US290 DB Project

Design-Build Contract Term Sheet

This document provides background information and summarizes the major terms of the Design-Build Contract ("DBC") for the design and construction of the US290DB Project ("Project"), which may be entered into by the Texas Department of Transportation ("TxDOT") and a firm ("DB Contractor") to be selected based on responses to a Request for Proposals ("RFP"). The DBC is comprised of the Design-Build Agreement ("DBA") and the DBA General Conditions Items 1-9. Capitalized terms used and not defined herein have the meanings set forth in the Programmatic DBA General Conditions Items 1-9 on TxDOT's website (txdot.gov). This document is intended as a general description of the anticipated major contract terms of the DBC (which terms are subject to change by TxDOT in its sole discretion during the procurement process) and is not a restatement or interpretation of the DBC requirements. There are numerous details, exceptions and qualifications associated with the anticipated provisions described below that can only be ascertained by reviewing the DBC itself.

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Section 1 Contract Overview

1.1 DB Contractor & Design-Build Contract Date

DB Contractor to be determined.

TxDOT currently anticipates executing the DBC in Spring 2028.

1.2 Contract Documents

The Contract Documents include the Design-Build Agreement and exhibits; DBA General Conditions Items 1-9; Design-Build Specifications Items 10-28 and 32; all amendments to the foregoing; TxDOT's standard specifications; and all Change Orders issued.

1.3 Proposal Commitments

The Proposal will also be a Contract Document to the extent that it exceeds the requirements of the other Contract Documents, such that commitments made by the DB Contractor in the Proposal relating to the Work will be binding to the extent TxDOT determines such commitments are advantageous to TxDOT.

1.4 Reference Information Documents

The Reference Information Documents ("RIDs") are provided with the RFP. Portions of the RIDs are explicitly referenced in the Contract Documents for the purpose of defining requirements of the Contract Documents. Such portions are deemed incorporated in the Contract Documents solely to the extent that they are so referenced. The DB Contractor may rely on the RIDs only to the extent expressly set forth in the DBA.

1.5 Scope of Work

Except as otherwise specified, all work for design and construction of the Project (the "Work") will be the responsibility of the DB Contractor. 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.

See the Request for Qualifications ("RFQ") for further details regarding the Scope of Work.

1.6 Alternative Technical Concepts ("ATC")

If the Contract Documents incorporate any approved ATCs and either: (a) the DB Contractor does not comply with one or more TxDOT conditions applicable to the ATC; or (b) the DB Contractor does not obtain a third-party approval that may be required for the ATC, then the DB Contractor must comply with the Contract Document requirements that would have applied but for the ATC, including acquiring DB Contractor-Designated ROW necessary to comply with the Contract Documents, without any increase in the Price, extension of the Completion Deadlines, or any other Change Order.

1.7 Notices to Proceed

TxDOT anticipates issuing two Notices to Proceed ("NTP"). Notice to Proceed 1 ("NTP1") is expected to be issued concurrently with execution of the DBC.

Issuance of NTP1 authorizes the DB Contractor to perform the portion of the Work necessary to obtain TxDOT's approval of the Project Management Plan, Quality Management Plan and Project Baseline Schedule 2; to enter the Project Right of Way ("ROW") that TxDOT owns in order to conduct surveys and site investigations, including geotechnical, Hazardous Materials and Utilities investigations; to perform certain ROW acquisition services; and to

commence negotiating and entering into Utility Agreements with Utility Owners.

Provided all other conditions to Notice to Proceed 2 ("NTP2") are satisfied, TxDOT anticipates issuing NTP2 concurrently with:

(a) TxDOT's approval of the Project Management Plan and Quality Management Plan,

(b) TxDOT's approval of the Project Baseline Schedule 2, and

(c) availability for occupancy of field office(s) and core office space.

Issuance of NTP2 authorizes the DB Contractor to perform all other Work and activities pertaining to the Project.

DB Contractor may begin Design Work prior to issuance of NTP2 upon TxDOT's written confirmation that DB Contractor has satisfied all of the conditions in the DBC relating to the Design Work.

If NTP1 is not issued within 180 days after the Proposal Due Date and the DB Contractor does not, in whole or in part, cause the delay, the Price will be subject to adjustment (based on the Engineering News-Record ("ENR") Construction Cost Index) until issuance of NTP1. If NTP1 is not issued within 365 days from the Effective Date, the DB Contractor may terminate the DBC.

If NTP2 is not issued within 270 days after the Proposal Due Date or [90] days after the issuance of NTP1 and the DB Contractor does not, in whole or in part, cause the delay, the Price will be subject to adjustment (based on the ENR Construction Cost Index).

Section 2 Price, Security ~~and~~ & Payments

2.1 Price

This is a fixed price, lump sum contract, to be paid based on progress and subject to a Maximum Payment Schedule. The Price will remain valid without adjustment until 180 days after the Proposal Due Date. Except in the case of adjustment due to delays to NTPs or changes in the ENR Construction Cost Index during a specified Adjustment Period, the Price is only subject to adjustment via Change Order.

2.2 Payment Obligations & Progress Payment Limitations

TxDOT will make payments based on Work progress as evidenced by a monthly Draw Request submitted by the DB Contractor in the form attached to the DBC.

A Maximum Payment Schedule provided with the Proposal establishes a cap on the aggregate amount of progress payments that may be paid to the DB Contractor each month over the term of the DBC. The Maximum Payment Schedule is subject to change to account for any changes in the Price due to Change Orders or amendments.

2.3 Proposal, Performance, Payment & Warranty Bonds

A Proposal Bond in the amount of $15 million will remain in place as security for performance of the DB Contractor's obligations. Upon receipt of Payment and Performance Bonds meeting the requirements of the DBC (and other documents required for NTP1), the Proposal Bond will be returned.

