



**CENTRAL TEXAS
Regional Mobility Authority**

AGENDA ITEM #12 SUMMARY

Approve and authorize execution of a design-build contract with Colorado River Constructors for the 183 South (Bergstrom Expressway) Project.

Strategic Plan Relevance: Regional Mobility

Department: Engineering

Associated Costs: \$581,545,700

Funding Source: 183 South (Bergstrom Expressway) Project Funds

Board Action Required: Yes

Description of Matter:

Resolution No. 15-032, approved by the Board of Directors on May 27, 2015, authorized the Executive Director to negotiate and finalize a design-build contract with Colorado River Constructors (an entity to be formed by Fluor and Balfour Beatty Infrastructure) for the 183 South (Bergstrom Expressway) Project.

Mobility Authority staff and Colorado River Constructors have completed these negotiations. The Executive Director now seeks Board approval of the design-build contract and the authority to execute that contract on behalf of the Mobility Authority.

Reference: Proposed 183 South Design Build Contract
Draft Resolution

Contact: Wesley M. Burford, P.E., Director of Engineering

Execution Copy

Bergstrom Expressway (183 South) Project

DESIGN/BUILD CONTRACT

Dated as of July ___, 2015

By and Among

Central Texas Regional Mobility Authority,
a regional mobility authority operating pursuant to
Texas Transportation Code Chapter 370

and

Colorado River Constructors,
an unincorporated joint venture between Fluor Enterprises, Inc.
and Balfour Beatty Infrastructure, Inc.
("D/B Contractor")

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DESIGN/BUILD CONTRACT
(Bergstrom Expressway (183 South) Project)

This **DESIGN/BUILD CONTRACT ("D/B Contract")** is made and entered into as of July __ 2015, by and between the **CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY** (the "**Mobility Authority**"), a regional mobility authority created by Travis and Williamson Counties located in central Texas and operating pursuant to Chapter 370 of the Texas Transportation Code, and **COLORADO RIVER CONSTRUCTORS**, an unincorporated joint venture between Fluor Enterprises, Inc. and Balfour Beatty Infrastructure, Inc. ("**D/B Contractor**"), with reference to the following facts:

A. The Mobility Authority desires to develop as a toll road a portion of existing US 183 extending for approximately 8 miles between US 290 and SH 71 in Austin, Texas (such roadway and alignment including its intersections with other highways and roads, bridges and other facilities, including toll gantries and other toll facilities, as more specifically described in the Scope of Work (Exhibit B) and Technical Provisions (Exhibit C), are the "**Project**").

B. The Mobility Authority has determined that it is in the best interests of the Mobility Authority and the public to contract with a single entity to develop, design and construct the Project.

C. Pursuant to Chapter 370 of the Texas Transportation Code (the "**Act**"), 43 Tex. Admin. Code, Chapter 26 (the "**Rules**"), and the Mobility Authority's Policies and Procedures Governing Procurement of Goods and Services ("**Mobility Authority Procurement Policies**"), the Mobility Authority issued a Request for Qualifications on April 14, 2014 (the "**RFQ**"). The RFQ was supplemented by information posted on the Mobility Authority website.

D. On August 1, 2014, the Mobility Authority received responses to the RFQ from prospective D/B Contractors.

E. On September 24, 2014, the Mobility Authority's Board of Directors (the "**Board**"), in accordance with the recommendation of an RFQ evaluation committee, shortlisted prospective D/B Contractors based upon their responses to the RFQ.

F. On December 18, 2014, pursuant to the Act, the Rules, and the Mobility Authority Procurement Policies, the Mobility Authority issued a final Request for Detailed Proposals ("**RFDP**") to the prospective D/B Contractors shortlisted by the Board. Addendum No. 1 to the RFDP was issued on March 5, 2015. Addendum No. 2 to the RFDP was issued on March 20, 2015.

G. The Mobility Authority received three (3) responses to the RFDP on April 16, 2015.

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BERGSTROM EXPRESSWAY (183 SOUTH) PROJECT

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H. After review and analysis and in accordance with applicable law, rules, policies, and the RFDP, an RFDP evaluation committee comprised of Mobility Authority staff and consultants determined that D/B Contractor was the proposer which best met the selection criteria contained in the RFDP and that its proposal was the one which provided the best value to the Mobility Authority.

I. On , 2015, the Mobility Authority Board accepted the recommendation of the Mobility Authority Project Director and the RFDP evaluation committee and authorized the Mobility Authority staff to negotiate and finalize this D/B Contract.

