving, Curing, Finishing, Texturing Machine Operator											\$16.34					\$11.71
1333	Concrete Saw Operator				\$14.67					\$14.49	\$17.33					\$13.99	
1399	Concrete/Gunite Pump Operator																
1344	Crane Operator, Hydraulic 30 tons or less				\$18.22		\$18.36			\$18.12	\$18.04	\$20.21			\$18.63	\$13.86	
1345	Crane Operator, Hydraulic Over 80 Tons																
1342	Crane Operator, Lattice Boom 80 Tons or Less	\$16.82	\$14.39	\$13.85	\$17.27		\$15.87			\$17.27		\$14.67			\$16.42	\$14.97	\$13.87
1343	Crane Operator, Lattice Boom Over 80 Tons				\$20.52		\$19.38			\$20.52		\$17.49			\$25.13	\$15.80	
1306	Crawler Tractor Operator	\$13.96	\$16.63	\$13.62	\$14.26		\$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				\$20.32		\$17.24										
1139	Electrician	\$20.96		\$19.87	\$19.80		\$26.35		\$20.27	\$19.80		\$20.92				\$27.11	\$19.87
1347	Excavator Operator, 50,000 pounds or less	\$13.46	\$12.56	\$13.67	\$17.19		\$12.88	\$14.38	\$13.49	\$17.19		\$13.88			\$14.09	\$12.71	\$14.42
1348	Excavator Operator, Over 50,000 pounds		\$15.23	\$13.52	\$17.04		\$17.71			\$16.99	\$18.80	\$16.22				\$14.53	\$13.52
1150	Flagger	\$9.30	\$9.10	\$8.50	\$10.28	\$8.81	\$9.45	\$8.70		\$10.06	\$9.71	\$9.03	\$8.81	\$9.08	\$9.90	\$10.33	\$8.10
1151	Form Builder/Setter, Structures	\$13.52	\$12.30	\$13.38	\$12.91	\$12.71	\$12.87	\$12.38	\$12.26	\$13.84	\$12.98	\$13.07	\$13.61	\$12.82	\$14.73	\$12.23	\$12.26
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	\$13.93
1360	Foundation Drill Operator, Mounted				\$17.99					\$17.99							\$17.43
1363	Truck Mounted Foundation Drill Operator		\$16.86	\$22.05	\$21.51		\$16.93			\$21.07	\$20.20	\$20.76		\$17.54	\$21.39	\$15.89	\$22.05
1369	Front End Loader Operator, 3 CY or Less	\$12.28	\$13.49	\$13.40	\$13.85		\$13.04	\$13.15	\$13.29	\$13.69	\$12.64	\$12.89			\$13.51	\$13.32	\$12.17
1372	Front End Loader Operator, Over 3 CY	\$12.77	\$13.69	\$12.33	\$14.96		\$13.21	\$12.86	\$13.57	\$14.72	\$13.75	\$12.32			\$13.19	\$13.17	\$13.02
1329	Joint Sealer																
1172	Laborer, Common	\$10.30	\$9.86	\$10.08	\$10.51	\$10.71	\$10.50	\$10.24	\$10.58	\$10.72	\$10.45	\$10.30	\$10.25	\$10.03	\$10.54	\$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	\$12.90
1187	Mechanic	\$20.14	\$15.47	\$17.47	\$17.74	\$17.00	\$17.10			\$17.68	\$18.94	\$18.58	\$17.00	\$16.61	\$18.46	\$16.96	\$17.47

CLASS. #	CLASSIFICATION DESCRIPTION	ZONE TX02 *(TX20250002)	ZONE TX03 *(TX20250003)	ZONE TX04 *(TX20250004)	ZONE TX05 *(TX20250005)	ZONE TX06 *(TX20250006)	ZONE TX07 *(TX20250007)	ZONE TX08 *(TX20250008)	ZONE TX24 *(TX20250024)	ZONE TX25 *(TX20250025)	ZONE TX27 *(TX20250027)	ZONE TX28 *(TX20250028)	ZONE TX29 *(TX20250029)	ZONE TX30 *(TX20250030)	ZONE TX37 *(TX20250037)	ZONE TX38 *(TX20250038)	ZONE TX42 *(TX20250042)
1380	Milling Machine Operator	\$15.54	\$14.64	\$12.22	\$14.29		\$14.19			\$14.32	\$14.35	\$12.86			\$14.75	\$13.53	\$12.80
1390	Motor Grader Operator, Fine Grade	\$17.49	\$16.52	\$16.88	\$17.12	\$18.37	\$18.51	\$16.69	\$16.13	\$17.19	\$18.35	\$17.07	\$17.74	\$17.47	\$17.08	\$15.69	\$20.01
1393	Motor Grader Operator, Rough	\$18.15	\$14.62	\$15.83	\$16.20	\$17.07	\$14.63	\$18.50		\$16.02	\$16.44	\$15.12	\$16.85	\$14.47	\$17.39	\$14.23	\$15.53
1413	Off Road Hauler			\$10.08	\$12.26		\$11.88			\$12.25		\$12.23			\$13.00	\$14.60	
1196	Painter, Structures					\$21.29	\$18.34						\$21.29			\$18.62	
1396	Pavement Marking Machine Operator	\$16.42		\$13.10	\$13.55		\$19.17	\$12.01		\$13.63	\$14.60	\$13.17		\$16.65	\$10.54	\$11.18	\$13.10
1443	Percussion or Rotary Drill Operator																
1202	Piledriver															\$14.95	
1205	Pipelayer		\$11.87	\$14.64	\$13.17	\$11.17	\$12.79		\$11.37	\$13.24	\$12.66	\$13.24	\$11.17	\$11.67		\$12.12	\$14.64
1384	Reclaimer/Pulverizer Operator	\$12.85				\$11.90	\$12.88			\$11.01		\$10.46					
1500	Reinforcing Steel Worker	\$13.50	\$14.07	\$17.53	\$16.17		\$14.00			\$16.18	\$12.74	\$15.83		\$17.10		\$15.15	\$17.72
1402	Roller Operator, Asphalt	\$10.95		\$11.96	\$13.29		\$12.78	\$11.61		\$13.08	\$12.36	\$11.68			\$11.71	\$11.95	\$11.50
1405	Roller Operator, Other	\$10.36		\$10.44	\$11.82		\$10.50	\$11.64		\$11.51	\$10.59	\$10.30		\$12.04	\$12.85	\$11.57	\$10.66
1411	Scraper Operator	\$10.61	\$11.07	\$10.85	\$12.88		\$12.27		\$11.12	\$12.98	\$11.88	\$12.43		\$11.22	\$13.95	\$13.47	\$10.89
1417	Self-Propelled Hammer Operator																
1194	Servicer	\$13.98	\$12.34	\$14.11	\$14.74		\$14.51	\$15.56	\$13.44	\$14.58	\$14.31	\$13.83		\$12.43	\$13.72	\$13.97	\$14.11
1513	Sign Erector																
1708	Slurry Seal or Micro-Surfacing Machine Operator																
1341	Small Slipform Machine Operator									\$15.90							
1515	Spreader Box Operator	\$12.60		\$13.12	\$14.71		\$14.04			\$14.73	\$13.84	\$13.68		\$13.45	\$11.83	\$13.58	\$14.05
1705	Structural Steel Welder															\$12.85	
1509	Structural Steel Worker						\$19.29									\$14.39	
1339	Subgrade Trimmer																
1143	Telecommunication Technician																
1145	Traffic Signal/Light Pole Worker						\$16.00										
1440	Trenching Machine Operator, Heavy						\$18.48										
1437	Trenching Machine Operator, Light																
1609	Truck Driver Lowboy-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	\$13.41
1612	Truck Driver Transit-Mix				\$14.14					\$14.14							
1600	Truck Driver, Single Axle	\$12.74	\$10.82	\$10.75	\$13.04	\$11.61	\$11.79	\$13.53	\$13.16	\$12.31	\$13.40	\$10.30	\$11.61		\$11.97	\$11.46	\$10.75
1606	Truck Driver, Single or Tandem Axle Dump Truck	\$11.33	\$14.53	\$11.95	\$12.95		\$11.68		\$14.06	\$12.62	\$11.45	\$12.28		\$13.08	\$11.68	\$11.48	\$11.10
1607	Truck Driver, Tandem Axle Tractor with Semi Trailer	\$12.49	\$12.12	\$12.50	\$13.42		\$12.81	\$13.16		\$12.86	\$16.22	\$12.50			\$13.80	\$12.27	\$12.50
1441	Tunneling Machine Operator, Heavy																
1442	Tunneling Machine Operator, Light																
1706	Welder		\$14.02		\$14.86		\$15.97		\$13.74	\$14.84					\$13.78		
1520	Work Zone Barricade Servicer	\$10.30	\$12.88	\$11.46	\$11.70	\$11.57	\$11.85	\$10.77		\$11.68	\$12.20	\$11.22	\$11.51	\$12.96	\$10.54	\$11.67	\$11.76

**Notes:**

\*Represents the USDOL wage decision.

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

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

**TEXAS COUNTIES IDENTIFIED BY  
WAGE RATE ZONES: 2, 3, 4, 5, 6, 7, 8, 24, 25, 27, 28, 29, 30, 37, 38, 42**

County Name	Zone	County Name	Zone	County Name	Zone	County Name	Zone
Anderson	28	Donley	37	Karnes	27	Reagan	37
Andrews	37	Duval	30	Kaufman	25	Real	37
Angelina	28	Eastland	37	Kendall	7	Red River	28
Aransas	29	Ector	2	Kenedy	30	Reeves	8
Archer	25	Edwards	8	Kent	37	Refugio	27
Armstrong	2	El Paso	24	Kerr	27	Roberts	37
Atascosa	7	Ellis	25	Kimble	37	Robertson	7
Austin	38	Erath	28	King	37	Rockwall	25
Bailey	37	Falls	28	Kinney	8	Runnels	37
Bandera	7	Fannin	28	Kleberg	27	Rusk	4
Bastrop	7	Fayette	27	Knox	37	Sabine	28
Baylor	37	Fisher	37	Lamar	28	San Augustine	28
Bee	27	Floyd	37	Lamb	37	San Jacinto	38
Bell	7	Foard	37	Lampasas	7	San Patricio	29
Bexar	7	Fort Bend	38	LaSalle	30	San Saba	37
Blanco	27	Franklin	28	Lavaca	27	Schleicher	37
Borden	37	Freestone	28	Lee	27	Scurry	37
Bosque	28	Frio	27	Leon	28	Shackelford	37
Bowie	4	Gaines	37	Liberty	38	Shelby	28
Brazoria	38	Galveston	38	Limestone	28	Sherman	37
Brazos	7	Garza	37	Lipscomb	37	Smith	4
Brewster	8	Gillespie	27	Live Oak	27	Somervell	28
Briscoe	37	Glasscock	37	Llano	27	Starr	30
Brooks	30	Goliad	29	Loving	37	Stephens	37
Brown	37	Gonzales	27	Lubbock	2	Sterling	37
Burleson	7	Gray	37	Lynn	37	Stonewall	37
Burnet	27	Grayson	25	Madison	28	Sutton	8
Caldwell	7	Gregg	4	Marion	28	Swisher	37
Calhoun	29	Grimes	28	Martin	37	Tarrant	25
Callahan	25	Guadalupe	7	Mason	27	Taylor	2
Cameron	3	Hale	37	Matagorda	27	Terrell	8
Camp	28	Hall	37	Maverick	30	Terry	37
Carson	2	Hamilton	28	McCulloch	37	Throckmorton	37
Cass	28	Hansford	37	McLennan	7	Titus	28
Castro	37	Hardeman	37	McMullen	30	Tom Green	2
Chambers	38	Hardin	38	Medina	7	Travis	7
Cherokee	28	Harris	38	Menard	37	Trinity	28
Childress	37	Harrison	42	Midland	2	Tyler	28
Clay	25	Hartley	37	Milam	28	Upshur	4
Cochran	37	Haskell	37	Mills	37	Upton	37
Coke	37	Hays	7	Mitchell	37	Uvalde	30
Coleman	37	Hemphill	37	Montague	37	Val Verde	8
Collin	25	Henderson	28	Montgomery	38	Van Zandt	28
Collingsworth	37	Hidalgo	3	Moore	37	Victoria	6
Colorado	27	Hill	28	Morris	28	Walker	28
Comal	7	Hockley	37	Motley	37	Waller	38
Comanche	37	Hood	28	Nacogdoches	28	Ward	37
Concho	37	Hopkins	28	Navarro	28	Washington	28
Cooke	37	Houston	28	Newton	28	Webb	3
Coryell	7	Howard	37	Nolan	37	Wharton	27
Cottle	37	Hudspeth	8	Nueces	29	Wheeler	37
Crane	37	Hunt	25	Ochiltree	37	Wichita	5
Crockett	8	Hutchinson	37	Oldham	37	Wilbarger	37
Crosby	2	Irion	2	Orange	38	Willacy	30
Culberson	8	Jack	28	Palo Pinto	28	Williamson	7
Dallam	37	Jackson	27	Panola	28	Wilson	7
Dallas	25	Jasper	28	Parker	25	Winkler	37
Dawson	37	Jeff Davis	8	Parmer	37	Wise	25
Deaf Smith	37	Jefferson	38	Pecos	8	Wood	28
Delta	25	Jim Hogg	30	Polk	28	Yoakum	37
Denton	25	Jim Wells	27	Potter	2	Young	37
DeWitt	27	Johnson	25	Presidio	8	Zapata	30
Dickens	37	Jones	25	Rains	28	Zavala	30
Dimmit	30			Randall	2		

01/03/2025

## **EXHIBIT 8**

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

*[Agreement for Design, Construction, Operation, and Maintenance of Water Conveyance Structures along SH 99 Grand Parkway Segment B-1 between TxDOT and the Gulf Coast Water Authority will be provided]*

## **EXHIBIT 9**

### **ALLOWANCES**

The Price includes the allowances specified in the table on the next page below (each an “**Allowance**”). Refer to the corresponding section of the Design-Build Specifications for a description of the Work that is included in the Allowance.



<b>Allowance</b>	<b>Description/Terms</b>	<b>Design-Build Specifications Reference (if applicable)</b>	<b>Amount</b>
Safety Allowance	<p>A Safety Allowance has been established for this Project for sole use by TxDOT. TxDOT may, in its sole discretion, request work zone enhancements to improve the effectiveness of the Traffic Control Plan, including the enhancements described in the DB Specifications sections cross-referenced in this table. DB Contractor shall account for the cost of Work performed under the Safety Allowance in accordance with (i) unit prices approved by TxDOT, (ii) the pricing requirements for Force Account Change Orders set forth in Section 4.6.8 of the General Conditions or (iii) a negotiated price for the Work approved by TxDOT.</p> <p>TxDOT shall be entitled to a reduction in the Price for any unused amounts in the Safety Allowance.</p>	Section 26.3.1	\$60,000
Landscaping Allowance	The landscaping Allowance shall be used to cover the costs of certain landscaping elements as described in the Contract Documents and the Aesthetics and Landscape Plan approved by TxDOT pursuant to Section 23.1.2 of the DB Specifications.	Requirements regarding the landscaping Allowance, including restrictions on use, are further described in DB Specifications Section 23.1.	\$4,800,000
Furniture Allowance – Core Office	The Allowance for the core office shall be used as directed by TxDOT for certain furniture selected by TxDOT and not otherwise specified in the DB Specifications.	Requirements regarding the furniture Allowance for the core office, including restrictions on use, are further described in DB Specifications Section 10.1.1.5	\$15,000
Furniture Allowance for Field Offices	The Allowance for the field offices shall be used as directed by TxDOT for certain furniture selected by TxDOT not otherwise specified in the DB Specifications.	DB Specifications Section 10.1.2.5.	\$30,000
Project Milestone Events Allowance	The Allowance shall be used as directed by TxDOT for the costs of certain non-labor items selected by TxDOT in connection with Project milestone events as further described in the DB Specifications.	DB Specifications Section 11.11.	\$50,000

**EXHIBIT 10**

**MAXIMUM PAYMENT SCHEDULES**

*[Following pages]*

**APPENDIX 1 TO EXHIBIT 10**

**SH 99 MAXIMUM PAYMENT SCHEDULE**

*[To be updated prior to DBC execution based on corresponding information included in Form P-4.1 in the Proposal]*

Months after NTP 1	Cumulative Draw

**TOTAL SH 99 PRICE (MAXIMUM PAYMENT): \$[•]<sup>1</sup>**

**TOTAL SH 99 MOBILIZATION PAYMENT ACTIVITY AMOUNT: \$[•]<sup>2</sup>**

<sup>1</sup> [This amount will be equal to the last entry in the cumulative maximum payment column of the above table.]