Payment and Performance Bonds in the amount of $15 million will be required as security for the DB Contractor's obligations as a condition for issuance of NTP1.

Upon issuance of NTP2, the amount of the Payment and Performance Bonds will increase to an amount equal to the portion of the Price allocable to Construction Work less the cost of Construction Work performed by Utility Owners.

If the Price is increased in connection with a Change Order, TxDOT may, in its sole discretion, require a corresponding proportionate increase in the amount of each bond.

2.4 Guaranty

Each guaranty assures performance of DB Contractor's obligations under the Contract Documents and must be maintained in full force and effect so long as DB Contractor has any obligations under the Contract Documents.

Guaranties may be required pursuant to the terms of the RFQ and RFP.

In addition, if at any time after execution of the DBC, the total combined net worth of DB Contractor, its equity members or partners (as applicable), and any Guarantors, decreases to less than 90% of the total combined tangible net worth of these entities as reflected in the Proposal, TxDOT may require one or more guarantees from a Guarantor acceptable to TxDOT so that DB Contractor's combined net worth meets the 90% threshold.

DB Contractor must report the net worth of DB Contractor, its joint venture members, partners, and Guarantors, as applicable, to TxDOT, twice per year by means of certifications by the Chief Financial Officers ~~CFOs~~ of the applicable entities.

Guarantor or DB Contractor (as applicable) must provide certain financial information periodically.

2.5 Mobilization

The DB Contractor is entitled to payment for mobilization in installments in an amount equal to the bid item price for mobilization, not to exceed 10% of the Price.

Section 3 Completion Deadlines, Schedule And Delay

3.1 Completion Deadlines

Time is of the essence. DB Contractor commits to develop the Project in accordance with the time periods set forth in the Contract Documents.

The deadline for Substantial Completion of the Project will be the date set forth in the Proposal (which may be constrained in accordance with the RFP). The entire Project must be opened to traffic on or before such deadline.

The deadline for Final Acceptance is 120 days after Substantial Completion.

TxDOT has no obligation to extend the Completion Deadlines, except as specifically provided. (See Change Order section below.)

3.2 Schedule

The DB Contractor must perform the Work in accordance with an approved comprehensive critical path schedule. The baseline schedule will be the schedule submitted with the Proposal and any changes must be approved by TxDOT as a condition to NTP2. The schedule will be updated monthly during the Work and used for payment, planning and monitoring progress of the Work. If the DB Contractor falls behind schedule, a recovery schedule to regain lost time is required.

3.3 Delay

Liquidated damages may be assessed for delays in meeting the deadlines for Substantial Completion and Final Acceptance. (See Liquidated Damages section below.)

TxDOT has the right to terminate the DBC if Substantial Completion is delayed beyond 365 days after the Substantial Completion Deadline or Final Acceptance is delayed beyond 180 days after the Final Acceptance Deadline.

3.4 Substantial Completion

TxDOT will issue a written Certificate of Substantial Completion when Substantial Completion occurs.

The DBC provides certain criteria that TxDOT may consider and require satisfaction of in determining whether Substantial Completion has occurred:

- (a) whether all major safety features, all required illumination, and required signs and signals are installed and functional
- (b) whether the need for temporary traffic controls or for Lane Closures at any time has ceased
- (c) whether all lanes of traffic set forth in the Released for Construction Documents are in their final configuration and available for public use
- (d) whether the DB Contractor has otherwise completed the Work in accordance with the Contract Documents and Released for Construction Documents
- (e) any additional conditions set forth in the DBC are fulfilled

3.5 Final Acceptance

Promptly after Substantial Completion, the DB Contractor must perform all remaining Work, including: (a) completion of all Punch List items, (b) all landscaping, and (c) aesthetic features.

DB Contractor must prepare and adhere to a timetable for planting and establishing the landscaping, which will provide for landscaping to be planted prior to Final Acceptance.

TxDOT will issue a Certificate of Final Acceptance at such time as certain conditions are satisfied.

These conditions include, but are not limited to:

- (a) TxDOT has issued the Certificate of Substantial Completion
- (b) all Punch List items have been completed and delivered to the reasonable satisfaction of TxDOT
- (c) TxDOT has received the as-built drawings
- (d) all manufacturers' warranties, guarantees, instruction sheets, parts lists, and other product data have been submitted to TxDOT
- (e) the DB Contractor has performed final cleanup in accordance with the requirements of the Contract Documents
- (f) the DB Contractor has delivered to TxDOT a certification representing there exists no uncured DB Contractor Default
- (g) no uncured DB Contractor Defaults exist and

- (h) all of the DB Contractor's other obligations under the Contract Documents have been satisfied in full or waived

3.6 Early Opening

Prior to Substantial Completion, TxDOT has the right to open to traffic portions of the Project, to the extent such portions are safe and necessary or advisable, in TxDOT's sole determination, for traffic circulation. Early openings do not constitute Substantial Completion or Final Acceptance of the Project or waive any requirements.

Section 4 Contract Rights ~~and~~ & Responsibilities

4.1 Control of Work

The DB Contractor is solely responsible for and will have control over Project safety, the construction, and the Site, and shall be solely responsible for coordinating all portions of the Work under the Contract Documents, subject, however, to all requirements contained in the Contract Documents.

The DB Contractor shall take all reasonable precautions and be solely responsible for the safety of, and shall provide protection to prevent damage, injury, or loss to, all persons on the Site or who would reasonably be expected to be affected by the Work.

The DB Contractor must ensure that all of its activities are undertaken in a manner that will minimize the effect on surrounding property and the traveling public to the maximum extent practicable.

4.2 Prevailing Wages

DB Contractor must 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 DBA and in the statutes and

regulations applicable to public works contracts, including Chapter 2258 of the Texas Government Code and the Davis-Bacon Act.