J. The Executive Director of the Mobility Authority has been authorized to enter into this D/B Contract pursuant to a resolution of the Mobility Authority Board dated July 29, 2015.

K. D/B Contractor's team includes the following Major Participants: Parsons Brinckerhoff, Inc.; AECOM Technical Services, Inc.; and Raba-Kistner Infrastructure, Inc.

L. The Parties intend for this D/B Contract to be a fixed price, lump sum contract obligating D/B Contractor to perform all work necessary to complete the Design/Build Work by the deadlines set forth in the D/B Contract and in a manner satisfactory to the Mobility Authority, for the Design/Build Price, subject only to certain specified limited exceptions set forth herein. D/B Contractor submitted with its Proposal a fixed price for the Project, and the Contract Documents provide that the Mobility Authority has no liability for any portion of the Design/Build Work for which a notice to proceed ("NTP") has not been issued. In order to allow the Mobility Authority to budget for and finance the Project and to reduce the risk of cost overruns, this D/B Contract includes restrictions affecting D/B Contractor's ability to make claims for an increase to the Design/Build Price or an extension of the Interim Completion Deadline, the Completion Deadline or the Acceptance Deadline herein.

M. If D/B Contractor fails to complete the Design/Build Work within the time limitations set forth in the Contract Documents, then the Mobility Authority will suffer substantial losses and damages which are impracticable and extremely difficult to ascertain. The Contract Documents therefore provide that D/B Contractor shall pay the Mobility Authority substantial Liquidated Damages in the event any such completion is delayed, on the conditions provided herein.

N. The Reference Documents include a Schematic Plan for the design of the Project. The Mobility Authority and D/B Contractor both intend for D/B Contractor to assume full responsibility and liability with respect to development of a Project Design of the Project, including correction of any errors, omissions, inconsistencies or other defects in the Schematic Plan affecting constructability, and for D/B Contractor to indemnify, defend and hold each of the

Indemnified Parties harmless with respect to any defects in the Project which may relate to errors, omissions, inconsistencies or other defects in the Schematic Plan.

NOW, THEREFORE, in consideration of the sums to be paid to D/B Contractor by the Mobility Authority, the foregoing promises and the covenants and agreements set forth herein, the Parties hereby agree as follows:

1. CONTRACT COMPONENTS.

1.1 Certain Definitions.

Initially capitalized terms not otherwise defined in the body of this D/B Contract shall have the definitions set forth in Exhibit A of this D/B Contract.

1.2 Order of Precedence.

Each of the Contract Documents is an essential part of this D/B Contract. The Contract Documents are intended to be complementary and to describe and provide for a complete D/B Contract. In the event of any conflict among the Contract Documents or between the Contract Documents and other documents, the order of precedence shall be as set forth below. For design and construction related standards and requirements, the order of precedence shall be:

- (a) Change Orders and D/B Contract amendments;
- (b) This D/B Contract (including Exhibit A but exclusive of other exhibits, unless specifically referred to in the body of the D/B Contract);
- (c) The Proposal, to the extent that it exceeds the requirements of the other Contract Documents. In other words, if the Proposal includes statements that can reasonably be interpreted as offers to provide higher quality items than otherwise required by the Contract Documents or to perform services in addition to those otherwise required, or otherwise contains terms which are more advantageous to the Mobility Authority than the requirements of the other Contract Documents, D/B Contractor's obligations hereunder shall include compliance with all such statements, offers and terms. All such statements, offers and terms are set forth in Exhibit Q and are specifically incorporated into this Design/Build Contract. In no event, unless specifically provided herein, shall the Proposal supercede a higher standard or obligation contained elsewhere in the Contract Documents.
- (d) Scope of Work (Exhibit B to this D/B Contract);
- (e) Technical Provisions, as modified by any ATCs accepted by the Mobility Authority and included in Exhibit O hereto (Exhibit C to this D/B Contract);

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- (f) TxDOT Standards and TxDOT Specifications; and
- (g) AASHTO Guidelines.

Certain of the Appendices to Exhibit D which are listed as Reference Documents are referenced in the Contract Documents for the purpose of defining requirements of the Contract Documents. Each such Appendix shall be deemed incorporated in the Contract Documents to the extent that it is so referenced, with the same order of priority as the highest level Contract Document in which the reference occurs. Additional details and more stringent requirements contained in a lower priority document will control unless the requirements of the lower priority document present an actual conflict with the requirements of the higher level document. Notwithstanding the order of precedence among Contract Documents set forth in this Section 1.2, in the event of a conflict within a Contract Document or set of Contract Documents with the same order of priority (including within documents referenced therein), the Mobility Authority shall have the right to determine, in its sole discretion, which provision applies. D/B Contractor shall request the Mobility Authority's determination respecting the order of precedence among such provisions promptly upon becoming aware of any such conflict.