<sup>2</sup>The Mobilization Payment Activity Amount is included in the total SH 99 Price.

**APPENDIX 2 TO EXHIBIT 10**

**SH 35 BYPASS MAXIMUM PAYMENT SCHEDULE**

*[To be updated prior to DBC execution based on corresponding information included in  
Form P-4.2 in the Proposal]*

Months after NTP 1	Cumulative Draw

**TOTAL SH 35 BYPASS PRICE (MAXIMUM PAYMENT): \$[●]<sup>1</sup>**

**TOTAL SH 35 BYPASS MOBILIZATION PAYMENT ACTIVITY AMOUNT: \$[●]<sup>2</sup>**

<sup>1</sup> [This amount will be equal to the last entry in the cumulative maximum payment column of the above table.]

<sup>2</sup>The Mobilization Payment Activity Amount is included in the total SH 35 Bypass Price.

## **EXHIBIT 11**

### **MAXIMUM REIMBURSEMENT AMOUNTS FOR EMINENT DOMAIN ASSISTANCE**

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

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

## **EXHIBIT 12**

### **FORMS OF BONDS**

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

**APPENDIX 1 TO EXHIBIT 12**

**FORM OF PERFORMANCE BOND**

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

**SH 99 GRAND PARKWAY SEGMENT B-1**  
**DESIGN-BUILD PROJECT**

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

WHEREAS, the Texas Department of Transportation ("Obligee"), has awarded to \_\_\_\_\_, a \_\_\_\_\_ ("Principal"), a Design-Build Contract for the SH 99 Grand Parkway Segment B-1 Design-Build Project, duly executed and delivered as of [●] (the "DBC") on the terms and conditions set forth therein; and

WHEREAS, upon award of the DBC, Principal is required to furnish a bond (this "Bond") guaranteeing the faithful performance of its obligations under the Contract Documents.

NOW, THEREFORE, Principal and \_\_\_\_\_, a \_\_\_\_\_ ("Surety") *[If multiple co-sureties will be used, TxDOT will revise this form of Bond to identify and refer to the Co-Sureties throughout and note that all such Co-Sureties are jointly and severally liable for all obligations under this Bond.]*, an admitted surety insurer in the State of Texas, are held and firmly bound unto Obligee in the initial amount of \$\_\_\_\_\_, which amount shall increase automatically to the amount of \$\_\_\_\_\_ [ONE HUNDRED PERCENT (100%) of the Price allocable to Construction Work less the cost of Construction Work performed by Utility Owners] effective upon issuance by the Obligee of the earlier of Limited NTP2 or NTP2 under the DBC (the "Bonded Sum"), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns. Each of Surety and Principal hereby consents to the automatic increase of the Bonded Sum as set forth in the prior sentence and waives notice related to such increase.

THE CONDITION OF THIS BOND IS SUCH THAT, if Principal shall promptly and faithfully perform all of its obligations under the Contract Documents, including any and all amendments and supplements thereto, then the obligations under this Bond shall be null and void; otherwise this Bond shall remain in full force and effect.

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

1. The Contract Documents are incorporated by reference herein. Capitalized terms not separately defined herein have the meanings assigned such terms in the DBC.
2. This Bond specifically guarantees the performance of each and every obligation of Principal under the Contract Documents, as they may be amended and supplemented, including but not limited to, its liability for Liquidated Damages, Qualifying Delay Late Fees, Key Personnel Change Fees and Lane Rental Charges, as specified in the Contract Documents, but not to exceed the Bonded Sum.
3. The guarantees contained herein shall survive Final Acceptance of the Project called for in the Contract Documents with respect to those obligations of Principal that survive such Final Acceptance of the Project.
4. Whenever Principal shall be, and is declared by Obligee to be, in default under the Contract Documents, provided that Obligee is not then in material default thereunder, Surety shall promptly:

a. arrange for the Principal to perform and complete the DBC; or

b. complete the Project in accordance with the terms and conditions of the Contract Documents then in effect, through its agents or through independent contractors; or

c. obtain bids or negotiated proposals from qualified contractors acceptable to the Obligees for a contract for performance and completion of the Work, through a procurement process approved by the Obligees, arrange for a contract to be prepared for execution by the Obligees and the contractor selected with the Obligees' concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the DBC, and pay to the Obligees the amount of damages as described in Paragraph 6 of this Bond in excess of the unpaid balance of the Price incurred by the Obligees 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 Obligees and, as soon as practicable after the amount is determined, tender payment therefore to the Obligees, or (ii) deny liability in whole or in part and notify the Obligees citing reasons therefore.

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 15 days after receipt of an additional written notice from the Obligees to Surety demanding that Surety perform its obligations under this Bond, and the Obligees shall be entitled to enforce any remedy available to the Obligees. If Surety proceeds as provided in Subparagraph 4.d of this Bond, and the Obligees refuse the payment tendered or Surety has denied liability, in whole or in part, without further notice, the Obligees shall be entitled to enforce any remedy available to the Obligees.

6. After the Obligees have terminated the Principal's right to complete the DBC, and if Surety elects to act under Subparagraph 4.a, 4.b or 4.c above, then the responsibilities of Surety to the Obligees shall not be greater than those of the Principal under the DBC, and the responsibilities of the Obligees to Surety shall not be greater than those of the Obligees under the DBC. To the limit of the Bonded Sum, but subject to commitment of the unpaid balance of the Price to mitigation costs and damages on the DBC, 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, Qualifying Delay Late Fees, Key Personnel Change Fees and Lane Rental Charges under the DBC.

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



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

---

---

---

9. No right of action shall accrue on this Bond to or for the use of any entity other than Oblige, any additional obligee pursuant to a dual obligee rider, or their successors and assigns.

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:

**SH 99 GRAND PARKWAY PROJECT SEGMENT B-1  
DESIGN-BUILD PROJECT**

**DUAL OBLIGEE RIDER**

This Rider is executed concurrently with and shall be attached to and form a part of Performance Bond No. \_\_\_\_\_.

WHEREAS, the Texas Department of Transportation ("Primary Obligor") has awarded to \_\_\_\_\_, a \_\_\_\_\_ ("Principal"), a Design-Build Agreement for the Grand Parkway Segments H, I-1 and I-2 Design-Build Project, duly executed and delivered as of \_\_\_\_\_, 20, (hereinafter called the "Contract"), on the terms and conditions set forth therein; and

WHEREAS, upon award of the Contract, Principal is required to furnish a performance bond naming the Grand Parkway Transportation Corporation as an additional obligee; and

WHEREAS, Principal and \_\_\_\_\_ (the "Surety") have agreed to execute and deliver this Rider concurrently with the execution of Performance Bond No. \_\_\_\_\_ (hereinafter referred to as "Performance Bond") upon the conditions herein stated.

NOW, THEREFORE, the undersigned hereby agree and stipulate as follows:

The Grand Parkway Transportation Corporation is hereby added to the Performance Bond as named obligee (hereinafter referred to as "Additional Obligor").

The Surety shall not be liable under the Bond to the Primary Obligor, the Additional Obligor, or either of them, unless the Primary Obligor, the Additional Obligor, or either of them, shall make payments to the Principal (or in the case the Surety arranges for completion of the Contract, to the Surety) substantially in accordance with the terms of said Contract as to payments; and the Surety shall not be liable under the Performance Bond to the Primary Obligor, Additional Obligor, or either of them, unless the Primary Obligor, the Additional Obligor, or either of them, shall perform all other obligations to be performed under the Contract in all material respects at the time and in the manner therein set forth such that no material default by the Primary Obligor, the Additional Obligor, or either of them, shall have occurred, been declared by the Principal, and be continuing under the Contract.

The aggregate liability of the Surety under this Performance Bond, to any or all of the obligees, as their interests may appear, is limited to the penal sum of the Performance Bond. The Additional Obligor's rights hereunder are subject to the same defenses Principal and/or Surety have against the Primary Obligor, provided that the Additional Obligor has received notice and 30 days' prior opportunity to cure breach or default by the Primary Obligor under the Contract.

The Surety may, at its option, make any payments under the Performance Bond by check issued jointly to all of the obligees.

In the event of a conflict between the Performance Bond and this Rider, this Rider shall govern and control. All references to the Performance Bond, either in the Performance Bond or in this Rider, shall include and refer to the Performance Bond as supplemented and amended by this Rider. Except as herein modified, the Performance Bond shall be and remains in full force and effect.

Additional Obligee's prior written consent is required with respect to any proposed amendment to the Performance Bond, and no amendment shall be effective as to Additional Obligee without such consent. Additional Obligee hereby approves the amendment contemplated by the NTP2 Rider delivered concurrently with the execution of the Performance Bond.

Signed, sealed and dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
(Principal)

\_\_\_\_\_  
(Seal)

By: \_\_\_\_\_

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Surety)

\_\_\_\_\_  
(Seal)

By: \_\_\_\_\_

\_\_\_\_\_, Attorney-in-Fact

**[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]**

**SURETY**

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

By: \_\_\_\_\_

Name

Title:

Address:

**APPENDIX 2 TO EXHIBIT 12**

**FORM OF PAYMENT BOND**

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

**SH 99 GRAND PARKWAY SEGMENT B-1  
DESIGN-BUILD PROJECT**

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

WHEREAS, the Texas Department of Transportation ("Obligee"), has awarded to \_\_\_\_\_, a \_\_\_\_\_ ("Principal"), a Design-Build Contract for SH 99 Grand Parkway Segment B-1 Design-Build Project, duly executed and delivered as of [●] (the "DBC") on the terms and conditions set forth therein; and

WHEREAS, upon award of the DBC, Principal is required to furnish a bond (this "Bond") guaranteeing payment of claims by Subcontractors and Suppliers.

NOW, THEREFORE, Principal and \_\_\_\_\_, a \_\_\_\_\_ ("Surety") *[If multiple co-sureties will be used, TxDOT will revise this form of Bond to identify and refer to the Co-Sureties throughout and note that all such Co-Sureties are jointly and severally liable for all obligations under this Bond.]*, an admitted surety insurer in the State of Texas, are held and firmly bound unto Obligee in the initial amount of \$[●], which amount shall increase automatically to the amount of \$\_\_\_\_\_ [ONE HUNDRED PERCENT (100%) of the Price allocable to Construction Work less the cost of Construction Work performed by Utility Owners] effective upon issuance by Obligee of the earlier of Limited NTP2 or NTP2 under the DBC (the "Bonded Sum"), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns. Each of Surety and Principal hereby consents to the automatic increase of the Bonded Sum as set forth in the prior sentence and waives notice related to such increase.

THE CONDITION OF THIS BOND IS SUCH THAT, if Principal shall fail to pay any valid claims by Subcontractors and Suppliers with respect to the Work, then Surety shall pay for the same in an amount not to exceed the Bonded Sum.

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

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

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

3. Correspondence or claims relating to this Bond should be sent to Surety at the following address:

---

---

---

4. This Bond shall inure to the benefit of Subcontractors and Suppliers with respect to the Work so as to give a right of action to such persons and their assigns in any suit brought upon this Bond.

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:

**GRAND PARKWAY SEGMENT B-1  
DESIGN-BUILD PROJECT**

**DUAL OBLIGEE RIDER**

This Rider is executed concurrently with and shall be attached to and form a part of Payment Bond No. \_\_\_\_\_.

WHEREAS, the Texas Department of Transportation has awarded to \_\_\_\_\_, a \_\_\_\_\_ (“Principal”), a Design-Build Agreement for the Grand Parkway Segment B-1 Design-Build Project, duly executed and delivered as of \_\_\_\_\_, 20, (hereinafter called the “Contract”), on the terms and conditions set forth therein; and

WHEREAS, upon award of the Contract, Principal is required to furnish a payment bond naming the Grand Parkway Transportation Corporation as an additional obligee; and

WHEREAS, Principal and \_\_\_\_\_ (the “Surety”) have agreed to execute and deliver this Rider concurrently with the execution of Payment Bond No. \_\_\_\_\_ (hereinafter referred to as “Payment Bond”) upon the conditions herein stated.

NOW, THEREFORE, the undersigned hereby agree and stipulate as follows:

The Grand Parkway Transportation Corporation is hereby added to the Payment Bond as named obligee (hereinafter referred to as “Additional Obligor”).

The Surety shall not be liable under the Bond to the Primary Obligor, the Additional Obligor, or either of them, unless the Primary Obligor, the Additional Obligor, or either of them, shall make payments to the Principal (or in the case the Surety arranges for completion of the Contract, to the Surety) substantially in accordance with the terms of said Contract as to payments; and the Surety shall not be liable under the Payment Bond to the Primary Obligor, Additional Obligor, or either of them, unless the Primary Obligor, the Additional Obligor, or either of them, shall perform all other obligations to be performed under the Contract in all material respects at the time and in the manner therein set forth such that no material default by the Primary Obligor, the Additional Obligor, or either of them, shall have occurred, been declared by the Principal, and be continuing under the Contract.

The aggregate liability of the Surety under this Payment Bond, to any or all of the obligees, as their interests may appear, is limited to the penal sum of the Payment Bond. The Additional Obligor’s rights hereunder are subject to the same defenses Principal and/or Surety have against the Primary Obligor, provided that the Additional Obligor has received notice and 30 days’ prior opportunity to cure breach or default by the Primary Obligor under the Contract.

The Surety may, at its option, make any payments under the Payment Bond by check issued jointly to all of the obligees.

In the event of a conflict between the Payment Bond and this Rider, this Rider shall govern and control. All references to the Payment Bond, either in the Payment Bond or in this Rider, shall include and refer to the Payment Bond as supplemented and amended by this Rider. Except as herein modified, the Payment Bond shall be and remains in full force and effect.

Additional Obligor’s prior written consent is required with respect to any proposed amendment to the Payment Bond, and no amendment shall be effective as to Additional Obligor without such consent. Additional Obligor hereby



approves the amendment contemplated by the NTP2 Rider delivered concurrently with the execution of the Payment Bond.

Signed, sealed and dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
(Principal)

\_\_\_\_\_  
(Seal)

By: \_\_\_\_\_

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Surety)

\_\_\_\_\_  
(Seal)

By: \_\_\_\_\_

\_\_\_\_\_  
, Attorney-in-Fact

**[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]**

**SURETY**

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

By: \_\_\_\_\_

Name

Title:

Address:

## **EXHIBIT 13**

### **FORM OF GUARANTY**

#### **GUARANTY**

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **4. Liability of Guarantor.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

If to TxDOT:

Texas Department of Transportation

\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

With copies to:

Texas Department of Transportation  
Office of General Counsel

\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

If to Guarantor:

\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

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

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

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

**15. Assignability.** This Guaranty is binding upon and inures to the benefit of the successors and assigns of Guarantor and TxDOT, including the Grand Parkway Transportation Corporation, 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. TxDOT may assign all or any portion of its rights, title and interests in this Guaranty to any Person in accordance with Section 7.8 of the General Conditions, including without Guarantor's consent, to the Grand Parkway Transportation Corporation.

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

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

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

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

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

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

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

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



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

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

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

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

## **EXHIBIT 14**

### **CHANGE ORDER AND DELAY DEDUCTIBLE DETERMINATION FORMS**

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

**APPENDIX 1 TO EXHIBIT 14**

**FORM OF REQUEST FOR CHANGE ORDER**

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

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

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

**SECTION I**

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

• Title: \_\_\_\_\_

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

• DB Contractor Name: \_\_\_\_\_

**DESCRIPTION:**

---

---

---

---

**SCOPE:**

---

---

---

---

**REASON FOR REQUEST FOR CHANGE ORDER:**

---

---

---

## **SECTION II**

The total amount of this Request for Change Order is \$ \_\_\_\_\_. The total amount includes \$ \_\_\_\_\_ allocated to the SH 99 Price and \$ \_\_\_\_\_ allocated to the SH 35 Bypass Price. Documentation supporting the Request for Change Order is attached as Exhibits \_\_\_\_\_ through \_\_\_\_\_.