4.3 Right of Way

TxDOT will acquire the Project ROW within the boundaries included in the NEPA schematics ("Schematic ROW"). DB Contractor will be responsible for acquiring any additional real property needed for the Project outside the Schematic ROW, including drainage easements, in accordance with the Contract Documents, the approved Right of Way Acquisition Management Plan and all applicable Laws. All Project ROW must be acquired by the DB Contractor in the name of the State.

DB Contractor may be entitled to compensation and an extension of the schedule for any delays to the Critical Path caused by TxDOT's inability to provide access to any parcel of Schematic ROW by the applicable access date for the parcel set forth in the Contract Documents.

DB Contractor is responsible for all costs and expenses in connection with acquiring real property, improvements and fixtures outside of the Schematic ROW that DB Contractor determines is necessary or advisable to be acquired for the Project and which acquisition is approved by TxDOT.

DB Contractor is responsible for the cost of any temporary construction easements or other temporary property interests.

4.4 Design and Construction

The DB Contractor is responsible for the design and construction of the Project in accordance with the Contract Documents.

4.5 Design Liability

The DB Contractor assumes full responsibility and liability with respect to design of the Project, including correction of any errors, omissions, inconsistencies or other defects in the Schematic Design affecting constructability.

4.6 Quality Management

The DB Contractor is responsible for all quality assurance and quality control activities necessary to fulfill all of its obligations under the Contract Documents. The DB Contractor must undertake all aspects of quality assurance and quality control for the Project and Work in accordance with the approved Quality Management Plan and Good Industry Practice.

The roles of the PSQAF and PSQAM have been removed for this Project. DB Contractor staff shall be responsible for all quality assurance and quality control activities related to professional services.

If the Independent Quality Firm ("IQF") or Subcontractor to the IQF is under contract or enters into a contract with TxDOT to provide materials inspection and testing services at a fabrication plant that is producing materials for the Project, the DB Contractor shall notify TxDOT, and the DB Contractor cannot use TxDOT Materials and Tests Division to perform such services at that fabrication plant. In such event, the IQF shall perform 100% of the services in accordance with the relevant provisions of the Construction Quality Management Plan ~~CQMP~~ and Section 3.5 of the QAP for DB Projects.

4.7 Oversight

TxDOT and its Authorized Representative have the right at all times to monitor, inspect, sample, measure, attend, observe or conduct tests and investigations, and conduct any other oversight respecting any part or

aspect of the Project or the Work, to the extent necessary or advisable to: (a) comply with the Federal Highway Administration ("FHWA"), U.S. Army Corps of Engineers ("USACE") or other applicable federal agency requirements, and (b) verify the DB Contractor's compliance with the Contract Documents. The DB Contractor at all times must coordinate and cooperate, and require its Subcontractors to coordinate and cooperate, with TxDOT and its representatives to facilitate TxDOT's oversight activities.

4.8 Standards

The DB Contractor must furnish all aspects of the Work and construct the Project and Utility Adjustments included in the Work as designed, free from defects and in accordance with (a) Good Industry Practice, (b) the requirements, terms and conditions set forth in the Contract Documents, (c) the Project Schedule, (d) all Laws, (e) the requirements, terms and conditions set forth in all Governmental Approvals, (f) the approved Project Management Plan, Quality Management Plan and all component plans prepared or to be prepared thereunder, and (g) the Released for Construction Documents, in each case taking into account the Project ROW limits and other constraints affecting the Project.

The DB Contractor may apply for TxDOT's approval of Deviations from applicable Design-Build Specifications regarding the Work in accordance with the Contract Documents. (See Deviations section below.)

4.9 Warranties

DB Contractor warrants that: (a) all Work furnished pursuant to the Contract Documents will conform to Good Industry Practice, (b) all Construction Work will be free of defects, including design Errors, (c) all Design Work shall meet the standard of care for engineering and architectural services set forth in the General Conditions, (d) the Project will

be fit for use for the intended function, (e) materials and equipment furnished under the Contract Documents will be of good quality and new, and (f) the Work will meet all of the requirements of the Contract Documents.

The Warranties commence at Substantial Completion and include a general warranty for the Project that runs concurrently with performance warranties for specified elements of the Project. The Warranty Term for the general warranty commences on the date of Substantial Completion and extends until one year after Final Acceptance of the Project, except that for elements of the Project that will be owned by Persons other than TxDOT (such as Utility Owners), the Warranty Period will be from the date of acceptance by such Persons until one year thereafter. For the performance warranties, the Warranty Term for each Performance Warranty Element, will be for the applicable number of years after Final Acceptance set forth in Attachment 32-1 to Item 32 of the Design-Build Specifications.

The Warranties apply to all Work re-done, repaired, corrected or replaced pursuant to the terms of the DBC. Following acceptance by TxDOT of re-done, repaired, corrected or replaced Work, the Warranties as to each such element of the Work will extend beyond the original Warranty Term.

4.10 Clayton Act Assignment

DB Contractor assigns to TxDOT all right, title and interest in and to all claims and causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15), arising from purchases of goods, services or materials pursuant to the Contract Documents or any Subcontract.

This assignment becomes effective at the time TxDOT tenders Final Payment to DB Contractor, without further acknowledgment by the Parties.

Section 5 Environmental ~~and~~ & Performance Risks

5.1 Permits & Approvals

TxDOT has obtained or will obtain the following permits and governmental approvals based on the schematic design as specified in the Contract Documents: NEPA Finding of No Significant Impact ("FONSI") and USACE Section 404 N~~n~~ationwide P~~p~~ermit 14 Pre-Construction Notice. The DB Contractor will be responsible for obtaining all other permits and government approvals.