In the event that the Contract Documents are ambiguous with respect to, or allow more than one choice of, the standard or course of action applicable to the completion of any portion of the Design/Build Work and the Mobility Authority and D/B Contractor cannot agree as to the appropriate standard or course of action, the Mobility Authority shall, in its reasonable discretion, determine the applicable standard or course of action that best preserves the long term durability, maintainability, and safety of the Project.

1.3 Referenced Standards.

1.3.1 Unless otherwise specified by the Mobility Authority, any reference in the Contract Documents to a described publication affecting any portion of the Design/Build Work shall be deemed to mean the latest edition or revision thereof, and amendments and supplements thereto, in effect on the Proposal Date.

1.3.2 In interpreting Referenced Standards:

- (a) References to the Project owner shall mean the Mobility Authority; and
- (b) References to "**plan(s)**" shall mean the Design Documents.

2. GENERAL FRAMEWORK AND OUTLINE OF TRANSACTION.

2.1 Type of Transaction.

This D/B Contract creates a partnering transaction to develop, design, permit, construct and insure the Project in accordance with the requirements of the Contract Documents.

2.2 Role of Parties to Transaction.

2.2.1 D/B Contractor's Role.

2.2.1.1 Prior to the issuance of NTP1, D/B Contractor may, at its sole option and risk, carry out certain Mobility Authority activities, including assisting and cooperating with the Mobility Authority, as it may request, in connection with the closing of the Project financing, including Bond financing, if any, and applications for State and federal assistance, by providing any reasonably requested information about D/B Contractor's organization and business.

2.2.1.2 From the issuance of NTP1 through Project Final Acceptance, D/B Contractor shall complete and manage the Design/Build Work at a fixed price (with certain limited exceptions thereto set forth in Section 14 of this D/B Contract) in compliance with the Contract Documents and in accordance with the Project Schedule, including but not limited to:

(a) Preparing or causing to be prepared all plans and specifications in accordance with TxDOT and FHWA approvals and other Governmental Approvals, applicable Law, this D/B Contract and the other Contract Documents, and any amendments thereto;

(b) Acquiring any required D/B Contractor Designated ROW;

(c) Performing Utility Adjustment Work in accordance with the Contract Documents;

(d) Obtaining (if not previously obtained by the Mobility Authority) and complying with all necessary Governmental Approvals;

(e) Completing the Design/Build Work in accordance with the Design Documents and the Project Schedule;

(f) Monitoring and ensuring quality completion by all members of the D/B Contractor Group of all aspects of the Design/Build Work;

(g) Providing quality control and material quality assurance with respect to the Design/Build Work, subject to Mobility Authority quality acceptance, oversight, testing and involvement and directives;

(h) Providing the Payment Bond and the Performance Bond in accordance with this D/B Contract;

(i) Maintaining or causing to be maintained in place insurance policies which satisfy the insurance requirements set forth in this D/B Contract;

(j) Warranting the Design/Build Work, to the extent required under this D/B Contract;

(k) Continuing to assist and cooperate with the Mobility Authority, as it may request, in connection with the Project financing by providing any reasonably requested information; and

(l) Complying with any requirements of the Mobility Authority applicable to the Project, that are contained in the Project Development, Operation, and Maintenance Agreement (the "**PDA**") between the Mobility Authority and TxDOT with respect to the Project, a copy of which is contained in Exhibit D – Item 12a. Such compliance requires assumption of the Mobility Authority obligations under the following sections of the PDA: 3 (maintenance activities), 4 (utility relocations), 5 (construction obligations), 6 (control of work), 7 (design), 8 (environmental permits and compliance), 10 (HUB policy and DBE guidelines), 11 (compliance with applicable laws), 13 (maintenance of records), and 20 (debarment requirements).

2.2.2 Mobility Authority's Role.

2.2.2.1 Prior to the issuance of NTP2, the Mobility Authority shall have the right to carry out certain financing-related and pre-construction activities, including:

(a) Participating in the negotiation of, and approving, the terms and conditions for the financing of the Project;

(b) Acquiring the Schematic ROW; and

(c) Taking all necessary action to advance the Project including working with the D/B Contractor in dealing with Governmental Entities, Railroads, Utilities, and other interested parties to obtain necessary permits and agreements.

2.2.2.2 From the date on which the Mobility Authority issues NTP1 through Project Final Acceptance, the Mobility Authority shall carry out certain design and construction-related activities, including:

(a) Undertaking and/or completing any of the activities set forth in Section 2.2.2.1 that are not completed as of the date on which the Mobility Authority issues NTP1.