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

- \_\_\_\_\_ A lump sum, negotiated price Change Order (provide information in Section IIA below); or
- \_\_\_\_\_ A unit price/quantities Change Order (provide information in Section IIB below); or
- \_\_\_\_\_ A Force Account Change Order (provide information in Section IIC below)

This Request for Change Order considers "Federal Participation" (check one box) Yes \_\_\_\_ No \_\_\_\_:

### **Section IIA<sup>1</sup>**

Lump sum price is \$ \_\_\_\_\_. The amount includes \$ \_\_\_\_\_ allocated to the SH 99 Price and \$ \_\_\_\_\_ allocated to the SH 35 Bypass Price

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

UNIT PRICE ITEM	UNIT PRICE	ESTIMATED QUANTITY	PRICE (Unit Price x Quantity)

Total of all items in above Table based on estimated quantities: \$ \_\_\_\_\_. The total includes \$ \_\_\_\_\_ allocated to the SH 99 Price and \$ \_\_\_\_\_ allocated to the SH 35 Bypass Price

### **Section IIC<sup>3</sup>**

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

- A. DB Contractor Labor (construction)
1. Wages (unburdened) \$ \_\_\_\_\_
2. Insurance and taxes<sup>4</sup> (45% of A.1) \$ \_\_\_\_\_
- B. DB Contractor and Subcontractor Labor (professional services)
1. Wages (unburdened) \$ \_\_\_\_\_
2. Labor surcharge (145% of B.1, which includes \_\_\_\_\_)

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

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

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

<sup>4</sup> For insurance and taxes including the cost of premiums on public liability and workers' compensation insurance, Social Security, and unemployment insurance taxes (see General Conditions Section 4.6.8.1)

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

The Grand Total includes \$\_\_\_\_\_ allocated to the SH 99 Price and \$\_\_\_\_\_ allocated to the SH 35 Bypass Price

### **SECTION III**

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

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

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

The status of the SH 35 FR Milestone Completion Deadline is as follows:

- ☐ Unaffected by this Request for Change Order

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

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

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

- ☐ Affected by (increasing) (decreasing) the SH 35 FR Milestone Completion Deadline by \_\_\_\_\_ calendar days.

The status of the Substantial Completion Deadline is as follows:

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

The status of the Final Acceptance Deadline is as follows:

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

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

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

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

---

---

---

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

If yes, state reason:

---

---

---

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

- (a) the above four sections represent a true and complete summary of all aspects of this Request for Change Order;
- (b) the amount of Delay Deductible credit, time and/or compensation requested is justified as to entitlement and amount;
- (c) this Request for Change Order includes all known and anticipated impacts or amounts, direct, indirect and consequential, which may be incurred as a result of the claim, event, occurrence or matter giving rise to the proposed change;
- (d) the cost and pricing data forming the basis for the Request for Change Order is complete, accurate and current; and
- (e) there has been no change to the disclosure of Interested Parties (as that term is defined in § 2252.908 of the Texas Government Code and in 1 T.A.C. § 46.3) that was made by DB Contractor in the most recent Form 1295 disclosure of interested parties form provided to TxDOT by DB Contractor. Alternatively, if there has been a change to the

disclosure of Interested Parties or if the value of this Change Order is \$1,000,000 or greater, DB Contractor has submitted with this Change Order a current Form 1295. This certification does not apply, and submission of a current Form 1295 is not required, in the event that DB Contractor is a publicly traded business entity, or is a wholly owned subsidiary of a publicly traded business entity.

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

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

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

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

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

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

**Comments:**

---

---

---

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

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

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

**Comments:**

---

---

---

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

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

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

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

**Comments:**

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

---

---

---

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

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

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

**Comments:**

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

---

---

---

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

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

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

**Comments:**

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

---

---

---

<sup>9</sup> If not required, insert "NOT APPLICABLE" in signature line.  
<sup>10</sup> If not required, insert "NOT APPLICABLE" in signature line.



**APPENDIX 2 TO EXHIBIT 14**

**FORM OF CHANGE ORDER**

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

**SECTION I**

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

• Title: \_\_\_\_\_

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

• DB Contractor Name: \_\_\_\_\_

**DESCRIPTION:**

---

---

---

---

**SCOPE:**

---

---

---

---

**REASON FOR CHANGE ORDER:**

---

---

## **SECTION II**

The total amount of this Change Order is \$ \_\_\_\_\_. The total amount includes \$ \_\_\_\_\_ allocated to the SH 99 Price and \$ \_\_\_\_\_ allocated to the SH 35 Bypass Price. Documentation supporting the Change Order is attached as Exhibits \_\_\_\_\_ through \_\_\_\_\_.

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

- \_\_\_\_\_ A lump sum, negotiated price Change Order (provide information in Section IIA below);
- \_\_\_\_\_ A unit price/quantities Change Order (provide information in Section IIB below);
- \_\_\_\_\_ A Force Account Change Order (provide information in Section IIC below)

This Change Order considers "Federal Participation" (check one box) Yes\_\_\_\_ No\_\_\_\_:

### **Section IIA<sup>1</sup>**

Lump sum price is \$ \_\_\_\_\_. The total includes \$ \_\_\_\_\_ allocated to the SH 99 Price and \$ \_\_\_\_\_ allocated to the SH 35 Bypass Price

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

UNIT PRICE ITEM	UNIT PRICE	ESTIMATED QUANTITY	PRICE (Unit Price x Quantity)

Total of all items in above Table based on estimated quantities: \$ \_\_\_\_\_. The total includes \$ \_\_\_\_\_ allocated to the SH 99 Price and \$ \_\_\_\_\_ allocated to the SH 35 Bypass Price

### **Section IIC<sup>3</sup>**

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

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

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

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

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

<sup>4</sup> For insurance and taxes including the cost of premiums on public liability and workers' compensation insurance, Social Security, and unemployment insurance taxes (see General Conditions Section 4.6.8.1)

- |    |   |          |
|----|---|----------|
| 2. | Labor surcharge (145% of B.1, which includes overhead and profit) | \$ _____ |
| C. | Materials (with taxes, freight and discounts)                     | \$ _____ |
| D. | Equipment <sup>5</sup> (includes 15% overhead and profit)         | \$ _____ |
| E. | Subcontracts (Force Account basis)                                | \$ _____ |
| F. | Utility Owner Direct Costs  | \$ _____ |
| G. | Overhead and Profit   |          |
| 1. | Construction Labor <sup>6</sup> (25% of A.1)                      | \$ _____ |
| 2. | Materials (15% of C)  | \$ _____ |
| 3. | Subcontracts (5% of E)  | \$ _____ |
| 4. | Utility Owner Direct Costs (5% of F)                              | \$ _____ |
| H. | Project Overhead (Qualifying Delay)                               | \$ _____ |
| I. | Not To Exceed Amount  | \$ _____ |

The Not to Exceed Amount is comprised of a not to exceed amount of \$\_\_\_\_\_ for SH 99 Work and a not to exceed amount of \$\_\_\_\_\_ for SH 35 Bypass Work.

### **SECTION III**

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

Prior TxDOT determined days of Delay Deductible (pursuant to Change Orders and Delay Deductible Determinations other than this Change Order): \_\_\_\_\_ calendar days

- ☐ Total days of Delay Deductible credited to the Delay Deductible Aggregate Cap by this Change Order: + \_\_\_\_\_ calendar days
- ☐ Total days of Delay Deductible credited toward the Delay Deductible Aggregate Cap including with this Change Order: \_\_\_\_\_ calendar days
- ☐ The number of days in the Delay Deductible Aggregate Cap less the number of days of Delay Deductible credited toward the cap is \_\_\_\_\_ calendar days.

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

The status of the SH 35 FR Milestone Completion Deadline is as follows:

- ☐ Unaffected by this Request for Change Order
- ☐ Affected by (increasing) (decreasing) the SH 35 FR Milestone Completion Deadline by \_\_\_\_\_ calendar days.

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

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

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

The status of the Substantial Completion Deadline is as follows:

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

The status of the Final Acceptance Deadline is as follows:

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

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

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

Justification for Change Order with reference to the Contract Documents:

---

---

---

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

If yes, state reason:

---

---

---

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

- (a) the above three sections represent a true and complete summary of all aspects of this Change Order;
- (b) the amount of Delay Deductible credit, time and/or compensation requested is justified as to entitlement and amount;
- (c) this Change Order includes all known and anticipated impacts or amounts, direct, indirect and consequential, which may be incurred as a result of the claim, event, occurrence or matter giving rise to the proposed change;
- (d) the cost and pricing data forming the basis for the Request for Change Order is complete, accurate and current; and
- (e) there has been no change to the disclosure of Interested Parties (as that term is defined in § 2252.908 of the Texas Government Code and in 1 T.A.C. § 46.3) that was made by DB Contractor in the most recent Form 1295 disclosure of interested parties form provided to TxDOT by DB Contractor. Alternatively, if there has been a change to the disclosure of Interested Parties or if the value of this Change Order is \$1,000,000 or greater, DB Contractor has submitted with this Change Order a current Form 1295. This certification does not apply, and submission of a current Form 1295 is not required, in the event that DB Contractor is a publicly traded business entity, or is a wholly owned subsidiary of a publicly traded business entity.

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

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

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

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

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

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

**Comments:**

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

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

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

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

**Comments:**

---

---

---

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

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

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

**Comments:**

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

---

---

---

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

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

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

**Comments:**

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

---

---

---

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

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

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

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

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

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

**Comments:**

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

---

---

---

**APPENDIX 3 TO EXHIBIT 14**

**FORM OF REQUEST FOR DELAY DEDUCTIBLE DETERMINATION**

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

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

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

**SECTION I**

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

• Title: \_\_\_\_\_

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

• DB Contractor Name: \_\_\_\_\_

**DESCRIPTION OF QUALIFYING DELAY:**

---

---

---

---

**IMPACT TO CRITICAL PATH:**

---

---

---

---

---

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

---

---



## **SECTION II**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Comments:**

---

---

---

**SECTION IV**      **(Reviewed by FHWA Project Representative, if applicable)<sup>1</sup>**

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

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

Comments:

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

**SECTION V**      **(Reviewed by TxDOT Chief Engineer, if applicable)<sup>2</sup>**

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

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

Comments:

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

**SECTION VI**      **(Reviewed by Chief Financial Officer, if applicable)<sup>3</sup>**

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

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

Comments:

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

**SECTION VII**      **(Reviewed by TxDOT Executive Director, if applicable)<sup>4</sup>**

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

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

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

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

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

<sup>4</sup> If not required, insert "NOT APPLICABLE" in signature line.

**Comments:**

---

---

---

**APPENDIX 4 TO EXHIBIT 14**

**FORM OF DELAY DEDUCTIBLE DETERMINATION**

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

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

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

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

**SECTION I**

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

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

• Title: \_\_\_\_\_

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

• DB Contractor Name: \_\_\_\_\_

**DESCRIPTION OF QUALIFYING DELAY:**

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

**IMPACT TO CRITICAL PATH:**

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

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

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

**SECTION II**

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

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

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

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

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

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

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

Comments:

---

---

---

**SECTION IV**      **(Reviewed by FHWA Project Representative, if applicable)<sup>1</sup>**

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

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

Comments:

---

---

---

**SECTION V**      **(Reviewed by TxDOT Chief Engineer, if applicable)<sup>2</sup>**

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

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

Comments:

---

---

---

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

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

**SECTION VI      (Reviewed by Chief Financial Officer, if applicable)<sup>3</sup>**

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

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

**Comments:**

---

---

---

**SECTION VII      (Reviewed by TxDOT Executive Director, if applicable)<sup>4</sup>**

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

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

**Comments:**

---

---

---

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

<sup>4</sup> If not required, insert "NOT APPLICABLE" in signature line.

## **EXHIBIT 15**

### **LANE RENTAL CHARGES AND LIQUIDATED DAMAGES FOR LANE CLOSURES**

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

#### **A. General Requirements for Lane Closures**

1. Except for Lane Closures required due to Incidents or Emergencies, advance written notice of any Lane Closure (a "Lane Closure Notice" or "LCN") must be provided to TxDOT no fewer than two Business Days prior to notification to the appropriate Community Groups. Requirements for advance notice to Community Groups are provided in Section 11.9.1 of the DB Specifications. The LCN shall provide information as to the location and duration of the Lane Closure, and shall include the completed form provided in DB Specification Attachment 26-1 (Request for Approval of Traffic Control Plan) (or TxDOT-approved alternative).
2. Except for Lane Closures required due to Incidents or Emergencies, all Lane Closures shall be pursuant to a TCP submitted and approved by TxDOT in accordance with Section 26.2.1 of the DB Specifications. TxDOT and DB Contractor may agree on the development and implementation of standard typical application TCPs for Lane Closures, which can be used on a recurring basis on the Project.
3. Lane Closures shall comply with the approved Traffic Management Plan and an approved TCP. No Lane Closure will be permitted unless DB Contractor can demonstrate that the Lane Closure will provide clear benefit to the progress of the Work. Lane Closures must be coordinated with adjacent projects. When simultaneous requests for traffic control are received from DB Contractor, adjacent projects, and/or Governmental Entities, TxDOT will give priority to the closure request submitted first. For Lane Closures on a non-TxDOT controlled facility, DB Contractor shall obtain approval from the applicable Governmental Entity in addition to approval from TxDOT. DB Contractor shall coordinate Lane Closures that may affect crossing TxDOT facilities with appropriate TxDOT Project staff, as needed, to ensure that no conflicts occur. When Lane Closures are necessary, DB Contractor shall use the public information and communication methods available to inform the appropriate Community Groups (refer to DB Specification Item 11.9.1).
4. If an Emergency condition should occur, DB Contractor shall notify TxDOT and Community Groups immediately in accordance with Section 11.9 of the DB Specifications. For non-TxDOT controlled facilities, DB Contractor shall immediately notify the controlling Governmental Entity. DB Contractor shall keep TxDOT and affected Governmental Entities informed of any and all changes or cancellations of proposed lane closures prior to the date of their implementation.
5. DB Contractor shall consider the safety of workers and the traveling public as the primary factor when determining the appropriate time to implement a Lane Closure.
6. The following TxDOT standards, specifications, procedure manuals, and references apply to all Lane Closures:
  - Texas Manual of Uniform Traffic Control Devices (TMUTCD);
  - TxDOT Traffic Control Plan (TCP) standards;
  - TxDOT Barricade and Construction (BC) standards; and
  - TxDOT Standard Specifications Item 502 (Barricades Signs and Traffic Handling).

7. A “Full Roadway Closure” means a Lane Closure that has no travel lanes available to traffic in one direction of travel. No travel lanes available to traffic in both directions of the roadway shall be considered two separate Full Roadway Closures.

## **B. Non-Chargeable Lane Closures and Chargeable Lane Closures**

1. A “Non-Chargeable Lane Closure” is (i) a Lane Closure included in an approved TCP and allowable pursuant to Section C below, (but does not extend past the approved time or duration in the approved TCP or Section 26.3.6 of the DB Specifications, as applicable) or (ii) a Lane Closure required due to an Incident or Emergency that is not attributable to, could not have been avoided by or is not exacerbated by the actions of a DB Contractor-Related Entity, and only to the extent necessary to remediate the Incident or Emergency.
2. A “Chargeable Lane Closure” is any Lane Closure or detour that is not a Non-Chargeable Lane Closure. Either Lane Rental Charges or Liquidated Damages for Lane Closures shall be assessed for Chargeable Lane Closures, as provided in more detail below.
  - a. Liquidated Damages for Lane Closures. Liquidated Damages for Lane Closures shall be assessed for Chargeable Lane Closures that occur (i) during the Daytime on Weekdays, or (ii) during a Holiday or a Special Event, or (iii) on a hurricane evacuation route during a hurricane evacuation.
  - b. Lane Rental Charges. Lane Rental Charges shall be assessed for any Chargeable Lane Closure that is not subject to Liquidated Damages for Lane Closures.