5.2 New Environmental Approvals

The DB Contractor is responsible for obtaining all new environmental approvals or changes to existing approvals. If a new or revised environmental approval becomes necessary for any reason other than for a TxDOT-Directed Change or Other Relief Event, the DB Contractor will bear full responsibility for all costs and delays.

5.3 Environmental Compliance

The DB Contractor is responsible for performance of all environmental mitigation measures and compliance with all other conditions and requirements of the Contract Documents and Environmental Approvals, including TxDOT-Provided Approvals and similar Governmental Approvals for the Project, other than any mitigation requirements which TxDOT has expressly agreed to perform.

Section 6 Contract Changes & Costs Outside The Contract

6.1 Change Orders

A Change Order or Directive Letter is required for any increase to Price or time extension.

TxDOT may issue a unilateral Change Order at any time.

For each Request for Change Order, DB Contractor must prepare a scope of work, cost estimate, time impact analysis and other information.

If the DB Contractor requests a time extension, then TxDOT may require DB Contractor to provide two alternative Requests for Change Order, one that provides for a time extension and any permitted additional costs, and another that shows all Acceleration Costs associated with meeting the non-extended Completion Deadlines, as well as any permitted additional costs.

Change Orders are subject to strict requirements (including notice & delivery).

Any increase to the Price under any Change Order may not include: (i) the amount of any insurance available to the DB Contractor, (ii) any deductible or self-insured retention associated with such insurance, or (iii) the amount of any insurance coverage required under the DBC that is deemed to be self-insured by the DB Contractor.

6.2 Differing Site Conditions

Subject to the following limits, the DB Contractor is entitled to a Change Order for certain additional costs resulting from the existence of Differing Site Conditions. The DB Contractor is fully responsible for costs up to the Differing Site Conditions Deductible ($[__]) incurred for changes in the Work resulting from each separate occurrence of Differing Site Conditions, subject to the Differing Site Conditions Aggregate Deductible Cap ($[__]). Except for project overhead to be calculated in accordance with the DBC for each day that a Completion Deadline is extended, delay and disruption damages are not recoverable.

DB Contractor will be allowed a time extension for certain delays to the Critical Path resulting from Differing Site Conditions. The risk of such delays

will be shared between DB Contractor and TxDOT, provided DB Contractor's responsibility for such delays is capped, as set forth in the DBC. If DB Contractor is prohibited from working at a particular location due to the discovery of Differing Site Conditions for which DB Contractor is entitled to a Change Order during the last 12 months prior to a Completion Deadline, then DB Contractor shall be entitled to an extension of the applicable Completion Deadline(s) for any Critical Path delays resulting from such discovery of Differing Site Conditions.

6.3 Supply Chain Disruptions

DB Contractor is entitled to a Change Order extending the Completion Deadlines for delays to the Critical Path resulting from unavailability of materials due to:

(a) Any earthquake, tornado, hurricane or other natural disaster that (i) occurs in Texas and (ii) has been proclaimed a disaster or state of emergency by the President of the United States, the Governor of the State of Texas, or the Federal Highway Administrator;

(b) Any epidemic in the State of Texas;

(c) Any blockade, rebellion, war, riot, act of sabotage, act of terrorism or civil commotion, in each case that occurs on the soil of the continental United States;

(d) Any other cataclysmic phenomena of nature, as determined by TxDOT in its good faith discretion; and

(e) Any other national shortage of materials that is the subject of a directive by the State of Texas or federal government.

The risk of such delays will be shared between DB Contractor and TxDOT, provided DB Contractor's responsibility for such delays is capped, as set forth in the DBC. DB Contractor shall only be entitled to a time extension for delays due to the foregoing events if such events (and the effects of such events) are beyond the control of the DB Contractor-Related Entities and are not due to (1) an act, omission, negligence, recklessness or intentional misconduct of or (2) breach of contract or Law or violation of any Governmental Approval by, any of the DB Contractor-Related Entities, and further provided that such events (or the effects of such events) could not have been avoided by the exercise of caution, due diligence, or reasonable efforts by any DB Contractor-Related Entity. DB Contractor will be entitled to project overhead to be calculated in accordance with the DBC for each day that a Completion Deadline is extended. DB Contractor will not be entitled to an increase in the Price for any other additional costs incurred as a result of supply chain disruptions.

6.4 Special Events Delays

The DBC will include lane closure restrictions during special events in the region. DB Contractor will be entitled to a Change Order extending the Completion Deadlines for certain delays to the Critical Path due to changes in the dates or times of such special events or the addition of a new special event.

DB Contractor will not be entitled an increase in the Price for additional costs incurred by DB Contractor due to changes to the special events.

6.5 Third Party Agreements

DB Contractor is entitled to a Change Order (a) to compensate DB Contractor for certain additional costs incurred and (b) to extend the applicable Completion Deadlines as the result of any delay in a Critical Path,

directly caused by modifications to DB Contractor's obligations resulting from new third party agreements or modifications to existing third party agreements. DB Contractor shall not be entitled to any relief for any new third party agreements or modifications to existing third party agreements unless the delays and the effects of such delays are beyond the control of the DB Contractor-Related Entities.

Except for project overhead to be calculated in accordance with the DBC for each day that a Completion Deadline is extended, delay and disruption damages are not recoverable.

(See Other Relief Events section below for relief for modifications to draft third party agreements included in the RIDs as of the proposal due date.)

6.6 [Reserved]

6.7 Railroads

The parties acknowledge and agree that there are no railroad crossings that warrant additional coordination with the railroad outside of the notices provided.

6.8 Deviations

The DB Contractor may apply for TxDOT's approval of Deviations from applicable technical requirements regarding the Work. All applications must be in writing. TxDOT has no obligation to approve any such application. No Deviation is deemed approved or effective unless and until stated in writing signed by TxDOT's Authorized Representative.