(b) Overseeing the completion of the Design/Build Work in accordance with this D/B Contract;

(c) Performing design quality acceptance and certain construction quality acceptance, testing and oversight services in connection with the Design/Build Work;

(d) Applying proceeds of Project financing toward, among other things, the payments under this D/B Contract;

(e) Acknowledging the occurrence of Interim Completion, Substantial Completion and Final Acceptance;

(f) Performing quarterly audit of processes, procedures and files to ensure compliance with the Uniform Act and State laws, rules and regulations; and

(g) Administering this D/B Contract.

2.2.2.3 From and after the commencement of tolling operations of the Project following Interim Completion and Substantial Completion thereof, the Mobility Authority shall have the right to carry out certain operations activities, including:

(a) Imposing tolls and fixing toll rates for use of the Project;

(b) Applying toll revenues to the purposes and in the priority permitted under Law;

(c) Administering this D/B Contract; and

(d) Enforcing the Warranties and any other Project warranties and guarantees.

2.3 Partnering.

2.3.1 Purpose; Scope.

The Mobility Authority intends to encourage the foundation of a cohesive partner relationship with D/B Contractor and its Subcontractors. The objectives include effective and efficient performance and completion of the Design/Build Work within budget, in accordance with the Project Schedule, and in accordance with the Contract Documents. An integral aspect of the partnering is the resolution of issues in a timely, professional and non-adversarial manner. The parties acknowledge that one of the keys to the success of these major projects is to build trust between the parties through communication and understanding. It is the Mobility Authority's belief that a strong partnering program will assist in promoting and maintaining an amicable working relationship.

2.3.2 Schedule; Participation.

Pursuant to Technical Provision 1.1.3.3, within 30 Days after issuance of NTP1, the D/B Contractor and the Mobility Authority jointly shall agree upon and select a third-party facilitator to conduct the partnering meetings. The cost of the facilitator shall be shared equally between the Mobility Authority and D/B Contractor. All costs of providing the partnering workshops, other than the cost of the partnering facilitator, shall be paid by the D/B Contractor. Partnering meetings may be conducted at the office of the Mobility Authority or at such location as otherwise agreed upon by the Parties. Persons who should attend the partnering meetings include Key Personnel and executives of the Parties.

2.3.3 Use of Information From Partnering Meetings.

Subject to the requirements of the Public Information Act, no statements made or materials prepared during or relating to partnering meetings, including any statements made or documents prepared by the facilitator, shall be admissible or discoverable in any judicial or other dispute resolution proceeding.

3. SCOPE OF DESIGN/BUILD WORK; ROLE OF THE PARTIES AND LOCAL AGENCIES; EFFECT OF TESTS AND INSPECTIONS.

3.1 Design/Build Work Scope.

The Design/Build Work includes D/B Contractor's obligation to furnish a complete design for the Project meeting all requirements of the Contract Documents, to construct the Project as designed and in accordance with all requirements of the Contract Documents and otherwise to comply with all of the requirements in this D/B Contract. D/B Contractor acknowledges that the Mobility Authority's designs of certain Project elements have been

advanced to different stages of development and are generally conceptual in nature and complete enough to support the Environmental Documents. The Reference Documents are provided as guidelines and programs to assist D/B Contractor in performing the Design/Build Work. D/B Contractor acknowledges that D/B Contractor is not entitled to rely on and has not relied on (i) the Reference Documents or (ii) any other documents or information provided by the Mobility Authority, except to the extent specifically permitted in the Contract Documents.

3.2 Project Location and Description.

A general description of the Project is set forth in the Scope of Work (Exhibit B).

3.3 Project Management Plan.

D/B Contractor shall plan, schedule, and execute all aspects of the Design/Build Work and shall coordinate its activities with all parties who are directly impacted by the Design/Build Work. D/B Contractor shall document and report all Design/Build Work in accordance with the requirements set forth herein and in an approved Project Management Plan. Within 30 Days after the issuance of NTP1, D/B Contractor shall submit the detailed Project Management Plan, which shall update and expand the project management plan contained in D/B Contractor's Proposal to meet the requirements contained in Technical Provisions 1 and 2, to the Mobility Authority for approval.