For the purposes of this Exhibit 15, Daytime, Nighttime, Weekday, and Weekend are defined as follows:

Day	Daytime Hours	Nighttime Hours
<b>Weekday</b> Monday-Friday	5:00 AM – 9:00 PM	12:00 AM – 5:00 AM 9:00 PM – 11:59 PM
<b>Weekend</b> Saturday-Sunday	8:00 AM – 9:00 PM	12:00 AM – 8:00 AM 9:00 PM – 11:59 PM

## **C. Allowable Lane and Roadway Closures**

The allowable lane and roadway closures are listed below. Any request for a Deviation from the allowable closures may be submitted in accordance with Section 4.1.2.2.4 of the General Conditions.

Lanes Closures are allowable to perform the following operations: placement of concrete traffic barrier, placement of pavement markings, full depth roadway repair, placement of bridge beams, bridge demolition or similar operations, adjacent construction, lanes for construction traffic, or similar operations.

DB Contractor shall provide a contingency plan as part of the TCP showing how Lane Closure modifications will be implemented and identify the specific actions to alleviate congestion. If, at any time, allowable Lane Closure backups become unreasonable, such that motorist delay is greater than twenty minutes, modifications to alleviate this congestion shall be taken immediately, including reopening the lane as soon as possible. If DB Contractor does not immediately implement the approved contingency plan, the congestion will be considered a Chargeable Lane Closure.

DB Contractor shall not reduce the existing number of lanes open to traffic except as shown on the following schedule:



**SH 35:** A reduction to one lane in each direction on SH 35 is allowable for all hours of the week (regardless of Holiday or Special Event restrictions), provided that no Lane Closures will be allowable within the SH 35 FR Milestone limits after SH 35 FR Milestone Completion is achieved.

**Table 15-1: One Lane Closure on SH 6\* & other cross streets with two or more existing lanes in one direction**

Day	Daytime Allowable Closure Hours	Nighttime Allowable Closure Hours	Daytime Restricted Hours (closure not allowable)
Monday-Friday	9:00 AM – 3:00 PM 7:00 PM – 9:00 PM	12:00 AM – 5:00 AM 9:00 PM – 11:59 PM	5:00 AM – 9:00 AM 3:00 PM – 7:00 PM
Saturday-Sunday	8:00 AM – 9:00 PM	12:00 AM – 8:00 AM 9:00 PM – 11:59 PM	-

\*SH 6 is a hurricane evacuation route. See special Lane Closure restrictions under Section C.3 below.

**Table 15-2: Full Roadway Closure, all roadways**

Day	Daytime Allowable Closure Hours	Nighttime Allowable Closure Hours**	Daytime Restricted Hours (closure not allowable)
Monday-Friday	None	12:00 AM – 5:00 AM 9:00 PM – 11:59 PM	5:00 AM – 9:00 PM
Saturday-Sunday	None	12:00 AM – 8:00 AM 9:00 PM – 11:59 PM	8:00 AM – 9:00 PM

\*\*Full Roadway Closures on roadway sections with multiple lanes in each direction will only be allowed for work on overhead structures.

\*\*Full Roadway Closures on crossing streets are further restricted by Section C.2 and C.3 below.

**Table 15-3: One Lane Closure, for the following roadways:**

SH 99 mainlanes, SH 99 frontage roads, and SH 99 direct connectors (after Substantial Completion only)

Day	Daytime Allowable Closure Hours	Nighttime Allowable Closure Hours	Daytime Restricted Hours (closure not allowable)
Monday-Friday	None	12:00 AM – 5:00 AM 9:00 PM – 11:59 PM	5:00 AM – 9:00 PM
Saturday-Sunday	None	12:00 AM – 8:00 AM 9:00 PM – 11:59 PM	8:00 AM – 9:00 PM

Full Roadway Closures of SH 99 tolled lanes, SH 99 ramps, SH 99 frontage roads, or SH 99 direct connectors after Substantial Completion are not allowed.

## C.1 Driveway Closures

Requirements and allowable lane closures are provided in DB Specification Item 26.2.2.

## C.2 Crossing Streets

For any proposed crossing street Full Roadway Closure, DB Contractor shall provide a TCP including a detour plan and obtain approval from TxDOT and any local Government Entities affected by the closure. When a crossing street is closed, the adjacent cross streets (on either side of the closed crossing) must remain open.

### C.3 Hurricane Evacuation

SH 6 is on a hurricane evacuation route. DB Contractor's TCPs for Lane Closures on SH 6 during the hurricane season (June 1 through November 30) shall include a written plan for reopening SH 6 and safely handling traffic through and across the Project in the event of a hurricane evacuation. In the event of a hurricane evacuation and upon notice by TxDOT, DB Contractor shall return all SH 6 lanes to an open, all-weather travel surface in accordance with the written plan included in the approved TCP. SH 6 Lane Closures during a hurricane evacuation that are not re-opened will be subject to Liquidated Damages for Lane Closures. Lane Closures may be re-implemented by the DB Contractor upon notice by TxDOT following a reasonable time period for the evacuees to return to their point of origin.

In addition to lane closures, DB Contractor shall cease work on or near SH 6 during a hurricane evacuation. Vehicles of the DB Contractor and its Subcontractors will not be allowed to enter or exit the SH 6 traffic stream, including those for the purpose of material hauling and delivery, and mobilization or demobilization of equipment.

### C.4 Additional Requirements

DB Contractor shall reopen closed traffic lanes during planned or actual periods of inactive Construction Work greater than or equal to five days.

If additional capacity is added to any roadway as part of the Project, a Lane Closure prior to Substantial Completion or SH 35 FR Milestone Completion, as applicable, of the additional capacity lane will be allowed and not subject to any Lane Rental Charge or Liquidated Damages for Lane Closures.

All other Lane Closures not listed as part of an allowable closure in this Section C are subject to Lane Rental Charges or Liquidated Damages for Lane Closures in accordance with Section F.

### D. Holidays

The following are "Holidays" for the purpose of this Exhibit 15. TxDOT has the right, without liability, to lengthen, shorten, or otherwise modify these Holidays as actual, or expected, traffic conditions may warrant. Lane Closures during the following Holidays will subject to Liquidated Damages for Lane Closures:

- New Year's Eve and New Year's Day (12:00pm on December 31 through 10:00pm on January 1)
- Easter Holiday Weekend (12:00pm on Friday through 10:00pm on Sunday)
- Memorial Day Weekend (12:00pm on Friday through 10:00pm on Monday)
- Independence Day (12:00pm on July 3 through 10:00pm on July 5)
- Labor Day Weekend (12:00pm on Friday through 10:00pm on Monday)
- Thanksgiving Holiday (12:00pm on Wednesday through 10:00pm on Sunday)
- Holiday retail period; (6:00am to 11:00pm every day from the end of the Thanksgiving Holiday described above through January 2; applicable within one mile radius of the FM 1462/SH 35 interchange, SH 6/SH 35 interchange and FM 646/I-45 interchange.
- Christmas Holiday (12:00pm on December 23 through 10:00pm on December 26)

Single Lane Closures on the two-lane sections of SH 35, prior to achieving the SH 35 FR Milestone Completion, are excluded from the Holiday restrictions.

### E. Special Events

The following are "Special Events" for the purpose of this Exhibit 15. Lane Closures during the following Special Events will be subject to Liquidated Damages for Lane Closures:

- Texas Independence Trail Ride (12:00pm on the Friday before through 5:00am on the Friday after)
- Tour de Braz (12:00pm on the Friday before through 5:00am on the Friday after)

TxDOT has the right to modify the list of Special Events as they are renamed or replaced. Subject to DB Contractor's right to a Change Order in accordance with Section 4.6.9.8 of the General Conditions, TxDOT also has the right to (a) reschedule a Special Event, (b) lengthen, shorten or otherwise modify these restrictions as actual traffic conditions may warrant, or (c) add a "Special Event" for certain major events that are currently unknown to TxDOT, which will be handled on an individual basis as they arise. TxDOT shall provide written notice to DB Contractor of any changes to the Special Events. These events could include, but are not limited to, any events held within a three-mile radius of any point along the length of the Project corridor with an expected attendance greater than 20,000, such as parades for sports championships, major political events, major Arts District events, and large athletic events (such as marathons).

Single lane closures on the two-lane sections of SH 35, prior to achieving the SH 35 FR Milestone Completion, are excluded from the Special Event restrictions

#### **F. Lane Rental Charges and Liquidated Damages for Lane Closures**

DB Contractor shall be liable for Lane Rental Charges and Liquidated Damages for Lane Closures for Chargeable Lane Closures pursuant to Section 8.7.2 of the General Conditions and Section 7.3 and Exhibit 15 of this DBA. The Lane Rental Charges and Liquidated Damages for Lane Closures for Chargeable Lane Closures are set forth below in Table 15-4.

**Table 15-4: Lane Rental Charges and Liquidated Damages for Lane Closures**

<b>Roadway</b>	<b>Daytime Weekday Amounts per lane per hour</b>	<b>Weekends/Nighttime Amounts per lane per hour</b>
SH 35 and FM 646	\$11,000	\$2,000
SH 6, FM 1462, and FM 517	\$8,000	\$1,500
FM 528 and Mustang Rd.	\$5,000	\$1,000
Delta Rd, E. House St., E. South St, CR 369/Fairway Dr., Johnson St./FM 2403	\$3,000	\$500
All others: Calder Rd, Hobbs Rd, Maple Leaf Drive, McFarland Rd., Clifford, Steele Rd., Jephson Ln., Briscoe St.	\$500	-
<b>The following amounts are added for Lane Closures occurring on other roadways after Substantial Completion:</b>		
SH 99 Tolloed Mainlanes (including SH 99 mainlane NB-EB/WB-SB structure at SH 35 Interchange)		
- Travel Lane	\$14,000	\$2,500
- Shoulder	\$4,000	\$1,000
SH99/SH35 Direct Connectors and Ramps		
- Travel Lane	\$4,000	\$500
- Shoulder	\$1,000	-
SH 99 Frontage roads (East/West, from SH 35 to FM 646)	\$4,000	\$500

The above amounts will be assessed for each hour or any part thereof that a Chargeable Lane Closure occurs. A Lane Closure of 30 minutes or shorter spanning two clock hours shall be measured as occupying only one clock hour (that clock hour having the higher Liquidated Damage/Lane Rental Charge amount).

#### **G. Incidents and Emergencies**

DB Contractor shall not be liable for Lane Rental Charges and Liquidated Damages for Lane Closures if the Lane Closures are required due to Incidents or Emergencies that are not attributable to, could not have been avoided by or are not exacerbated by the actions of a DB Contractor-Related Entity, but only to the extent necessary to remediate the Incident or Emergency.

For the avoidance of doubt, DB Contractor shall not be relieved of liability for Lane Rental Charges and Liquidated Damages for Lane Closures for extended Lane Closures beyond the approved window due to conditions resulting from DB Contractor's Work on the Site, or the acts or omissions of any DB Contractor-Related Entity, including failure to complete the Work within the planned window of an approved Lane Closure.

**EXHIBIT 16**

**RESERVED**

**EXHIBIT 17**

**IDENTIFIED SUBCONTRACTORS**

***[To be inserted from Proposal]***

**EXHIBIT 18**

**KEY PERSONNEL**

***[To be updated prior to DBC execution]***

<b>POSITIONS</b>	<b>INDIVIDUAL</b>
Project Manager	
Construction Manager	
Design Manager	
Lead Maintenance of Traffic (MOT) Design Engineer	
Independent Quality Firm Manager	
Professional Services Quality Assurance Manager	
Construction Quality Control Manager	
Utility Manager	
Lead MOT Implementation Manager	
Environmental Compliance Manager	

**EXHIBIT 19**

**INITIAL DESIGNATION OF AUTHORIZED REPRESENTATIVES**

***[To be updated prior to DBC execution]***

TxDOT Authorized Representatives: *(To be provided by TxDOT)*

DB Contractor's Authorized Representatives: *(To be provided by DB Contractor)*



## EXHIBIT 20

### DISPUTES RESOLUTION REQUIREMENTS

**1. Dispute Resolution Procedures.** If the procedures set forth in Sections 4.9 and 4.10 of the General Conditions fail to resolve an issue and DB Contractor elects to pursue a formal Dispute with TxDOT, the Dispute shall be resolved pursuant to Texas Transportation Code Section 201.112 and the DRP Rules, as the same may be amended from time to time. This Exhibit 20 shall not apply to: (a) Claims that are not actionable against TxDOT by DB Contractor on its own behalf or on behalf of any of its Subcontractors in accordance with Section 2 of this Exhibit 20; (b) Claims arising solely in tort; (c) Claims for indemnity under Section 7.12 of the General Conditions; (d) Claims for injunctive relief; (e) Claims against insurance companies, including any Subcontractor Dispute that is covered by insurance; (f) Claims arising out of or relating to any Utility Adjustment where the Utility Owner is a necessary party (unless, and only to the extent that, the applicable Utility Agreement provides for resolution of claims as set forth in this Exhibit 20); (g) any Dispute based on remedies expressly created by statute; or (h) any Dispute that is actionable only against a Surety.

**2. Additional Requirements for Subcontractor Disputes.** For purposes of this Exhibit 20, a "Subcontractor Dispute" shall include any Dispute by a Subcontractor, including any pass-through claims by a lower tier Subcontractor, against DB Contractor that is actionable by DB Contractor against TxDOT and arises from Work, materials or other services provided or to be provided under the Contract Documents. If DB Contractor determines to pursue a Dispute against TxDOT that includes a Subcontractor Dispute, the following additional conditions shall apply:

a. DB Contractor shall identify clearly in all submissions pursuant to this Exhibit 20, that portion of the Dispute that involves a Subcontractor Dispute.

b. Failure of DB Contractor to assert a Subcontractor Dispute on behalf of any Subcontractor at the time of submission of a related demand by DB Contractor, as provided hereunder, shall constitute a release and discharge of TxDOT by DB Contractor on account of, and with respect to, such Subcontractor Dispute.

c. DB Contractor shall require in all Subcontracts that all Subcontractors of any tier:

- i. agree to submit Subcontractor Disputes to DB Contractor in a proper form and in sufficient time to allow processing by DB Contractor in accordance with this Exhibit 20;
- ii. agree to be bound by the terms of this Exhibit 20 to the extent applicable to Subcontractor Disputes;
- iii. agree that, to the extent a Subcontractor Dispute is involved, completion of all steps required under this Exhibit 20 shall be a condition precedent to pursuit by the Subcontractor of any other remedies permitted by Law, including institution of a lawsuit against DB Contractor;
- iv. agree that any Subcontractor Dispute brought against a Surety, that also is actionable against TxDOT through DB Contractor, shall be stayed until completion of all steps required under this clause (c); and
- v. agree that the existence of a dispute resolution process for Disputes involving Subcontractor Disputes shall not be deemed to create any claim, right or cause of action by any Subcontractor against TxDOT. Subcontractors shall, at all times, have rights and remedies only against DB Contractor.

**3. Mediation.** DB Contractor and TxDOT, by mutual agreement, may refer a Dispute (as well as any dispute with a Utility Owner relating to any Utility Adjustment) to mediation for resolution. The Parties shall use diligent efforts to convene and conclude mediation proceedings within 30 days after they agree to refer the Dispute to mediation. DB Contractor and TxDOT shall share equally the expenses of the mediation. If any Dispute has been referred to mediation for resolution by mutual agreement of the Parties, but the Dispute is not resolved within the foregoing 30-day period, then either Party shall have the right, on or after the 31st day, to cease participating in such mediation. A Party shall give written notice to the other Party that it will no longer participate. The deadlines in this Exhibit 20 for processing a Dispute are tolled, day for day, during mediation.

**4. Subsequent Proceedings.**

a. **Exclusive Jurisdiction and Venue.** The Parties agree that the exclusive jurisdiction and venue for any legal action or proceeding, at law or in equity, which is permitted to be brought by a Party in court arising out of the Contract Documents, shall be the district courts of Travis County, Texas.

b. **Admissibility of Disputes Resolution Proceedings.** The Disputes Review Panel Process and Informal Resolution Procedures process, including all notices, submissions, testimony, working documents, reports and recommendations in connection therewith, are an attempt to mutually resolve a claim without litigation and are not admissible for any purpose in any administrative or judicial proceeding subsequent to such dispute resolution process.