TxDOT's lack of issuance of a written approval for any Deviation within 14 days after DB Contractor's application is deemed a disapproval of such application.

TxDOT's denial or disapproval of a requested Deviation is final and not subject to dispute resolution procedures.

Any material change in the Basic Configuration must be approved by TxDOT and authorized by a Change Order.

6.9 Nonconforming Work

TxDOT may, but is not obligated to, accept Nonconforming Work without requiring it to be fully corrected, in which case TxDOT is entitled to reimbursement of a portion of the Price in accordance with the Contract Documents.

Nonconforming Work rejected by TxDOT must be removed and replaced so as to conform to the requirements of the Contract Documents, at DB Contractor's cost and without any adjustment to the Price or any Completion Deadline or any other relief, and DB Contractor must promptly take all action necessary to prevent similar Nonconforming Work from occurring in the future.

6.10 TxDOT-Directed Changes

The DB Contractor is entitled to a Change Order providing for a Price adjustment and/or a time extension for:

- (a) changes in the scope of the Work or terms and conditions of the Contract Documents;
- (b) suspensions of the Work by TxDOT for more than 48 hours per suspension or 96 hours total;
- (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 subsurface utility engineering ("SUE") report identified in Appendix 2 to Exhibit 3 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.

6.11 Hazardous Materials

The DB Contractor is not entitled to any compensation or time extension with respect to: (a) immaterial quantities, (b) Hazardous Materials that could have been avoided by reasonable design modifications or construction techniques, (c) costs that could have been avoided, (d) Hazardous Materials on Additional Properties designated by the DB Contractor, (e) Hazardous Materials encountered during the demolition of buildings, structures, fixtures or other improvements within the Site, other than in improvements on parcels to which access was not provided prior to the Proposal Due Date, (f) Hazardous Materials management costs resulting from DB Contractor's acts or omissions, or (g) Hazardous Materials brought onto the Site by the DB Contractor.

The DB Contractor may request a Change Order to extend a Completion Deadline for a delay directly attributable to discovery of Hazardous Materials that changes the duration of a Critical Path. DB Contractor is not entitled to an extension of any Completion Deadline for any delays resulting from the discovery of Hazardous Materials prior to submission of a notice.

The DB Contractor may request a Change Order to increase the Price for Hazardous Materials Management for Pre-existing Hazardous Materials as

follows: DB Contractor is 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 $[__] but do not exceed $[__], (b) 100% of Reimbursable Hazardous Materials Management Costs for Pre-existing Hazardous Materials encountered by DB Contractor that exceed $[__], 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. Such reimbursement is limited to the incremental reasonable, out-of-pocket Direct Costs incurred for Phase II site assessment costs conducted in accordance with the DBC and the handling, transport, removal and disposal of Pre-existing Hazardous Materials after completion of the testing process to determine whether Pre-existing Hazardous Materials are present.

If DB Contractor encounters Hazardous Materials for which DB Contractor is entitled to compensation, and Hazardous Materials Management of such Hazardous Materials results in delays to the Critical Path, DB Contractor bears 100% of the risk of such Hazardous Materials Delay up to an amount of 30 days per location and up to an aggregate amount of 120 days for all locations on the Project. If the DB Contractor is prohibited from working at a particular location due to the discovery of Hazardous Materials for which the DB Contractor is entitled to a Change Order during the last 12 months prior to a Completion Deadline, then the DB Contractor is entitled to an extension of the applicable Completion Deadline for any Critical Path delays resulting from such discovery of Hazardous Materials. Except for Project Overhead to be calculated in accordance with the DBC for each day that a

Completion Deadline is extended, delay and disruption damages are not recoverable.

As between TxDOT and the DB Contractor, TxDOT will be considered the generator of Hazardous Materials and assume generator responsibility for Hazardous Materials except for DB Contractor Releases of Hazardous Materials.

6.12 Utilities

The DB Contractor is responsible for performing all necessary utility adjustment work and is not entitled to a Change Order for performance of adjustment work that was initially anticipated to be performed by a Utility Owner.

The DB Contractor is entitled to a Change Order (a) increasing the Price to compensate the DB Contractor for any increase in costs incurred in performing the Utility Adjustment Work that is directly attributable to a New Utility and (b) extending the applicable Completion Deadline as a result of any delay in the Critical Path directly attributable to performing the Utility Adjustment Work directly attributable to a New Utility.

DB Contractor is entitled to an increase in the Price in connection with certain increases in the cost of the Work due to Unidentified Utilities within the Schematic ROW. The amount of the Price increase in any Change Order issued for each such Unidentified Utility facility is equal to the Basic Costs for that facility, less the Unidentified Utilities Deductible ($[__]) (which deductible amount is the DB Contractor's sole responsibility). Notwithstanding the foregoing, DB Contractor is not responsible for a total amount of Unidentified Utilities Deductibles in excess of the Unidentified Utilities Deductible Cap ($[__]).

DB Contractor will be allowed a time extension due to certain delays resulting from the need to relocate Unidentified Utilities, delays caused by uncooperative Utility Owners and delays caused by each Utility Owner that fails to comply with any timelines for the Utility Owner's performance in the executed Utility Agreement. The cumulative risk of such delays will be shared between DB Contractor and TxDOT, provided DB Contractor's responsibility for such delays is capped, as set forth in the DBC. Except for project overhead to be calculated in accordance with the DBC for certain days that a Completion Deadline is extended, delay and disruption damages are not recoverable for such delays.