3.4 Mobility Authority's Role.

The Mobility Authority, or its designee, intends to oversee performance of the Design/Build Work for the purpose of confirming that the Design/Build Work meets the requirements of the Contract Documents. Mobility Authority responsibilities include design reviews and acceptance, construction inspection and acceptance, oversight of materials, acceptance of the Design/Build Work in accordance with Section 20, and establishment of priorities for the purpose of ensuring timely receipt of revenues. The Mobility Authority's role in oversight of D/B Contractor's design and construction quality is detailed in Technical Provision 2. The Mobility Authority will also serve as a liaison with regulatory agencies in connection with D/B Contractor's application for Environmental Approvals and/or amendments or re-evaluations for which D/B Contractor is responsible, provided that the ultimate responsibility for obtaining such Environmental Approvals shall remain with D/B Contractor and the D/B Contractor shall not be entitled to a Change Order for additional time or compensation due to any action or inaction of the Mobility Authority with respect to such liaison service. The Mobility Authority will provide the Mobility Authority-Provided Approvals in accordance with the Contract Documents. The Mobility Authority will assist D/B Contractor in efforts to obtain any required TxDOT and FHWA approvals, provided that the ultimate responsibility for such reviews and approvals shall remain with D/B Contractor and the D/B Contractor shall not be

entitled to a Change Order for additional time or compensation due to any action or inaction by the Mobility Authority related to such assistance. The Mobility Authority, or its designee, will also administer this D/B Contract, including: review and approval of progress payments; Project Schedule review and approval; performance evaluation; Change Order negotiation; and dispute resolution. The Mobility Authority will designate a Project Engineer to assist the Mobility Authority with the administration and oversight of the Design/Build Work. The Resident Engineer is not authorized to waive any requirements or provisions of this D/B Contract.

3.5 Local Agencies Roles.

Elements of the Design/Build Work on local roads may be subject to review, approval, inspection, testing, and/or acceptance by local agencies. In addition, certain environmental mitigation measures identified in the Environmental Documents may require coordination with local agencies. D/B Contractor shall take such actions as are necessary to obtain all needed local Governmental Approvals and ensure coordination with local agencies, in each case, as required to undertake and complete the Design/Build Work, but D/B Contractor shall not make any commitment or enter into any obligations that will affect or impact the Mobility Authority or TxDOT without the written consent of the Mobility Authority and/or TxDOT, as the case may be.

3.6 D/B Contractor Obligations.

3.6.1 D/B Contractor shall design and construct the Project in conformity with the Basic Configuration and in general conformity with the Schematic Plan, in accordance with all professional engineering principles and construction practices generally accepted in the State as the standard in the industry, in a good and workmanlike manner, free from defects and in accordance with the terms and conditions set forth in the Contract Documents. Except as otherwise specifically provided in the Contract Documents, all materials, services and efforts necessary to achieve Interim Completion on or before the Interim Completion Deadline, Substantial Completion on or before the Completion Deadline and Final Acceptance on or before the Acceptance Deadline shall be D/B Contractor's sole responsibility; and the cost of all such materials, services and efforts are included in the Design/Build Price. D/B Contractor acknowledges that it shall maintain the Design/Build Work until Final Acceptance, including repair of damage caused by accidents or vandalism, and that the cost of maintenance services for the Project prior to Final Acceptance is included in the Design/Build Price except as otherwise specified in the Contract Documents.

3.6.2 D/B Contractor shall furnish all design and other services, provide all supervision, labor, equipment and materials and undertake all efforts necessary or appropriate (excluding only those materials, services and efforts which the Contract Documents specify will be undertaken by other Persons) to construct the Project, achieve Interim Completion on or before the Interim

Completion Deadline, Substantial Completion on or before the Completion Deadline and Final Acceptance on or before the Acceptance Deadline and maintain the Design/Build Work during construction. In so doing, D/B Contractor shall comply with the requirements of the Contract Documents, the Project Schedule, all Governmental Approvals, the approved Project Management Plan, the approved Design Quality Management Plan, the approved Construction Quality Management Plan, the Quality Assurance Program, the approved Safety Plan and applicable Laws, and shall take into account the boundaries of the Schematic ROW, the Additional Properties and other physical constraints affecting the Project. Unless Utilities are relocated at the expense of a Utility Owner or a local government, D/B Contractor shall be responsible for reimbursing any Railroad and Utility Owners for Adjustments that they perform. D/B Contractor shall also be responsible for coordinating construction and other activities with any Railroad and Utility Owners and other contractors involved with the Project, and/or projects adjacent to the Project in order to ensure that the Project is able to open to the public and commence toll revenue service on or before the Completion Deadline.