**5. Continuation of Disputed Work.** At all times during the procedures for resolving Disputes set forth in this DBC, DB Contractor and all Subcontractors shall continue with the performance of the Work and their obligations, including any disputed Work or obligations, diligently and without delay, in accordance with this DBC, except to the extent enjoined by order of a court or otherwise approved by TxDOT in its sole discretion. DB Contractor acknowledges that it shall be solely responsible for the results of any delaying actions or inactions taken during the pendency of resolution of a Dispute relating to the Work even if DB Contractor's position in connection with the Dispute ultimately prevails. In addition, during the pendency of resolution of a Dispute relating to the Work, the Parties shall continue to comply with all provisions of the Contract Documents, the Project Management Plan, the Governmental Approvals and applicable Law.

**6. Records Related to Claims and Disputes.** Throughout the course of any Work that is the subject of any Dispute that is the subject of the procedures for resolving Disputes in this DBC, DB Contractor shall keep separate and complete records of any extra costs, expenses, and/or other monetary effects relating to the disputed Work, and shall permit TxDOT access to these and any other records needed for evaluating the Dispute. These records shall be retained for a period of not less than one year after the date of resolution of the Dispute pertaining to such disputed Work (or for any longer period required under any other applicable provision of the Contract Documents).

**7. Interest.**

a. This Section 7 applies only to claims that are subject to the Texas Prompt Payment Act, Government Code, Chapter 2251.

b. In the event a DB Contractor elects to pursue a formal Dispute with TxDOT under this Exhibit 20, TxDOT shall notify DB Contractor whether it will dispute the claim not later than the 21st day after the date TxDOT receives the claim. A payment becomes overdue and begins to accrue interest in accordance with the Texas Prompt Payment Act, Government Code, Chapter 2251.

**8. Attorneys' Fees.** A Party shall pay the attorneys' fees of the other party for Disputes brought pursuant to this Exhibit 20 only if such payment is required pursuant to the Texas Prompt Payment Act and the payment of attorney's fees is ordered in a TxDOT administrative order or in a judicial order.

## **EXHIBIT 21**

### **OPERATING PROCEDURES**

#### **1. GENERAL**

Nothing in these Operating Procedures supersedes the Contract Documents or the Disputes Review Panel Agreements unless mutually agreed by the Parties.

These procedures are for the purpose of providing guidelines for operation of the Panel. They are based on the DBC and current practice of disputes review panels, and are intended to be flexible to meet circumstances that may arise during the life of the Project.

The Panel will assist the Parties in facilitating the timely resolution of disputes, claims and other controversies arising out of the work on the Project.

The Parties should not default in their normal responsibility to settle issues by indiscriminately referring disputes to the Panel. The Panel will encourage the Parties to resolve issues without resorting to the Disputes Review Panel Process.

As provided in Section 4.9 of the General Conditions, except for their participation in the Panel's activities, neither the DB Contractor nor TxDOT will solicit or receive advice or consultation on job site construction from the Panel or its members on matters dealing with the conduct of the work or resolution of problems. During hearings and site visits, no Panel member will express any opinion concerning the merit of any facet of a controversy or a potential dispute.

The Parties will furnish to each of the Panel members all documents necessary for the Panel to perform its functions including regular written reports, baseline CPM and updates and other relevant data.

The Panel encourages the use of e-mail to transmit agenda, reports and documents of reasonable size.

It must be emphasized and firmly understood that individual Panel members are not the "representative of" or "advocate for" the Party which nominated them. The entire Panel must function as an objective, impartial, and independent body at all times. In order to avoid any suggestion of partiality, there must be no individual communication concerning the project between Panel members and employees of the DB Contractor or TxDOT or of their agents and/or sub-contractors during the life of the Project. The Parties will direct any matters needing attention between meetings of the Panel to the Panel Chairperson who shall be the only person to deal directly with the designated contact persons for the TxDOT and the DB Contractor.

The Panel will at all times be impartial, unbiased and neutral in all of its actions. There will be no ex parte communication, rendering of advice or other consultations between any Panel member and TxDOT or any DB Contractor-Related Entities.

#### **2. FREQUENCY OF MEETINGS**

The Panel will meet initially at 3-month intervals and at such other times as requested by the Parties. If conditions warrant, the Panel Chairperson, in consultation with the Parties, may reduce or increase the time between meetings to better serve the Parties. Factors to be considered include work progress, occurrence of unusual events and the number and complexity of potential Disputes. The ensuing Panel meeting will be scheduled at each Panel regular meeting.

The Panel requests cooperation of the Parties to the end that no changes be requested to scheduled meeting dates unless absolutely necessary and unavoidable.

In the event that a member of the Panel is unable to attend a scheduled meeting, the Panel Chairperson will attempt to reschedule the meeting. Should rescheduling not be possible, the other two Panel members will attend the meeting without the third.

### **3. AGENDA FOR MEETINGS**

The Panel Chairperson will develop an agenda for each meeting and submit the draft agenda to the Parties 14 calendar days prior to the scheduled meeting date for review and suggested changes.

The Panel Chairperson will send the approved agenda, a memo confirming the Panel meeting and the Panel member travel schedules to the Parties and the Panel members.

The agenda will provide an opportunity for the Panel to hear a round table discussion by the Parties on the status of the work, a brief discussion of any issues and include ample time for a site visit.

The Panel may conduct certain meetings via video conference in accordance with Section 4.9.3.2 of the General Conditions. At the conclusion of each meeting held at or near the Project site, the Panel will conduct a field observation of active sections of the Work accompanied by representatives of both the DB Contractor and TxDOT. The Parties will point out all areas of the Project that are subject to a potential issue.

### **4. MINUTES OF MEETINGS**

The Parties may request the Panel Chairperson to prepare a summary of regular meetings, and if no request is made, the Panel Chairperson at his or her sole discretion may prepare a summary of regular meetings. If minutes are prepared, the minutes will be circulated to all Parties for comments, additions and corrections. Minutes as so amended will be adopted at the next meeting.

### **5. PROCEDURES FOR DISPUTE HEARINGS**

#### **5.1 Procedure to Take a Dispute to the Panel**

After the Parties have diligently attempted to negotiate to settle a Dispute pursuant to Section 4.9.5 of the General Conditions, either Party may refer it to the Panel. After all requirements of the DBC are met, the referring Party transmits a written notice meeting the requirements of Section 4.9.5.3 of the General Conditions to the Panel and the other Party.

All hearings will be held at the job site except as agreed by the Parties.

The Panel, in a meeting or conference call with the Parties, will determine whether the hearing should be in conjunction with the next meeting or at a specially scheduled meeting, and agree on a date and time required for documentation and hearing preparation. Then the Panel Chairperson, in conference with the Parties, will set dates for completion of each of the documents described below.

Pursuant to Section 4.9.8 of the General Conditions, discovery shall only be permitted at the sole discretion of the Panel.

The Parties may submit documentary evidence for the hearing, which shall be exchanged by the Parties in accordance with Section 4.9.8 of the General Conditions. The Panel may also request that the Parties jointly prepare a statement of dispute and stipulated facts and a common reference document.

#### **1. Statement of Dispute and Stipulated Facts**

An agreed simple statement of the dispute on a single page ideally limited to one paragraph.

## **2. Common Reference Document (CRD)**

A common set of exhibits prepared jointly by the Parties to facilitate Panel review and understanding of the referring Party's written notice and other Party's response, and to minimize confusion during the hearing. The CRD should include stipulations to as many facts, dates, quantities, etc., as possible. The CRD should include all documents that either Party wants to use in support of their position. The Parties are encouraged to include visual aids, exhibits, charts or summaries of documents in order to facilitate the Panel's understanding of the issues, and to avoid the submission of voluminous records that are not necessary for the Panel's understanding and consideration.

To the greatest extent possible, the Parties should assemble all documents in chronological order. Large documents (submittals, daily records, photographs, etc.) may be included as appendices. It facilitates Panel review and is helpful during the hearing if the documents are assembled in subsections with a descriptive tab on each, e.g.:

- A. Correspondence, in chronological order.
- B. Contract Documents: Portions of specifications, drawings, geotechnical reports, change orders, etc. that are pertinent to the dispute.
- C. Job Records: Pertinent shift, daily and weekly reports, diary pages, submittals, schedules, drawings, pictures, etc.
- D. Reports: Any reports prepared specifically for the dispute by outside parties, consultants, etc.
- E. Other

A master index should be prepared and all pages should be numbered sequentially (e.g., Bates stamp) in the lower right hand corner.

Other than the list of representatives described below, the Parties may not send the Panel any further exhibits or correspondence regarding the Dispute, without prior approval, between the time of submittal of the above pre-hearing documentation and the hearing.

### **5.2 List of Representatives**

At least two weeks prior to the hearing date, the Parties exchange and submit to the Panel a list of the representatives and, if permitted by the Panel, testifying witnesses that each Party intends to have present at the hearing. Only a limited number of representatives from each Party should attend the hearing. The list of representatives and, if permitted, witnesses should contain the following information: the person's name, title, professional affiliation, and, if the person is a testifying witness, a brief summary of the matters that the person will address.

### **5.3 Presentation of Dispute**

The hearing will be informal. The Panel will conduct the proceedings. The referring Party will make an initial presentation of its case, followed by the respondent. Then, one or more rebuttals to any assertion by the other Party may be presented until the Panel determines that all aspects of the Dispute have been adequately covered. The Panel members may ask questions, request clarification, or ask for additional data. In large or complex cases, the hearing may be continued as necessary in order to consider and fully understand all the evidence presented by both Parties.

One person for each Party should be designated as the primary presenter, although other individuals may give portions of the presentations as required.

The Panel members will control the hearings and guide the discussion of issues by questioning the Parties or focusing their presentation in order to expeditiously obtain all information that the Panel deems necessary to make its findings and recommendations.

Only one person, who has been recognized by the Panel Chairperson, may speak at a time. The Parties should address the Panel members, not each other. Except in summation, repetitious discussion is discouraged.

No questions or interruptions by one Party will be allowed during the other Party's presentation. Dialogue between the Parties will be allowed only in exceptional situations and with the approval of the Panel Chairperson. At its sole discretion, the Panel may permit questioning of one Party by another Party if it facilitates the clarification of an issue. The Panel Chairperson will control and limit such questioning and response.

Panel members may interrupt to ask presenters to repeat statements that were not understood and may request pauses when presentations are too fast for adequate note taking. The Panel may also interrupt presentations when necessary to clarify a point or receive an explanation, which might be lost if left to a later time. The Panel may ask for additional factual documentation.

Documents and/or exhibits that were not included with the pre-hearing submissions will usually be inadmissible. If the Panel decides to permit their introduction, the hearing will be extended as necessary for the other Party to review the new information and to consider its position and present a rebuttal. If necessary the hearing may be adjourned and reconvened at a future date.

In exceptional cases a hearing transcript by a court reporter may be utilized if requested by either Party and if the Panel deems that a transcript will expedite its deliberations. No audio or video recording will be permitted. In the event that only one Party requests a court reporter, that Party shall bear the cost, including the furnishing of one copy of the transcript to the non-requesting Party and to each Panel member. Otherwise the cost shall be shared equally.

Paper reproductions of overheads and computer screens such as Power Point, shall be provided to the Panel members prior to their use in the hearing.

#### **5.4 Redundant Evidence and Oral Statements**

The Panel may limit the presentation of documents or oral statements when it deems them to be irrelevant or redundant, or when it determines such material is of no added value to the Panel in understanding the facts and circumstances of the dispute and arriving at its findings and recommendations.

#### **5.5 Disputes Involving Subcontractors**

The Panel will not consider Disputes between Subcontractors and the DB Contractor unless they are actionable by the DB Contractor against TxDOT and actually "passed-through" to TxDOT.

The DB Contractor must clearly identify the portions of the Dispute in all pre-hearing submissions that involve a Subcontractor(s) and the identity of the Subcontractor(s). The DB Contractor must ensure that all Subcontractor documents are timely exchanged and submitted to the Panel as part of the DB Contractor's package, all as above described.

At any hearing regarding a Dispute that includes one or more Subcontractor Disputes, the DB Contractor will have a senior Subcontractor representative with direct and actual knowledge of the Dispute present. Such representative may assist in or make the presentation of the Subcontractor issues and answer questions.

## **5.6 Panel Deliberations**

After the Dispute hearing is concluded, the Panel will meet to formulate findings and its recommendations for resolution of the Dispute. All deliberations will be conducted in private and will be confidential. The Panel may request post-hearing submittals including exhibits, job records, and written responses to the Panel's post-hearing questions directed in writing to either of the Parties. All such post-hearing submittals and written answers to directed questions sent to the Panel are to be simultaneously sent to the other Party.

## **5.7 Recommendation**

Written Panel Recommendations will be forwarded to the Parties in accordance with the provisions of Section 4.9.11 of the General Conditions.

The Panel will make every reasonable attempt to formulate unanimous Panel Recommendations but in the event that is not possible, a minority or dissenting recommendation will be prepared and included with the majority recommendation. All Panel Recommendations will include information and expanded rationales to aid the Parties in fully understanding them.

If requested by either Party following delivery of the Panel Recommendations, the Panel shall meet with TxDOT and the DB Contractor to provide additional clarification of the Panel Recommendations.

Pursuant to Section 4.9.13 of the General Conditions, Panel Recommendations will not be admissible as evidence in any subsequent dispute resolution proceedings.

## **6. OTHER**

The Panel reserves the right, with the agreement of the Parties, to revise the above procedures depending upon the circumstances of any particular Dispute.

## **EXHIBIT 22**

### **DISPUTES REVIEW PANEL AGREEMENT**

THIS DISPUTES REVIEW PANEL AGREEMENT ("Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, among: the Texas Department of Transportation, hereinafter referred to as "TxDOT", \_\_\_\_\_, hereinafter referred to as "DB Contractor", and \_\_\_\_\_, hereinafter referred to as "Panel Member". Panel Member is a member of the Disputes Review Panel, hereinafter referred to as the "Panel" for the \_\_\_\_\_ ("Project"). TxDOT, DB Contractor, and Panel Member may be referred to individually herein as a "Party" or collectively as the "Parties". All capitalized terms used in this Agreement and not defined or modified herein shall have the same meaning as set forth in the Design-Build Contract, dated \_\_\_\_\_ between TxDOT and DB Contractor (the "DBC").

WHEREAS, TxDOT is now engaged in the development of the Project; and

WHEREAS, the DBC provides for DB Contractor to design and construct the Project and further provides for the establishment and operation of a Panel to assist in resolving certain disputes, claims and other controversies as specified therein; and

WHEREAS, the Panel is comprised of three members, one who was selected by TxDOT, one who was selected by DB Contractor, and the Panel Chairperson who was selected by the first two members and approved by TxDOT and DB Contractor.

NOW THEREFORE, in consideration of the terms, conditions, covenants and agreements contained herein, or attached and incorporated and made a part hereof, the Parties agree as follows:

#### **I. DESCRIPTION OF WORK**

The DBC provides for establishment of the Panel to assist in the resolution of Disputes between TxDOT and DB Contractor. The purpose of the Panel is to fairly and impartially consider the Disputes placed before it, and to provide written Panel Recommendations to both TxDOT and DB Contractor, for resolution of these Disputes. Panel Member shall perform the services necessary to participate on the Panel in accordance with the scope of work set forth herein.

#### **II. SCOPE OF SERVICES**

The scope of services of the Panel includes the following.

##### **A. Adopting Operating Procedures:**

At the first regular meeting after the effective date of this Agreement, the Panel will meet with DB Contractor and TxDOT to establish the rules and procedures ("Operating Procedures") which will govern the Panel's participation in the Project as set forth in the Section 4.9 of the General Conditions. In establishing the Operating Procedures, the Parties shall first consider the form of Operating Procedures included in Exhibit 21 to the Design-Build Agreement, along with the other members of the Panel, and make any revisions necessary to the effective operation of the Panel and efficient resolution of Disputes. The agreed upon Operating Procedures shall not conflict with any provisions of the DBC. The Panel may establish any internal rules and procedures not covered in the DBC.