Subject to the limitations set forth in the DBC, DB Contractor may request a Change Order to (a) increase the Price to compensate the DB Contractor for any increase in costs incurred, including project overhead and disruption damages, and (b) extend the applicable Completion Deadlines as a result of any delay in the Critical Path, directly attributable to changes to the scope of the work for the Utility Adjustment from the scope of the work agreed to by the Utility Owner in a Pre-Proposal Utility Commitment that was made by an authorized representative of the Utility Owner and approved by TxDOT prior to the due date for proposals for the Project. Except for project overhead to be calculated in accordance with the DBC for certain days that a Completion Deadline is extended, delay and disruption damages are not recoverable for such delays.

~~If required, [TxDOT anticipates entering into an Advance Utility Relocation Agreement with Energy Transfer for the relocation of a high power transmission line. DB Contractor is entitled to a Change Order (a) increasing the Price to compensate the DB Contractor for any increase in costs incurred and (b) extending the applicable Completion Deadline as a result of any failure by such Utility Owner to relocate its Utility in accordance with any~~

~~advance utility relocation agreement entered into with TxDOT. Except for project overhead to be calculated in accordance with the DBC for each day that a Completion Deadline is extended, delay and disruption damages are not recoverable.~~

6.13 Force Majeure Events

Subject to the following risk sharing, DB Contractor is entitled to additional time and/or compensation for specified Relief Events, including Force Majeure Events, that materially and adversely affect DB Contractor's obligations, provided such events are beyond the control of the DB Contractor-Related Entities and are not due to (1) an act, omission, negligence, recklessness or intentional misconduct of or (2) breach of contract or Law or violation of any Governmental Approval by, any of the DB Contractor-Related Entities, and further provided that such events (or the effects of such events) could not have been avoided by the exercise of caution, due diligence, or reasonable efforts by any DB Contractor-Related Entity.

The Force Majeure Events are:

(a) Any earthquake, tornado, hurricane or other natural disaster that (i) causes direct physical damage to the Project and (ii) has been proclaimed a disaster or state of emergency by the President of the United States, the Governor of the State of Texas, or a County Judge of a county in which the Project is located, unless and to the extent such damage is caused by the DB Contractor's action or inaction or the DB Contractor's means and methods of construction;

(b) Any epidemic in the region around the Project;

(c) Any blockade, rebellion, war, riot, act of sabotage, act of terrorism or civil commotion, in each case that causes direct physical damage to the Project; and

(d) Any other cataclysmic phenomena of nature or cataclysmic fire, as determined by TxDOT in its good faith discretion, that (i) causes physical damage to the Project or (ii) prevents any access to the Site.

The risk of such delays will be shared between DB Contractor and TxDOT, provided DB Contractor's responsibility for such delays is capped, as set forth in the DBC. Except for project overhead to be calculated in accordance with the DBC for days that a Completion Deadline is extended, delay and disruption damages are not recoverable.

6.14 Other Relief Events

The DB Contractor will be entitled to additional time and/or compensation for the following other Relief Events, in addition to and subject to the same conditions as Force Majeure Events:~~1~~

(a) The discovery at, near or on the Project ROW (excluding DB Contractor-Designated ROW) of any archaeological, paleontological or cultural resources provided that the existence of such resources or substances was not disclosed in, or ascertainable from, the RFP Documents, was not otherwise known to DB Contractor prior to the Proposal Due Date and would not have become known to DB Contractor by undertaking reasonable investigation prior to the Proposal Due Date;

(b) The discovery at, near or on the Project ROW (excluding DB Contractor-Designated ROW) of any species listed as a Threatened or Endangered Species (regardless of whether the species is listed as threatened or endangered as of the Proposal Due Date), provided that the presence of such species was not disclosed in, or ascertainable from, the RFP Documents, was not otherwise known to DB Contractor prior to the Proposal Due Date and would not have become known to DB Contractor by undertaking reasonable investigation prior to the Proposal Due Date;

(c) Any Change in Law, that (1) requires a material modification of the Project design, (2) requires DB Contractor to obtain a new major State or federal environmental approval not previously required for the Project, (3) results in an increase in DB Contractor's costs directly attributable to the Change in Law of at least $500,000, or (4) specifically targets the Project or DB Contractor;

(d) Any Third Party Release of Hazardous Materials or TxDOT Release of Hazardous Materials which: (1) occurs after the Proposal Due Date (and for Third Party Releases, also after the date TxDOT makes the parcel available to DB Contractor for the Work) and before the end of the Term, (2) is required to be reported to a Governmental Entity, (3) renders use of the roadway or construction area unsafe or potentially unsafe absent assessment, containment or remediation, and (4) with respect to Third Party Releases of Hazardous Materials, does not result from DB Contractor's failure to exercise reasonable efforts to protect the Site from third parties;

(e) Issuance of a temporary restraining order or other form of injunction by a court that prohibits prosecution of a material portion of the Work;

(f) The suspension, termination, interruption, modification, denial or failure to obtain or non-renewal of any TxDOT-Provided Approval, except to the extent that such suspension, termination, interruption, modification, denial or failure to obtain or non-renewal arises from failure by any DB Contractor-Related Entity to locate or design the Project or carry out the work in accordance with the TxDOT-Provided Approvals or other Governmental Approval;

(g) Modifications to a Governmental Approval that is DB Contractor's responsibility to obtain made by a Governmental Entity after formal issuance of the Governmental Approval, provided that the required modification is not due to changes to the Project initiated by DB Contractor;

(h) Modifications made after the Proposal Due Date to draft Third Party Agreements included in the RIDs; and

(i) Issuance of a new drainage permit by TxDOT that requires a material modification of the Project design where either (1) DB Contractor was not provided with the permit application or (2) DB Contractor was provided with the permit application and timely notified TxDOT of the specific conflict with DB Contractor's design.