3.6.3 D/B Contractor shall, at all times, provide a Project Manager approved in writing by the Mobility Authority, in its sole discretion, who will have full responsibility for the prosecution of the Design/Build Work and will act as a single point of contact in all matters on behalf of D/B Contractor. D/B Contractor shall not change the Project Manager or any other Category A Personnel, as described in Technical Provision 1, except for the reasons specified in Section 19.1.6, without the prior written approval of the Mobility Authority, in its sole discretion. If D/B Contractor fails to obtain the Mobility Authority's approval of a replacement within 30 Days after the existing Project Manager or Category A Person leaves, the Mobility Authority shall have the right to withhold payments under this D/B Contract until such time as an approved replacement has started work. In such event, the provisions of Sections 19.1.6 shall also apply. Moreover, D/B Contractor shall not change or replace any Major Participant without the prior written approval of the Mobility Authority, and the Mobility Authority may withhold payments under this D/B Contract until such time as a replacement Major Participant has been approved by the Mobility Authority.

3.6.4 D/B Contractor shall obtain and pay the cost of obtaining all Governmental Approvals except Mobility Authority-Provided Approvals. Prior to beginning any construction activities for any portion of the Project, D/B Contractor shall furnish the Mobility Authority with fully executed copies of all Governmental Approvals required for such portion of the Project and provide the Mobility Authority with all bonds required under this D/B Contract.

3.6.5 Except as provided in Sections 7.5.2 and 7.6, D/B Contractor shall, at its expense, undertake and properly perform all actions required by, and all actions necessary to maintain in full force and effect, all Governmental Approvals, including performance of all environmental mitigation and compliance measures required by the Contract Documents, Environmental Approvals and applicable Law.

3.6.6 D/B Contractor shall perform construction inspection, material sampling and testing in accordance with the Contract Documents and D/B Contractor's approved CQMP and the Mobility Authority's Quality Assurance Program.

3.6.7 D/B Contractor shall provide and maintain field offices as described in Technical Provision 1, which facilities shall be for the joint use of D/B Contractor, the Mobility Authority, the Resident Engineer and other Persons reasonably designated by the Mobility Authority.

3.6.8 D/B Contractor shall cooperate with the Mobility Authority and its agents and designated representatives in connection with all matters relating to the Project, including review of the design of the Project and conducting inspections during the construction of the Project.

3.6.9 D/B Contractor shall mitigate delay to the Project and mitigate damages due to delay in all circumstances, at no cost to the Mobility Authority except as otherwise specified herein, to the extent reasonably possible, including by resequencing, reallocating or redeploying its forces to other work, and obtaining additional personnel, equipment and materials, as necessary.

3.6.10 D/B Contractor shall, at all times, deliver design submittals in accordance with the Technical Provisions. D/B Contractor shall deliver to the Mobility Authority a written certification by the DQCM of the Final Design Plans for the Project in accordance with Technical Provision 2. If D/B Contractor fails to deliver such certification and approval to the Mobility Authority in accordance with the provisions of Technical Provision 2, the Mobility Authority shall have the right to withhold payments under this D/B Contract until such time as the Final Design Plans have been approved by the DQCM and the Mobility Authority, in its design quality acceptance role, in accordance with Technical Provision 2.

3.6.11 D/B Contractor shall, at its expense, provide for acquisition and relocation services to implement the acquisition of any D/B Contractor Designated ROW, including the actual real property cost.

3.7 Effect of Reviews, Inspections, Tests and Acceptances.

D/B Contractor shall not be relieved of any obligations to perform the Design/Build Work in accordance with the Contract Documents by reviews, tests, inspections or acceptances performed by any Persons, or by any failure of any Person to take such action. The reviews, inspections, tests and acceptances conducted or provided by the Mobility Authority and others do not constitute approval of the materials or Design/Build Work reviewed, tested or inspected, and the Mobility Authority may reject or accept any Design/Build Work or materials, request modifications or corrective actions, and/or identify additional Design/Build Work which must be done to bring the Project into compliance with the requirements of the Contract Documents at

any time prior to Project Final Acceptance, whether or not previous reviews, inspections, tests or acceptances were conducted by any such Persons; provided that Mobility Authority may not require D/B Contractor to change Design/Build Work to comply with requirements of the Contract Documents if Mobility Authority has previously approved a specific Deviation from such requirements in writing. Notwithstanding any design oversight, construction oversight, environmental oversight or other Project oversight activities by the Mobility Authority or any of the Indemnified Parties, the DQCM, the MQAM, or the Resident Engineer, D/B Contractor shall be solely responsible for the quality, safety and operability of the Project, through its compliance with the requirements of the Contract Documents, the Governmental Approvals and applicable Law.