**B. Conducting Regular Progress Meetings:**

All regular meetings are expected to be held at or near the Project site, provided that certain regular meetings may be held by video conference in accordance with Section 4.9.3.2 of the General Conditions. Except as otherwise agreed by DB Contractor and TxDOT, the regular progress meetings shall be held no less frequently than quarterly through Final Acceptance, although TxDOT and DB Contractor may request more frequent meetings, consistent with the construction activities and the matters under consideration and Dispute. Each meeting is expected to consist of a round table discussion and, except for meetings held by video conference, a field inspection of the work being performed on the Project. A member of TxDOT's staff is expected to conduct the round table discussion, and the round table discussion attendees are expected to include selected personnel from TxDOT and DB Contractor. The agenda for each meeting will be set by the Panel in accordance with Section 4.9.3.2 of the General Conditions.

**C. Advisory Opinions:**

If requested by TxDOT and DB Contractor, the Panel shall provide TxDOT and DB Contractor with an oral advisory opinion after concurrent submissions by TxDOT and DB Contractor of brief written summaries of the issue(s) in Dispute, pertinent facts and circumstances, and relevant provisions of the Contract Documents. The submissions from TxDOT and DB Contractor shall meet the requirements of and advisory opinions shall be provided in accordance with Section 4.9.6 of the General Conditions and any applicable provisions of the Operating Procedures.

**D. Conducting Hearings on Disputes:**

Upon receipt by the Panel of a Dispute, either from TxDOT or DB Contractor, the Panel shall convene a hearing to review and consider the Dispute in accordance with the procedures set forth in Section 4.9 of the General Conditions of the DBC and the Operating Procedures. Both TxDOT and DB Contractor shall be given a full and adequate opportunity to present their evidence at these hearings in accordance with Section 4.9 of the General Conditions of the DBC.

It is expressly understood that all Panel members, including Panel Member, are to act impartially and independently in the consideration of facts and conditions surrounding any dispute. Ex parte contact with representatives of TxDOT or DB Contractor is prohibited and is grounds for removal of Panel Member from the Panel.

**III.  
PANEL RESPONSIBILITIES**

The Panel is organized in accordance with Section 4.9 of the General Conditions of the DBC for the purposes described therein. Section 4.9 is incorporated by reference herein. The Panel is intended to provide recommendations for resolving disputes, claims and other controversies between TxDOT and DB Contractor, arising under the DBC. The Panel will conduct hearings regarding Disputes under the DBC, including determining compensation payable with respect to such Disputes. If requested by TxDOT and DB Contractor, the Panel may provide Panel Recommendations on merit only, with compensation to be determined later if TxDOT and DB Contractor are unable to resolve the Dispute.

The Panel Recommendations shall be based on the pertinent provisions of the General Conditions and other Contract Documents and the facts and circumstances involved in the Dispute. Panel Recommendations shall be furnished in writing to TxDOT and DB Contractor.

Panel Member represents, warrants and covenants on his/her behalf that he/she:

(a) Has been provided with a copy of the DBC and other Contract Documents and has taken the time necessary to become familiar with and understand Section 4.9 of the General Conditions;

(b) Satisfies the requirements for Panel membership set forth in Section 4.9 of the General Conditions;

(c) Shall not seek or accept other employment by TxDOT, any firm under contract with TxDOT, the DB Contractor, any Guarantor or any DB Contractor-Related Entity during the term of this Agreement or within one calendar year after his/her termination, withdrawal, or the termination of this Agreement;

(d) Shall not discuss employment, nor make any agreement regarding employment with TxDOT, the DB Contractor, any Guarantor or any DB Contractor-Related Entity during the term of this Agreement;

(e) Shall not take any other action that would result in disqualification from service as a Panel member; and

(f) Shall immediately notify TxDOT and the DB Contractor if circumstances arise which impair his/her qualification as a Panel member.

Panel Member shall conduct all Panel business in accordance with this Agreement and Section 4.9 of the General Conditions. In the event of any conflict between this Agreement and Section 4.9 of the General Conditions, Section 4.9 of the General Conditions shall control.

All Panel members are to act independently in the consideration of facts and conditions surrounding any Dispute. Panel Member acknowledges that neither TxDOT nor DB Contractor is permitted to seek Panel Member's advice or consultation, ex parte, although either TxDOT or DB Contractor may seek such advice or consultation from the entire Panel, at a Panel meeting, after first giving notice to all parties who might thereafter be parties before the Panel in a Dispute involving that matter. A Panel member who has ex parte contact with TxDOT or DB Contractor or their representatives shall be subject to removal from the Panel for cause.

Panel Member further covenants to TxDOT and the DB Contractor that he/she:

(a) Shall be bound by and perform his/her obligations in accordance with the procedures set forth in Section 4.9 of the General Conditions;

(b) Shall protect the confidentiality of information provided by TxDOT and DB Contractor; and

(c) Shall disclose during the term of this Agreement any potential conflicts of interest as described in Section 4.9.2.5 of the General Conditions.

#### **IV. DB CONTRACTOR RESPONSIBILITIES**

Except for its participation in the Panel's activities as provided in the DBC and in this Agreement, DB Contractor shall not solicit advice or consultation from the Panel or its members on matters dealing with the conduct of the work or the resolution of problems.

The DB Contractor shall furnish to Panel Member one copy of all documents it has, other than those furnished by TxDOT, which are pertinent to the performance of the Panel.

**V.  
TxDOT'S RESPONSIBILITIES**

Except for its participation in the Panel's activities as provided in the DBC and in this Agreement, TxDOT shall not solicit advice or consultation from the Panel or its members on matters dealing with the conduct of the work or resolution of problems.

TxDOT shall furnish the following:

**A. Contract Documents and Other Documents**

TxDOT shall furnish Panel Member one copy of (a) the DBC and all related Contract Documents, including, but not limited to, the Design-Build Specifications, any modifications or amendments to the Contract Documents, (b) Project Schedule Updates, and (c) other documents, as agreed by TxDOT and DB Contractor that are pertinent to the performance of the DBC, and necessary to the Panel's work.

**B. Coordination**

TxDOT will, in cooperation with DB Contractor, coordinate the operations of the Panel.

**C. Services**

TxDOT and DB Contractor will arrange for or provide conference facilities at the Project Office or TxDOT's facilities, and will provide secretarial and copying services.

**VI.  
TIME FOR BEGINNING AND COMPLETION**

The Panel shall begin operation upon execution of Disputes Review Panel Agreements between TxDOT, DB Contractor and each of the members of the Panel, and written authorization by TxDOT, and shall terminate its activities upon later of (a) completion of all work required to be performed by DB Contractor under the DBC (including, unless the DBC is terminated earlier, work required pursuant to the Warranties) or (b) conclusion of any proceedings before the Panel.

Except for choosing a Panel Chairperson, if Panel Member is a Party-appointed member, Panel Member shall not begin any work under the terms of this Agreement until authorized in writing by TxDOT.

**VII.  
PAYMENT**

Invoices of the Panel members for services performed as described in this Article VII shall be paid by DB Contractor subject to approval by TxDOT and DB Contractor. Payments shall constitute full compensation for work performed and services rendered, and for all materials, supplies and incidentals necessary to serve on the Panel. TxDOT shall reimburse the DB Contractor for one half of these fees and expenses in accordance with the DBC.

**A. Payment for Services and Expenses**

Panel Member shall be entitled to be paid at the hourly rate of \$\_\_\_\_\_ [\$200 – 450 depending on qualifications] prorated for each quarter-hour for actual time spent (a) at regular Panel meetings at the Project site, including site visits, or by video conference; (b) at hearings conducted by the Parties; (c) choosing the Panel Chairperson, if applicable; and (d) if approved in advance by TxDOT, actual time spent on pre-meeting and pre-hearing review of information and documents provided to the Panel, consultation and discussion with other members of the Panel,

telephonic meetings and discussions with the Panel and parties to a Dispute, post-hearing deliberations with the other members of the Panel, drafting Panel Recommendations, and reconsideration and modifications of Panel Recommendations when appropriate. Panel Member shall not be entitled to compensation for travel time.

Reasonable and necessary direct expenses will be reimbursed without markup to Panel Member. These expenses may include, but are not limited to, travel expenses from the Panel Member's point-of-departure to the initial point-of-arrival in accordance with the State travel expenditure guidelines, printing, long distance telephone, postage and courier delivery. Billing for these expenses shall include an itemized listing supported by copies of the original bills, invoices, expense accounts and miscellaneous supporting date. All expenses shall be subject to TxDOT standard requirements.

#### **B. Payments**

Panel Member may submit invoices for payment for work completed not more often than once per month during the progress of work. Such invoices shall be in a format approved by TxDOT and DB Contractor, and accompanied by a general description of activities performed during that period. The value of work accomplished for payment shall be established from the billing rate and hours, or portions thereof, expended by Panel Member together with direct expenses. Satisfactorily submitted invoices shall be paid within 30 days of approval by TxDOT and DB Contractor.

#### **C. Inspection of Cost Records**

Panel Member shall keep, available for inspection by representatives of TxDOT or DB Contractor for a period of four years after final payment, the cost records and accounts pertaining to this Agreement.

### **VIII. ASSIGNMENT**

Panel Member shall not assign any of the work of this Agreement.

### **IX. TERMINATION OF AGREEMENT**

This Agreement may be terminated by mutual agreement of TxDOT and DB Contractor at any time upon not less than four weeks' prior written notice to the Panel members.

Panel Member may withdraw from the Panel by providing four weeks' prior written notice to the other Parties. Panel Member may be terminated for or without cause as specified in the DBC.

Each of TxDOT and DB Contractor shall be entitled to replace the Panel member selected by such Party without cause and without agreement of the other Parties (other than approval of the replacement). The Panel Chairperson may be replaced without cause only with the agreement of TxDOT and DB Contractor.

Should the need arise to appoint a replacement Panel member, the replacement member shall be appointed in the same manner as the original member was appointed. The selection of a replacement Panel member shall begin promptly upon notification of the necessity for a replacement and shall be completed within 20 days.

### **X. LEGAL RELATIONS**

The Parties hereto mutually understand and agree that Panel Member, in the performance of his/her duties on the Panel, is acting in the capacity of an independent agent and not as an employee of either TxDOT or DB Contractor.

Panel Member is absolved of any personal or professional liability arising from the activities and recommendations of the Panel. TxDOT and DB Contractor each agree to hold harmless Panel Member from such liability to the extent permitted by law.

**XI.  
MISCELLANEOUS**

This Agreement shall be governed and construed in accordance with the laws of the State of Texas.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

PANEL MEMBER

By: \_\_\_\_\_

DB CONTRACTOR:

\_\_\_\_\_

TEXAS DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

## **EXHIBIT 23**

### **PRE-PROPOSAL UTILITY COMMITMENTS**

*[Include any Utility Owner commitments (a) regarding Utility Adjustments that are necessary for the accommodation of the Project, (b) that were approved by TxDOT prior to the Proposal Due Date in accordance with Section 2.13 of the ITP, and (c) that were included in the Proposal in accordance with Section 4.5 of Exhibit B to the ITP.]*

## **EXHIBIT 24**

### **AMENDMENTS TO COMPLETION DEADLINES PROVISIONS**

- A. The General Conditions are amended as follows: (i) underlined text is hereby added to the applicable section of the General Conditions and (ii) stricken text is hereby deleted therefrom.

1. Section 4.1.1.1 of the General Conditions is hereby amended as follows:

4.1.1.1 Furnish all design and other Professional Services, provide all materials, equipment and labor and undertake all efforts necessary or appropriate (excluding only those materials, services and efforts that the Contract Documents expressly specify will be undertaken by TxDOT or other Persons) to administer, design and construct the Project and maintain it during construction in accordance with the requirements of the Contract Documents so as to meet all ~~achieve Substantial Completion and Final Acceptance by the applicable~~ Completion Deadlines.

2. Section 4.1.2.1.1 of the General Conditions is hereby amended as follows:

4.1.2.1.1 The Work shall include the design and construction of the Project, conforming to the Basic Configuration as set forth in the Schematic Design and otherwise complying with the requirements of the Contract Documents, except as otherwise approved in writing by TxDOT. All materials, services and efforts necessary to ~~achieve Substantial Completion and Final Acceptance on or before the applicable~~ meet the Completion Deadlines shall be DB Contractor's sole responsibility, except as otherwise specifically provided in the Contract Documents. DB Contractor shall plan, schedule, and execute all aspects of the Work and shall coordinate its activities with all Persons who are directly impacted by the Work. Subject to the terms of Section 4.6, the costs of all Work, including all necessary materials, services and efforts, are included in the Price.

3. Section 4.6.6.2.2(b) of the General Conditions is hereby amended as follows:

(b) the change in the Work or other event or situation which is the subject of the requested Change Order has caused or will result in an identifiable and measurable disruption of the Work that impacted the Critical Path activity (i.e., consumed all available Float and extended the time required to complete the Work necessary to meet ~~achieve Substantial Completion or Final Acceptance beyond the applicable~~ Completion Deadline); and

4. Section 4.6.6.3 of the General Conditions is amended as set forth in Section 6.10.4 of the Design-Build Agreement.

5. Section 8.1.3.3 of the General Conditions is hereby amended as follows:

#### **8.1.3.3 No Time Extensions**

Except as otherwise specifically provided in Section 4.6, TxDOT shall have no obligation to extend a Completion Deadline and DB Contractor shall not be relieved of its obligation to comply with the Project Schedule and to meet all ~~achieve Substantial Completion and Final Acceptance by the applicable~~ Completion Deadlines for any reason.

6. Section 8.7.1.1 of the General Conditions is hereby amended as follows:

8.7.1.1 DB Contractor shall be liable for and pay to TxDOT liquidated damages with respect to any failure to ~~meet the achieve Substantial Completion and Final Acceptance by the applicable~~ meet the Completion Deadlines, as the same may be extended pursuant to this Design-Build Contract. The amounts of such liquidated damages are in the amounts set forth in Section 7.2 of the Design-Build Agreement.

7. Section 8.7.3.1 of the General Conditions is hereby amended as follows:

8.7.3.1 In the event that DB Contractor fails to ~~achieve Substantial Completion or Final Acceptance by the applicable~~ meet the Completion Deadlines, or in the event of ~~impermissible~~ Chargeable Lane Closures or Key Personnel Changes TxDOT will incur substantial damages.

8. Section 8.8.3.1 of the General Conditions is hereby amended as follows:

8.8.3.1 If an Event of Default consists solely of DB Contractor's failure to ~~achieve Substantial Completion or Final Acceptance by the applicable~~ meet a Completion Deadline, TxDOT's sole remedy for such Event of Default shall be the right to assess Liquidated Damages, provided that (a) such Event of Default does not delay Substantial Completion beyond 365 days after the Substantial Completion Deadline or Final Acceptance beyond 180 days after the Final Acceptance Deadline, ~~as applicable~~, and (b) DB Contractor continues to diligently perform the Work despite such Event of Default.

B. Section 8.5.3.2(a) of the General Conditions is hereby amended by replacing the phrase "the Critical Path" with the phrase "each Critical Path".

C. References in Sections 4.4.6, 4.6.9.4.2 and 8.5.5.2 of the General Conditions to "the Critical Path" shall be deemed references to "a Critical Path".



## EXHIBIT 25

### TIFIA DISCLOSURE REQUIREMENTS

(a) Representations and warranties:

(i) To the best of its knowledge and belief, DB Contractor, the TIFIA Parties and any of their respective principals (as defined in 2 C.F.R. § 180.995):

A. Are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in Federal contracts, procurement, or non-procurement matters by any Federal department or agency, or delinquent on a Federal government debt, and are compliant with the applicable requirements of 2 C.F.R. Part 180, as applicable;

B. Have not within a three year period preceding the effective date of the TIFIA Loan Agreement been convicted of or had a civil judgment rendered against them for any of the offenses listed in 2 CFR §180.800(a);

C. Are not then 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 B above; and

D. Have not within a three-year period preceding the effective date of the TIFIA Loan Agreement had one or more public transactions (federal, state or local) terminated for cause or default.