~~**Potential Grave Site**~~

~~DB Contractor is responsible for site investigation, and any potential disinter and relocation of remains from the identified site.~~

~~DB Contractor will be entitled to additional compensation if remains are found within the identified site as follows: (a) 50% of DB Contractor's Direct Costs that exceed $25,000 but do not exceed $100,000; (b) 100% of DB Contractor's Direct Costs that exceed $100,000.~~

~~DB Contractor will not be entitled to any time extension associated with the discovery of a grave site within the Project ROW within the identified potential site.~~

6.15 Delay Deductible Aggregate Cap

DB Contractor's responsibility for delays to the Critical Path due to qualifying delays (Uncooperative Utility Delay, Utility Owner Delay, Differing Site Conditions Delay, Unidentified Utility Delay, Force Majeure Event Delay, and Eminent Domain Delay) shall not exceed 355 days (the "Delay Deductible Aggregate Cap"). If the Delay Deductible Aggregate cap is reached, DB Contractor will be entitled to a Change Order extending the Completion Deadlines for each day of delay to the Critical Path occurring after the Delay Deductible Aggregate Cap is reached that results from a qualifying delay, as well as project overhead to be calculated in accordance with the DBC for any days the Completion Deadlines are extended.

6.16 Matters Not Eligible for Change Orders

DB Contractor is responsible for all risks not specifically accepted by TxDOT. Examples of specific exclusions are identified in the DBC.

6.17 Potential Grave Site

DB Contractor is responsible for site investigation, and any potential disinter and relocation of remains from the identified site.

DB Contractor will be entitled to additional compensation if remains are found within the identified site as follows: (a) 50% of DB Contractor's Direct Costs that exceed $25,000 but do not exceed $100,000; (b) 100% of DB Contractor's Direct Costs that exceed $100,000.

DB Contractor will not be entitled to any time extension associated with the discovery of a grave site within the Project ROW within the identified potential site.

Section 7 Business Risks

7.1 Insurance

The DB Contractor is required to provide insurance coverage specified in the DBC, which must include at a minimum: builder's risk, commercial general liability, automobile liability, pollution liability, professional liability, workers' compensation and employer's liability, umbrella liability, and railroad protective liability.

Subcontractor insurance requirements are also specified in the DBC.

7.2 DB Contractor Defaults

The following are examples of DB Contractor Defaults:

- (a) Failure to begin Work within 30 days following issuance of NTP1 or NTP2, or failure to satisfy all conditions to commencement of the Construction Work, and commence the Construction Work with diligence and continuity

- (b) Failure to complete the Work by the applicable Completion Deadline

- (c) Failure to perform the Work in accordance with the Contract Documents

- (d) Suspending or ceasing the Work or failure to continuously and diligently prosecute the Work

- (e) Failure to obtain or maintain any insurance, bonds, guarantees, letters of credit (if any) or other performance security as and when required under the DBC

- (f) Voluntary or involuntary assignment or transfer of all or any portion of the DBC without TxDOT's prior written consent

- (g) Failure to make payment when due for labor or equipment or failure to make payment to TxDOT when due of any amounts owing to TxDOT

- (h) Failure to timely observe or perform any other material obligation, term, or condition under the DBC

- (i) Material misrepresentation by the DB Contractor

- (j) Voluntary or involuntary bankruptcy or insolvency

- (k) DB Contractor or, if DB Contractor is a joint venture, any Equity Member knowingly or intentionally fails to comply with a requirement of Subchapter J, Chapter 552, Government Code that is applicable to DB Contractor.

- (l) Persistent DB Contractor Default.

7.3 Cure of DB Contractor Defaults

The DB Contractor has an opportunity to cure certain DB Contractor Defaults, as described in the DBC.

7.4 TxDOT Remedies for DB Contractor Default

TxDOT has the right to exercise one or more of the following remedies in the event of an uncured DB Contractor Default:

- (a) Right to terminate
- (b) Right to deduct amounts (including interest) payable to TxDOT from amounts owing to the DB Contractor
- (c) Right to take immediate action in the event of emergency or danger
- (d) Right to recover damages
- (e) Right to make demand upon, draw on, enforce and collect any bonds, letters of credit, guaranty, or other performance security available to TxDOT for DB Contractor Default
- (f) Other remedies as provided by Law

7.5 DB Contractor's Right to Stop Work

The DB Contractor has the right to stop Work if TxDOT fails to make an undisputed payment within 15 Business Days after TxDOT's receipt of written notice of nonpayment from the DB Contractor. If such nonpayment continues for more than 180 days, upon written notice from the DB Contractor to TxDOT, the nonpayment may be deemed a Termination for Convenience.

7.6 Suspension

TxDOT may order the DB Contractor to suspend all or any part of the Work for the period of time that TxDOT deems appropriate. Such suspension for convenience will be considered a TxDOT-Directed Change, except for brief suspensions (not exceeding 48 hours each up to a total of 96 hours). Adjustments of the Price and the Completion Deadlines are available for any such TxDOT-Directed Change.

7.7 Termination

The DB Contractor may terminate the DBC if NTP1 has not been issued by TxDOT within 365 days after the Effective Date.

TxDOT may terminate the DBC for convenience or for the DB Contractor's default.

7.8 Liquidated Damages

Liquidated Damages for Delay: DB Contractor will pay liquidated damages to TxDOT with respect to any failure to achieve Substantial Completion and/or Final Acceptance by the applicable Completion Deadline unless the delay was directly attributable to a Qualifying Delay. The daily amounts of such liquidated damages are set forth in the DBA.

Qualifying Delay Late Fees: DB Contractor will pay liquidated damages to TxDOT with respect to any failure to achieve Substantial Completion and/or Final Acceptance by the applicable Completion Deadline due to a Qualifying Delay. The daily amounts of such Qualifying Delay Late Fees are set forth in the DBA.