4. INFORMATION SUPPLIED TO D/B CONTRACTOR; ACKNOWLEDGMENT BY D/B CONTRACTOR.

4.1 Information Supplied.

Exhibit D to this D/B Contract contains the list of Reference Documents that have been made available to D/B Contractor, and D/B Contractor acknowledges and agrees that it has been provided the opportunity to review all such documents.

4.2 Acknowledgment by D/B Contractor.

D/B Contractor agrees that it has full responsibility for the design of the Project and that D/B Contractor will furnish the design of the Project regardless of the fact that certain conceptual design work occurred and was provided to D/B Contractor prior to the Effective Date. D/B Contractor agrees that it has diligently reviewed and verified the Schematic Plan for errors, inadequacies, inaccuracies, omissions, inconsistencies or other defects which may affect constructability, durability, conformance with acceptable design standards and efficient and safe operation and has incorporated into the Design/Build Price all costs associated with Design/Build Work to correct said errors, inadequacies, inaccuracies, omissions, inconsistencies and other defects. D/B Contractor specifically acknowledges and agrees that:

(a) The Schematic Plan is preliminary and conceptual in nature.

(b) D/B Contractor is not entitled to rely on any documents or information provided by the Mobility Authority, including the RFDP Documents and the Reference Documents, except for overall conceptual guidance and then only to the extent expressly provided to the contrary herein.

(c) Subject to the oversight rights of the Mobility Authority under this D/B Contract, D/B Contractor shall correct any errors, inadequacies, inaccuracies, omissions and defects in the Schematic Plan which can be corrected through the design and/or construction

process and implement field changes serving the same purpose so long as such correction does not result in a material change in the Basic Configuration.

(d) The Mobility Authority shall have no liability for errors, inadequacies, inaccuracies, omissions and defects in the Schematic Plan. The foregoing shall not be deemed to limit the Mobility Authority's obligations with respect to Differing Site Conditions as set forth in Section 14.9, or D/B Contractor's right to receive any available insurance proceeds.

(e) The Warranties and indemnities hereunder given by D/B Contractor cover errors, omissions and defects in the Project, including those that may be related to errors, inadequacies, inaccuracies, omissions and defects in the Schematic Plan.

(f) Except as may be otherwise provided in Exhibit Q, D/B Contractor has independently determined that the Schematic Plan represents a feasible concept for the design of the Project which can and shall be used as the basis for the Project Design to be furnished by D/B Contractor, and agrees that it shall have no right to seek additional compensation or a time extension as a result of errors, omissions, inadequacies or inaccuracies in the Schematic Plan, except as specifically permitted by Section 14.

(g) THE MOBILITY AUTHORITY DOES NOT REPRESENT OR WARRANT THAT THE INFORMATION CONTAINED IN THE SCHEMATIC PLAN, AND OTHER REFERENCE DOCUMENTS IS EITHER COMPLETE, CORRECT OR ACCURATE OR THAT SUCH INFORMATION IS IN CONFORMITY WITH THE REQUIREMENTS OF THE ENVIRONMENTAL APPROVALS, APPLICABLE LAW OR OTHER CONTRACT DOCUMENTS. D/B CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR VERIFYING THE ACCURACY AND COMPLETENESS OF SUCH INFORMATION AND SHALL HAVE NO RECOURSE AGAINST THE MOBILITY AUTHORITY OR ITS AGENTS OR REPRESENTATIVES IF SUCH INFORMATION AND/OR ANY ASPECT OF THE SCHEMATIC PLAN OR OTHER REFERENCE DOCUMENTS PROVES TO BE INACCURATE, INCOMPLETE OR NOT IN CONFORMITY WITH THE ENVIRONMENTAL APPROVALS, APPLICABLE LAW OR OTHER CONTRACT DOCUMENTS.

(h) The Mobility Authority shall not be responsible or liable in any respect for any Loss suffered by any member of the D/B Contractor Group by reason of any use of any information contained in the Schematic Plan or any action or forbearance in reliance thereon. D/B Contractor further acknowledges and agrees that (i) if, and to the extent that any member of the D/B Contractor Group uses any of said information in any way, such use is made on the basis that D/B Contractor, not the Mobility Authority, has approved of such use and information and is responsible for said information, (ii) D/B Contractor is capable of conducting and is obligated hereunder to conduct any and all studies, analyses and investigations as it deems advisable to

verify or supplement said information, and (iii) any use of said information is entirely at D/B Contractor's own risk and at its own discretion.