(ii) The Design-Build Agreement and each Subcontract or other agreement related to the Project to which a TIFIA Party is a party, is in full force and effect and all conditions precedent to the obligations of the respective parties under each agreement have been satisfied.

(iii) Unless otherwise disclosed to TxDOT, no event has occurred that gives DB Contractor the right to terminate the Design-Build Agreement, and, to the best of DB Contractor's knowledge after reasonable and diligent inquiry and investigation, no event has occurred that gives any other TIFIA Party the right to terminate its respective Subcontract, Guaranty, or other agreement or obligation entered into with respect to this Project.

(iv) Neither DB Contractor nor, to the best of DB Contractor's knowledge after reasonable and diligent inquiry and investigation, any of the TIFIA Parties is in breach of, or in default under, any material term in the Design-Build Agreement, or any Subcontract, Guaranty or other agreement or contracts with respect to the Project to which it is a party.

(v) None of the DB Contractor, nor to the knowledge of the DB Contractor, any TIFIA Party, is (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC or the U.S. Department of State, (b) any Person operating, organized or resident in a Sanctioned Country, or (c) any Person owned or Controlled by any such Person or Persons (each, a "Sanctioned Person").

(vi) Neither DB Contractor nor, to the best of DB Contractor's knowledge after reasonable and diligent inquiry and investigation, any of the TIFIA Parties is in violation of or, since the date that is five (5) years prior to the effective date of the TIFIA Loan Agreement, has violated (A) any U.S. and other applicable laws, rules and regulations, as amended from time to time, concerning or related to anti-money laundering, including but not limited to

those contained in the Bank Secrecy Act and the Patriot Act ("Anti-Money Laundering Laws"); (B) any applicable economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the Federal Government, including those administered by OFAC or the U.S. Department of State ("Sanctions"); (C) any applicable U.S. and other applicable laws, rules and regulations, as amended from time to time, concerning or related to bribery or corruption ("Anti-Corruption Laws"); or (D) any applicable anti-drug trafficking, or anti-terrorism laws, civil or criminal.

(vii) There are no pending or, to the knowledge of the DB Contractor, threatened claims or investigations by any Governmental Authority against, or any internal investigations conducted by, the DB Contractor or any TIFIA Party, with respect to any possible or alleged violations of any Sanctions, Anti-Money Laundering Laws, Anti-Corruption Laws, or any anti-drug trafficking or anti-terrorism laws.

(viii) No use of proceeds from any transaction contemplated by the Design-Build Agreement or any other document or contract to which the DB Contractor is a party with respect to the Project will violate any Sanctions, Anti-Money Laundering Laws, or Anti-Corruption Laws, or any applicable anti-drug trafficking or anti-terrorism laws.

(ix) DB Contractor is, and, to the best of DB Contractor's knowledge after reasonable and diligent inquiry and investigation, each TIFIA Party is, in compliance in all material respects with, and has conducted (or caused to be conducted) its business and operations and the business and operations of the Project in compliance in all material respects with, all applicable Laws (other than Environmental Laws, which are addressed in subclause (a)(vii) below). No notices of violation of any applicable Law has been issued, entered or received by DB Contractor, or, to the best of DB Contractor's knowledge after reasonable and diligent inquiry and investigation, by any of the TIFIA Parties, other than, in each case, notices of violations that are immaterial.

(x) DB Contractor and, to the best of DB Contractor's knowledge after reasonable and diligent inquiry and investigation, each of the TIFIA Parties is in compliance in all material respects with all laws applicable to the Project relating to (i) air emissions, (ii) discharges to surface water or ground water, (iii) noise emissions, (iv) solid or liquid waste disposal, (v) the use, generation, storage, transportation or disposal of toxic or hazardous substances or wastes, (vi) biological resources (such as threatened and endangered species) or (vii) other environmental, health or safety matters, including all laws applicable to the Project referenced in the notice "Federal Environmental Statutes, Regulations, and Executive Orders Applicable to the Development and Review of Transportation Infrastructure Projects," 79 Fed. Reg. 22756 (April 23, 2014) (or any successor Federal Register notice of similar import), which document is available at <http://www.transportation.gov/policy/transportation-policy/environment/laws> (the "TIFIA Environmental Laws").

(xi) Neither DB Contractor nor, to the best of DB Contractor's knowledge after reasonable and diligent inquiry and investigation, any of the TIFIA Parties has received any written communication or notice (written or oral), whether from a Governmental Entity, employee, citizens group, or any other Person, that alleges that DB Contractor or such TIFIA Party, as applicable, is not in full compliance with all TIFIA Environmental Laws and Governmental Approvals relating thereto in connection with the Project and, to the knowledge of DB Contractor, there are no circumstances with respect to any such TIFIA Environmental Law or Governmental Approval that may prevent or interfere with full compliance in the future.

(xii) There is no action, suit, proceeding, inquiry or investigation before or by any court or other Governmental Authority, pending or threatened against or affecting DB Contractor, or to the best of DB Contractor's knowledge after reasonable and diligent inquiry and investigation, any of the TIFIA Parties, threatened against or affecting the Project or the ability of the DB Contractor to execute, deliver and perform its obligations under the Contract Documents or other agreement or obligation entered into with respect to this Project to which the DB Contractor is a party, except for matters arising after the effective date of the TIFIA Loan Agreement that could not reasonably be expected to (i) result in a material adverse change in (A) the Project, (B) the business, operations, properties, condition (financial or otherwise) or prospects of TxDOT, (C) the legality, validity or enforceability of any material provision of the

TIFIA Loan Agreement, the Design-Build Agreement or any document or contract related to the Project to which a TIFIA Party is a party with respect to the Project, (D) the ability of TxDOT, DB Contractor or any TIFIA Party to enter into, perform or comply with any of its material obligations under the TIFIA Loan Agreement, the Design-Build Agreement or any other document or contract to which a TIFIA party is a party with respect to the Project, respectively, (E) the validity, perfection or enforceability or priority of the liens provided under any security document related to the TIFIA Loan Agreement on the collateral in favor of the TIFIA Lender or (F) the TIFIA Lender's rights or remedies available under the TIFIA Loan Agreement or any related document (such material adverse changes collectively, the "TIFIA MAE"); or (ii) adversely affect TxDOT's ability to receive Project revenues.

(xiii) DB Contractor owns, or has adequate licenses or other valid rights to use, all patents, trademarks, service marks, trade names, copyrights, franchises, formulas, licenses and other rights with respect thereto and has obtained assignment of all licenses and other rights of whatsoever nature, in each case necessary for the Project and the operation of its business. To DB Contractor's knowledge, there exists no conflict with the rights or title of any third party with respect to the intellectual property described in the preceding sentence. Excluding the use of commercially available "off-the-shelf" software, to DB Contractor's knowledge, no product, process, method, substance, part or other material produced or employed or presently contemplated to be produced by or employed by the Project infringes or will infringe any patent, trademark, service mark, trade name, copyright, franchise, formula, license or other intellectual property right of any third party.

(b) Covenants:

(i) Neither DB Contractor, nor, to the best of DB Contractor's knowledge after reasonable and diligent inquiry and investigation, any of the TIFIA Parties (A) shall violate (1) any applicable Anti-Money Laundering Laws; (2) any applicable Sanctions; (3) any applicable Anti-Corruption Laws; or (4) any applicable anti-drug trafficking or anti-terrorism laws, civil or criminal, or (B) shall be a Sanctioned Person.

**EXHIBIT 26**

**FORM OF DRAW REQUEST AND REQUIREMENTS**

*[Following pages]*

**EXHIBIT 26**

**FORM OF DRAW REQUEST AND CERTIFICATE REQUIREMENTS**

<b><u>Exhibit Description</u></b>	<b><u>No. of Pages</u></b>
Attachment 1 – Form of Draw Request and Certificate	2
Attachment 1A-1 – SH 99 Draw Request Summary Sheet	1
Attachment 1A-2 – SH 99 Materials on Hand Summary	1
Attachment 1A-3 – SH 99 Deductions Summary	1
Attachment 1B-1 – SH 35 Bypass Draw Request Summary Sheet	1
Attachment 1B-2 – SH 35 Bypass Materials on Hand Summary	1
Attachment 1B-3 – SH 35 Bypass Deductions Summary	1
Attachment 2 –Draw Request Certifications	2
Attachment 3 –Draw Request Contents Checklist	2

**ATTACHMENT 1 TO EXHIBIT 26**  
**FORM OF DRAW REQUEST AND CERTIFICATE**

**Draw Request #** \_\_\_\_\_

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

\_\_\_\_\_  
month/day/year

Texas Department of Transportation

[Address]

to

A. Draw Request for Work performed for the period: \_\_\_\_\_

\_\_\_\_\_  
month/day/year

B. Original Price

\$

C. Approved Change Order Amounts

\$

D. Revised Price (B+C)

\$

E. Cumulative Amount of Price Earned to Date (Sum of Amount "E"  
from Attachments 1A-1 and 1B-1)

F. Cumulative Maximum Payment Schedule Allowance (this Draw  
Request from Appendix 1 and Appendix 2 to DBA Exhibit 10)

G. Cumulative Amount of Previous Draw Requests

H. Amount Qualified for Payment this Draw Request (Sum of Amount  
"H" from Attachment 1A-1 and Attachment 1B-1))

\$

I. Total deductions from progress payment per Section 9.4.1 of the  
General Conditions (Sum of totals from Attachments 1A-3 and 1B-  
3)

\$

J. Current Amount Due for the Project ("H" - "I")

\$

Printed Name	Signature	month/day/year
DB Contractor's Authorized Representative		

Printed Name	Signature	month/day/year
TxDOT's District Engineer or Designee		

(Note: See Attachment 3 Draw Request Checklist)

**ATTACHMENT 1A-1 TO EXHIBIT 26**

**SH 99 SUMMARY SHEET**

**Draw Request #** \_\_\_\_\_

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

\_\_\_\_\_  
month/day/year

Texas Department of Transportation

[Address]

to

A. Draw Request for Work performed for the period: \_\_\_\_\_

\_\_\_\_\_  
month/day/year

B. Original SH 99 Price

\$

C. Approved SH 99 Change Order Amounts

\$

D. Revised SH 99 Price (B+C)

\$

E. Cumulative Amount of SH 99 Price Earned to Date (Amount "E"  
from Attachment 1A-2)

\$

F. Cumulative Maximum Payment Schedule Allowance (this Draw  
Request from Appendix 1 to DBA Exhibit 10)

\$

G. Cumulative Amount of Previous Draw Requests for SH 99 Work

\$

H. Amount Qualified for Payment for SH 99 Work this Draw Request  
(Lesser of "E-G" or "F-G") (includes Allowance Work described  
below)

\$

I. Total deductions from progress payment per Section 9.4.1 of the  
General Conditions (from Attachment 1A-3)

\$

J. Current Amount Due for SH 99 Work ("H" - "I")

\$



**ATTACHMENT 1A-2 TO EXHIBIT 26**

**SH99 MATERIALS ON HAND SUMMARY**

**Draw Request No.** \_\_\_\_\_

A. Cumulative Amount of SH 99 Price Earned to Date based on the Schedule of Values

\$

B. Previous MOH Invoices

\$

C. Installed to-date

\$

D. Current MOH Invoices

\$

E. Cumulative Amount of SH 99 Price Earned to Date (A+B-C+D)

\$

**SH 99 Materials on Hand Record Log**

[Create smart pdf to sum amounts and (+/-) toggle to ADD and DELETE line items in table]

Invoice Number	Sub/Vendor	Payment Activity ID(s)	Item Number and Description	Material Description	Buy America Documentation (Y/N)	Invoice Total	Paid on D.R. #	Installed	Installed on D.R. #

**SH 99 Payment Activity Summary Log**

Payment Activity ID(s)	Total Value based on SOV	Total Earned Value to Date	Total MOH
	\$	\$	\$

**ATTACHMENT 1A-3 TO EXHIBIT 26**

**SH 99 DEDUCTIONS SUMMARY**

**Draw Request No.** \_\_\_\_\_

Provide a summary of deductions to Draw Request from SH 99 Price as described in Section 9.4.1 of the General Conditions

<b>Deduction / Withholding</b>	<b>This Draw Request</b>	<b>Cumulative Total</b>
A. TxDOT or third party Losses (see Section 9.4.1(a) of the General Conditions)	\$	\$
B. Liquidated Damages, Qualifying Delay Late Fees, Key Personnel Change Fees and Lane Rental Charges (see Section 9.4.1(b) of the General Conditions)		
C. Failure to pay for labor or materials (see Section 9.4.1(c) of the General Conditions)		
D. Failure to maintain Record Documents (see Section 9.4.1(d) of the General Conditions)		
E. Work or materials that is the subject of an NCR (see Section 9.4.1(e) of the General Conditions)		
F. Failure to monitor and maintain Project Schedule (See Section 9.4.1 (f) of the General Conditions)		
G. Any other sums owed to TxDOT (see Section 9.4.1(g) of the General Conditions)		
Total		

**ATTACHMENT 1B-1 TO EXHIBIT 26**

**SH 35 BYPASS SUMMARY SHEET**

**Draw Request #** \_\_\_\_\_

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

month/day/year

Texas Department of Transportation

[Address]

to

A. Draw Request for Work performed for the period: \_\_\_\_\_

month/day/year

B. Original SH 35 Bypass Price

\$

C. Approved SH 35 Bypass Change Order Amounts

\$

D. Revised SH 35 Bypass Price (B+C)

\$

E. Cumulative Amount of 35 Bypass Price Earned to Date (Amount  
"E" from Attachment 1B-2)

\$

F. Cumulative 35 Bypass Maximum Payment Schedule Allowance  
(this Draw Request from Appendix 1 to DBA Exhibit 10)

\$

G. Cumulative Amount of Previous Draw Requests for SH 35 Bypass

\$

H. Amount Qualified for Payment for SH 35 Bypass Work this Draw  
Request (Lesser of "E-G" or "F-G") (includes Landscaping  
Allowance Work described below)

\$

I. Total deductions from progress payment per Section 9.4.1 of the  
General Conditions (from Attachment 1B-3)

\$

J. Current Amount Due for SH 35 Bypass Work ("H" - "I")

\$

**ATTACHMENT 1B-2 TO EXHIBIT 26**

**SH 35 BYPASS MATERIALS ON HAND SUMMARY**

**Draw Request No.** \_\_\_\_\_

A. Cumulative Amount Earned to Date based on the Schedule of Values

B. Previous MOH Invoices

C. Installed to-date

D. Current MOH Invoices

E. Cumulative Amount Earned to Date (A+B-C+D)

\$
\$
\$
\$
\$

**35 Bypass Materials on Hand Record Log**

[Create smart pdf to sum amounts and (+/-) toggle to ADD and DELETE line items in table]

Invoice Number	Sub/Vendor	Payment Activity ID(s)	Item Number and Description	Material Description	Buy America Documentation (Y/N)	Invoice Total	Paid on D.R. #	Installed	Installed on D.R. #

**35 Bypass Payment Activity Summary Log**

Payment Activity ID(s)	Total Value based on SOV	Total Earned Value to Date	Total MOH
	\$	\$	\$

**ATTACHMENT 1B-3 TO EXHIBIT 26**

**SH 35 BYPASS DEDUCTIONS SUMMARY**

**Draw Request No.** \_\_\_\_\_

Provide a summary of deductions from Draw Request from SH 35 Bypass Price as described in Section 9.4.1 of the General Conditions

<b>Deduction / Withholding</b>	<b>This Draw Request</b>	<b>Cumulative Total</b>
H. TxDOT or third party Losses (see Section 9.4.1(a) of the General Conditions)	\$	\$
I. Liquidated Damages, Qualifying Delay Late Fees, Key Personnel Change Fees and Lane Rental Charges (see Section 9.4.1(b) of the General Conditions)		
J. Failure to pay for labor or materials (see Section 9.4.1(c) of the General Conditions)		
K. Failure to maintain Record Documents (see Section 9.4.1(d) of the General Conditions)		
L. Work or materials that is the subject of an NCR (see Section 9.4.1(e) of the General Conditions)		
M. Failure to monitor and maintain Project Schedule (See Section 9.4.1 (f) of the General Conditions)		
N. Any other sums owed to TxDOT (see Section 9.4.1(g) of the General Conditions)		
Total		

**ATTACHMENT 2 TO EXHIBIT 26**

**DRAW REQUEST NO. \_\_\_\_\_ CERTIFICATION**

The undersigned hereby certifies that (choose applicable bracketed language):

- ◆ Except as specifically noted in this certification, all Work, including that of designers, Subcontractors and Suppliers, that is the subject of this Draw Request has been checked and/or inspected in accordance with the respective Quality Management Plan;
- ◆ Except as specifically noted in this certification, all Work that is both the subject of this Draw Request and for which an audit or inspection has been performed conforms to the requirements of the Contract Documents;
- ◆ [The Professional Services quality program] [The Construction quality program] and all of the measures and procedures provided therein are functioning properly and are being followed; and
- ◆ [The Professional Services percentages] [The construction percentages] indicated are accurate, correct, and are based on the Schedule of Values. All quantities for which payment is requested on a unit price basis are accurate.
- ◆ All quantities for which payment is requested on a unit price basis are accurate.