Lane Closures and Liquidated Damages: Liquidated damages for Lane Closures outside of the approved time are set forth in the DBC.

Key Personnel Change Fees: Fees will be assessed, as set forth in the DBC, if DB Contractor changes Key Personnel, regardless of whether TxDOT approves a replacement.

Key Personnel Unavailability Liquidated Damages: Liquidated damages will be assessed, as set forth in the DBC, for each day that a relevant Key Personnel role is not filled by an approved individual.

7.9 Non-Compliance Points

The performance of the Work ~~will be~~ is subject to Non-Compliance Points, as set forth in the DBA. Non-Compliance Points may be assessed by TxDOT for certain breaches of the Contract Documents. The DB Contractor will be assessed liquidated damages for certain point thresholds. In addition, TxDOT will have the right to terminate the DBC for a DB Contractor Persistent Default evidenced by the accumulation of a certain number of Non-Compliance Points within a rolling 180-day period.

7.10 Indemnification

The DB Contractor shall indemnify, defend, and hold harmless TxDOT, the State of Texas, the Texas Transportation Commission, FHWA, TxDOT consultants, and their respective successors, assigns, officeholders, officers, directors, agents, representatives, consultants and employees for the actual or alleged culpable act, error, omission, negligence, breach, or misconduct of any DB Contractor-related entity in or associated with performance of the Work, any actual or threatened release of hazardous materials, breach of the DBC, and failure to comply with applicable Laws or Governmental Approvals, among other things.

Section 8 Other Contract Provisions

8.1 Dispute Resolution

Informal resolution procedures and compliance with the Dispute Review Panel procedures are prerequisites and conditions to resolution of Disputes under the Dispute Resolution Procedures set forth in the DBC.

A three-member Disputes Review Panel (Panel) will be established to assist TxDOT and DB Contractor with the resolution of any Disputes that arise during the term of the DBC. TxDOT and DB Contractor will each appoint one Panel member, and the two party-appointed Panel members will appoint a Panel Chairperson. The Panel will meet with TxDOT and DB Contractor and inspect the Project site on at least a quarterly basis and will provide non-binding recommendations regarding any Dispute raised by a party.

If a Dispute is not timely resolved after a recommendation is provided by the Panel, the parties must commence the Informal Resolution Procedures, during which the officers/directors of the parties will meet to attempt to resolve the Dispute. After the conclusion of the Informal Resolution Procedures, if the Dispute was not resolved to the Parties' satisfaction: (a) the Parties may mutually agree to initiate mediation, or (b) either Party may refer the Dispute to the formal Dispute Resolution Procedures.

The formal Dispute Resolution Procedures include the contract claims process established pursuant to Texas Transportation Code Section 201.112 and Title 43, Texas Administrative Code, Section 9.2.

The Disputes Review Panel procedures and Dispute Resolution Procedures do not apply to certain Ineligible Matters.

8.2 Records and Documentation; Software

The DB Contractor must submit all submittals to TxDOT through TxDOT's electronic content management system.

In addition, the DB Contractor must (i) establish its own electronic content management system in a format that is subject to approval by TxDOT and (ii) maintain all project records and documents in accordance with Texas State Records Retention Schedule. DB Contractor is required to provide certain contracting information if requested by TxDOT as a result of a request pursuant to the Public Information Act.

Design Submittals shall be in the most recent version of OpenRoads Designer utilized by TxDOT.

The DB Contractor may be required to purchase additional software as required for the Project.

8.3 Escrowed Proposal Documents ("EPD")

The DB Contractor's detailed Proposal pricing information (EPDs) will be kept at TxDOT's project office in locked fireproof cabinets with the keys held only by the DB Contractor.

EPDs are the property of the DB Contractor and will be considered to be in the DB Contractor's possession.

EPDs must be available for joint review by DB Contractor, TxDOT and TxDOT's consultants, and any dispute resolver(s).

Change Order documentation must be added to EPDs.

EPDs will be maintained until all of the following have occurred: (a) 180 days from the later of Final Acceptance or termination of the DBC, (b) all Claims or Disputes regarding the Work have been settled, (c) all Warranty Terms have expired, and (d) Final Payment has been made and accepted.

8.4 DBE Provisions; Subcontractors

TxDOT's Disadvantaged Business Enterprise ("DBE") Program for design-build contracts is based on TxDOT's standard DBE Program with certain modifications to accommodate the design-build approach.

It is anticipated that there will be separate DBE goals for professional services and construction services that will be set forth in the RFP. The DB Contractor must exercise good faith efforts to achieve the DBE participation goals if such goals are set for the Project.

The DB Contractor may only retain Subcontractors that are qualified, experienced and capable in the performance of the portion of the Work assigned. After execution of the DBC, the DB Contractor must select subcontractors based on procedures approved by TxDOT.

DB Contractor must provide 100% of any cost savings to TxDOT, if the DB Contractor replaces a Subcontractor that is identified in the Proposal, unless the replacement is for a reason that is specified in the DBC.

The DB Contractor is required to include flow down required terms into subcontracts. Subcontracts must be fully assignable to TxDOT. Dispute procedures involving Subcontractors must contain additional requirements.

8.5 Key Personnel

Certain job categories of Key Personnel for the Project are identified. Except for certain reasons specified in the DBC, Key Personnel may not be substituted. Liquidated damages may be assessed for unavailability of Key Personnel.

8.6 Assignment

The DB Contractor may not assign its interests in the DBC without TxDOT's prior written approval.

TxDOT may assign its interests in the DBC: (a) without the DB Contractor's consent, to any other public agency or public entity as permitted by Law, (b) without the DB Contractor's consent, to any other Person that succeeds to the governmental powers and authority of TxDOT, and (c) to any other Person with the prior written approval of the DB Contractor.