Exceptions:

---

---

---

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

\_\_\_\_\_  
Date

[PSQAF] [IQF] Representative

**DRAW REQUEST NO. \_\_\_\_\_ CERTIFICATION**

The undersigned hereby certifies that all Work that is the subject of this Draw Request fully complies with the requirements of the Contract Documents subject to any exceptions identified in this certification.

Exceptions:

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

Date

DB Contractor's Authorized Representative

## **ATTACHMENT 3 TO EXHIBIT 26**

### **DRAW REQUEST CONTENTS CHECKLIST**

The following items shall be included in the Draw Request package in the order listed below:

- ☐ A cover sheet.
- ☐ A completed Form of Draw Request and Certificate (Attachment 1, including all attachments to Attachment 1, to this Exhibit 26).
- ☐ Certification by the DB Contractor's authorized representative that all Work that is the subject of the Draw Request fully complies with the requirements of the Contract Documents, subject to any exceptions identified in the certification (Attachment 2 to this Exhibit 26).
- ☐ Certification by the Professional Services Quality Assurance Firm, if applicable (Attachment 2 to this Exhibit 26).
- ☐ Certification by the Independent Quality Firm, if applicable (Attachment 2 to this Exhibit 26).
- ☐ Documentation showing the CSJ cost distribution, if applicable.
- ☐ Documentation describing in detail the related payments due and the Maximum Payment Schedules, as of the end of the prior month.
- ☐ A current Schedule of Values and status of completion of Payment Activities.
- ☐ Monthly expenditure projections in the WBS format. Cash flow curves and comparisons to the applicable Maximum Payment Schedules.
- ☐ Updated actual cumulative cash flow curve for the SH 99 Price and SH 35 Bypass Price plotted along with the three corresponding cumulative cash flow curves: one based on the early dates; one based on the late dates; and one based on the applicable Maximum Payment Schedule required in Section 8.5.3.2 of the General Conditions.
- ☐ Data sheets and documents that support and substantiate the amounts requested in this Draw Request, which may include:
- ☐ Quantities and unit prices for unit priced Work including invoices, receipts or other evidence establishing the number of units delivered.
- ☐ Time and materials documentation for Force Account Change Orders in accordance with Section 4.6.8 of the General Conditions.
- ☐ Actual costs as evidenced by invoices for items to be paid from an allowance.
- ☐ Invoices or statements of actual cost for Materials on Hand for the SH 99 Work and the SH 35 Bypass Work with copies of Buy America compliance documentation with completed Attachment 1A-2 and Attachment 1B-2 to this Exhibit 26.
- ☐ A list of any Change Orders that were identified or executed during the previous month and their status.



- ☐ A description of any deductions, including any Losses for which DB Contractor is responsible, Liquidated Damages, Qualifying Delay Late Fees, Key Personnel Change Fees, Lane Rental Charges, and any other amounts subject to deduction pursuant to Section 9.4.1 of the General Conditions, with completed Attachment 1A-3 and Attachment 1B-3 to this Exhibit 26.
- ☐ A Nonconformance Report (NCR) log as described in Section 3.5.3.4 of the QAP for DB Projects.
- ☐ Certification of prompt payment using either Prompt Payment Certification Form 2177 or TxDOT's electronic compliance tracking system as described in Section 9.8.4 of the General Conditions, if applicable.
- ☐ A monthly report of personnel hours.
- ☐ DBE utilization reports in a format reasonably satisfactory to TxDOT.
- ☐ A listing of all Subcontracts in effect to which DB Contractor is a party with a list of the Subcontractors under such Subcontracts, guarantees of such Subcontracts and the guarantors thereunder, in accordance with Section 8.2.1.2(a) of the General Conditions.
- ☐ Details of amounts paid to Subcontractors, if applicable, including Suppliers, from the payments made by TxDOT to DB Contractor with respect to the Draw Request submitted two months prior.
- ☐ Summary description of DB Contractor maintenance activities in accordance with Section 27.4 of the Design-Build Specifications.
- ☐ Status of Project ROW acquisition, if applicable, and a description of the survey activity performed and condemnation support services provided as described in Sections 15.2.6, 15.3.2 and 15.4.4 of the Design-Build Specifications.
- ☐ A monthly Progress Submittal, including .xer file if required by TxDOT, as described in Section 8.5.4 of the General Conditions.

## **EXHIBIT 27**

### **AMENDMENTS TO RIGHT OF WAY PROVISIONS**

The General Conditions are amended as follows: (i) underlined text is hereby added to the applicable section of the General Conditions and (ii) stricken text is hereby deleted therefrom.

1. Section 4.4.1.1 of the General Conditions is hereby amended as follows:

4.4.1.1 All Project ROW, including Additional Properties but excluding temporary interests in property for Project Specific Locations, shall be acquired ~~by DB Contractor~~ in the name of the State. DB Contractor shall undertake and complete the acquisition of all ~~Project ROW, including~~ Additional Properties, in accordance with Item 15 of the Design-Build Specifications, the approved Right of Way Acquisition Management Plan and all applicable Laws relating to such acquisition, including the Uniform Act. DB Contractor shall also be responsible for submitting the completed files in accordance with the closeout procedures as defined by TxDOT in Section 15.2.11 of the Design-Build Specifications.

2. Section 4.4.1.3 of the General Conditions is hereby amended as follows:

4.4.1.3 TxDOT shall (a) provide review and approval or disapproval of Acquisition Packages and Condemnation Packages for ~~Project ROW~~Additional Properties, (b) except as provided below, undertake eminent domain proceedings, if necessary, for ~~Project ROW~~Additional Properties in accordance with the procedures and time frames established in Item 15 of the Design-Build Specifications and the approved Right of Way Acquisition Management Plan, and (c) provide review and approval for the following Submittals: payment Submittals, relocation Submittals, administrative settlement Submittals and closing Submittals for ~~Project ROW~~Additional Properties in accordance with the procedures and time frames established in the Design-Build Specifications and the approved ROW Acquisition Management Plan. TxDOT shall also provide review and approval for final closeout procedures established in Section 15.2.12 of the Design-Build Specifications.

3. Section 4.4.2.1 of the General Conditions is hereby amended as follows:

4.4.2.1 TxDOT shall be responsible for the acquisition of all~~For~~ real property needed for ROW within the Schematic ROW; TxDOT shall be responsible for (a) the purchase price of such real property, (b) any market-rental consideration paid in connection with PUAs in accordance with Section 15.4.1 of the Design-Build Specifications, (c) relocation assistance payments required in connection with such real property and (d) title insurance for such real property. ~~Subject to the immediately preceding sentence and Section 4.4.2.6, DB Contractor shall be responsible for the performance and the costs of all right of way engineering, surveying, appraisals, administration, acquisition, relocation assistance, environmental permitting (other than certain mitigation requirements expressly excluded under Section 4.7.1) and related services for all such parcels, including all costs and expenses of negotiation. If TxDOT incurs and pays any such costs and expenses on DB Contractor's behalf, DB Contractor shall reimburse TxDOT within 10 days of TxDOT's submittal to DB Contractor of an invoice for such TxDOT costs and expenses. Alternatively, TxDOT may deduct the amount of such costs and expenses from any sums owed by TxDOT to DB Contractor pursuant to this Design-Build Contract. For any parcels within the Schematic ROW that require acquisition by eminent domain, DB Contractor shall be responsible for the performance of support services for the condemnation proceedings described in Item 15 of the Design-Build Specifications; provided, however, that DB Contractor shall be entitled to reimbursement for DB Contractor's reasonable out-of-pocket costs for providing such services to the extent allowed in accordance with DBA Exhibit 11. Such costs may be included in any Draw Request after~~

the services are provided and incurred by DB Contractor. DB Contractor's responsibility for such support services shall terminate upon Final Acceptance of the Project, except that DB Contractor shall ensure that any expert witnesses employed by DB Contractor-Related Entities are available to assist TxDOT in connection with any condemnation proceedings, including discovery, depositions, pre-hearings and hearings after Final Acceptance. Notwithstanding the foregoing, TxDOT shall be responsible for the legal costs for the Office of the Attorney General or fees for private counsel retained ~~as directed by the Office of the Attorney General to represent TxDOT~~ in connection with any condemnation actions, except for such legal fees and costs that arise out of the acts, omissions, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental Approval of a DB Contractor-Related Entity in the performance of its obligations under the Contract Documents.

4. Section 4.4.2.5 of the General Conditions is hereby amended as follows:

4.4.2.5 If any DB Contractor-Related Entity holds a real property interest, including a fee, easement or option to purchase, in a parcel located in the Schematic ROW, a mitigation site or a parcel on which a drainage easement shall be located, TxDOT, ~~in its sole discretion, may elect to perform some or all of the real property acquisition services required under the Contract Documents that are associated with such parcel. In such event, TxDOT shall be entitled to deduct TxDOT's Recoverable Costs incurred in performing such services.~~ Any risk of delay associated with the acquisition of the real property encumbered by the DB Contractor-Related Entity's property interest, including delay caused by condemnation proceedings, shall be borne by DB Contractor and shall not be eligible for time extension. The price paid by the DB Contractor-Related Entity for the real property interest acquired in such parcel may, in TxDOT's sole discretion, be disregarded as a comparable price for purposes of appraisal or condemnation of such parcel.

5. Section 4.4.2.6 of the General Conditions is hereby amended as follows:

4.4.2.6 If a parcel acquired by TxDOT includes (a) property for which TxDOT is responsible for paying the price of acquisition (i.e., Schematic ROW Additional Properties that must be acquired due to a TxDOT-Directed Change or a Necessary Basic Configuration Change or a Relief Event) and (b) property for which DB Contractor is responsible for paying the price of acquisition (i.e., DB Contractor-Designated ROW), DB Contractor shall reimburse TxDOT a pro rata share of the parcel's total purchase price and related fees and costs based on the physical area of the property referenced in clause (b) of this Section 4.4.2.6 as a proportion of the combined physical area of the properties referenced in clauses (a) and (b) of this Section 4.4.2.6 that is acquired by TxDOT.

6. Section 4.4.5.1 of the General Conditions is hereby amended as follows:

4.4.5.1 Negotiations for any Project ROW Additional Properties shall be undertaken as set forth in the Contract Documents, including Section 15.4.1 of the Design-Build Specifications. DB Contractor shall obtain TxDOT's written approval of any offer to be extended to an owner of any interest in Project ROW Additional Properties prior to making such offer, in accordance with Section 15.3.6 of the Design-Build Specifications. DB Contractor shall notify TxDOT in writing, for its concurrence, of the failure of negotiations with respect to the acquisition of any parcel included in the Project ROW Additional Properties and shall submit to TxDOT for approval a Condemnation Package for the parcel as described in Section 15.4.4 of the Design-Build Specifications. Subject to the limitation on the number of concurrent packages set forth in Section 15.2.4 of the DB Specifications, TxDOT shall have 10 Business Days either to (a) approve the Condemnation Package or (b) provide its comments or request for additional information to DB Contractor if TxDOT determines that the Condemnation Package is incomplete or otherwise deficient. DB Contractor shall incorporate any suggested changes and provide any additional information requested by TxDOT and shall resubmit the Condemnation Package to TxDOT for review and approval. TxDOT shall have 10 Business Days to approve or provide comments to DB Contractor on any resubmittals.

7. Section 4.4.5.2 of the General Conditions is hereby amended as follows:

4.4.5.2 Condemnation proceedings for Additional Properties will be brought by TxDOT within a reasonable time following approval by TxDOT of a complete Condemnation Package for the parcel as described in Section 15.4.4 of the Design-Build Specifications. TxDOT will deliver the petition for the parcel to DB Contractor within 105 days from the date of approval of the Condemnation Package. For ~~Project ROW~~ Additional Properties other than DB Contractor-Designated ROW, TxDOT will provide the payment for the parcel within 45 days from the date the Special Commissioners' award is filed with the court. For DB Contractor-Designated ROW, DB Contractor will provide the payment for the parcel after the date the Special Commissioners' award is filed with the court. Subject to the cost reimbursement provisions in Exhibit 11 to the DBA, DB Contractor shall cooperate in all respects with TxDOT and shall cause all expert witnesses, appraisers, surveyors, land planners and other consultants utilized by DB Contractor in connection with the acquisition of the Project ROW subject to condemnation to be available to and assist TxDOT in connection with the condemnation proceedings, including discovery, depositions, prehearing preparation, Special Commissioners' hearing, jury trial, or other proceedings. Counsel engaged for settlement and condemnation proceedings shall be from the Office of the Attorney General or private counsel retained to representing TxDOT.

8. Section 4.4.5.3 of the General Conditions is hereby amended as follows:

Except as provided in Section 4.4.2.5, DB Contractor shall be entitled to a Change Order in accordance with Section 4.6.9.5 for delays to the Critical Path due to failure of TxDOT to make available the portion of the ~~Schematic ROW or any~~ Additional Properties that must be acquired due to a TxDOT-Directed Change, Relief Event, or a Necessary Basic Configuration Change, described in a condemnation packet within the number of days after approval of the Condemnation Package specified in Section 6.5 of the DBA, excluding any delay caused in whole or in part by an act, omission, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental Approval by any DB Contractor-Related Entity in performing the services required under the Contract Documents; provided, however, that the risk of delay following the expiration of such period shall be subject to the risk sharing provisions set forth in Section 6.5 of the DBA. In the event DB Contractor is entitled to an extension of a Completion Deadline, DB Contractor shall also be entitled to Project Overhead to the extent permitted in Section 4.6.6.2. The term "make available," as used herein, means to make available for (a) relocation of occupants and personal property, for occupied parcels, (b) demolition, for unoccupied, improved parcels, or (c) construction, for unoccupied, unimproved parcels. DB Contractor through due diligence shall initiate, cooperate and be responsible for all efforts necessary for the processing of the administrative portion of the condemnation action, up to and including the deposit of the award of Special Commissioners.

9. A new Section 4.4.5.4 of the General Conditions is hereby added after Section 4.4.5.3 of the General Conditions:

4.4.5.4 DB Contractor shall be entitled to a Change Order for Schematic ROW Delay to the extent set forth in Section 6.5 of the DBA.

10. Section 4.4.7 of the General Conditions is hereby amended as follows:

Except for delays caused by an event described in Section 4.4.5.3 and Section 4.4.5.4, DB Contractor shall not be entitled to any increase in the Price or time extension for delays caused by the failure or inability of TxDOT to provide Project ROW. Where DB Contractor makes a written request for access or rights of entry for any Project ROW for which access has not yet been acquired, DB Contractor may, with TxDOT's prior written consent, which may be withheld or withdrawn at any time, in TxDOT's good faith discretion, and subject to the

provisions of Section 4.4.6 above and Item 15 of the Design-Build Specifications, negotiate with property owners or occupants for early access or temporary use of land, provided that any such negotiations shall comply in all respects with applicable Law, including the Uniform Act. DB Contractor's negotiations with property owners or occupants for early rights-of-entry shall occur only under such terms and conditions as are stipulated by TxDOT. TxDOT shall not be bound by the terms and conditions agreed upon by DB Contractor and any property owner or occupant until such time as TxDOT has expressly so indicated in writing (and then only to the extent expressly set forth therein).