(i) The Schematic Plan is hereby incorporated by reference herein to the extent, and only to the extent, that it sets forth the Basic Configuration of the design of the Project. Accordingly, in general, D/B Contractor may deviate from the Schematic Plan as it deems advisable, provided that it must obtain prior written approval by the Mobility Authority and/or a Change Order hereunder with respect to any material change by D/B Contractor from the Basic Configuration, except as may be otherwise provided in Exhibit O. Furthermore, D/B Contractor's right to deviate from the Schematic Plan and the Basic Configuration is subject to D/B Contractor's compliance with all applicable requirements of the Contract Documents.

(j) The topography mapping, Utility characteristics (including ownership, types, sizes and locations) and the exploratory geotechnical investigations presented in the Reference Documents may or may not represent the actual subsurface conditions along the present alignment of the Project. Except to the extent that Section 14 provides for an increase in the Design/Build Price and/or extensions of the Interim Completion Deadline, Completion Deadline and/or Acceptance Deadline with respect to such matter, the Mobility Authority accepts no responsibility for the accuracy of the topographical mapping, Utility information or geotechnical information provided, or for information concerning the location or extent of Hazardous Materials, archaeological features, endangered species or vegetation or D/B Contractor's interpretation of any information provided. Furthermore, D/B Contractor acknowledges and agrees that the existing surface conditions, including Utility characteristics as specified above, may have changed or may be different from the surface conditions depicted in the Reference Documents. Except to the extent, if any, that Section 14 provides for an increase in the Design/Build Price and/or extensions of the Interim Completion Deadline, Completion Deadline and/or Acceptance Deadline with respect to such matter, the Mobility Authority accepts no responsibility for the accuracy of any depiction of surface or subsurface conditions in the Reference Documents or D/B Contractor's interpretation of any information provided.

(k) The Proposal, to the extent that it meets or exceeds the requirements of the other Contract Documents, as provided in Section 1.2(c) hereof, imposes obligations on D/B Contractor hereunder, provided such Proposal shall not supercede a higher standard or obligation contained elsewhere in the Contract Documents.

(l) D/B Contractor is obligated to comply with any TxDOT approval or other TxDOT requirements applicable to the Project, the Mobility Authority, or D/B Contractor contained in or required by the PDA, as specified in Section 2.2.1.1(l) hereof.

4.3 Changes in Basic Configuration.

4.3.1 Except as may be otherwise provided in Exhibit O, D/B Contractor shall not make any material change in the Basic Configuration except as approved by the Mobility Authority (with concurrence by TxDOT and FHWA) and authorized by a Change Order. Except as set forth in Section 4.3.3, a Change Order is required regardless of the reason underlying the change and regardless of whether the change increases, decreases or has no effect on D/B Contractor's costs. Any such Change Order shall be subject to the conditions and requirements contained in this Section 4.3, as well as the conditions and requirements which are generally applicable to Change Orders in Section 14 and subject to the limitations contained in Section 7.6.

4.3.2 D/B Contractor shall be responsible for any cost increases and/or delays which affect the duration of a Critical Path activity resulting from changes in requirements and obligations of D/B Contractor relating to the Project due to inaccuracies in the Schematic Plan. Any changes in the Basic Configuration shall be the responsibility of D/B Contractor with the exception of a Mobility Authority-Directed Change involving more than \$50,000 in additional costs or involving a delay to a Critical Path.

4.3.3 No Change Order shall be required for any non-material changes in the Basic Configuration which have been approved by the Mobility Authority, in writing. D/B Contractor acknowledges and agrees that constraints set forth in the Mobility Authority-Provided Approvals, TxDOT Standards and TxDOT Specifications and other Contract Documents, as well as site conditions and the Schematic Plan, will impact D/B Contractor's ability to make changes in the Basic Configuration.

5. TIME WITHIN WHICH PROJECT SHALL BE COMPLETED; PROJECT SCHEDULE AND PROGRESS.

5.1 Time of Essence; Notices to Proceed.

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

5.1.2 Authorization allowing D/B Contractor to proceed with Design/Build Work hereunder shall be provided through the Mobility Authority's issuance of NTP1 and NTP2.

5.1.3 The Mobility Authority anticipates issuing NTP1 concurrently with execution and delivery of this D/B Contract. Issuance of NTP1 authorizes D/B Contractor to enter the Project ROW in order to conduct surveys and site investigations, including geotechnical, Hazardous Materials and Utilities investigations. It also authorizes D/B Contractor to commence Design Work in accordance with the Technical Provisions.

5.1.4 The Mobility Authority anticipates issuing NTP2 following the Finance Closing Date. Issuance of NTP2 authorizes D/B Contractor to perform all other Design/Build Work and activities pertaining to the Project. Notwithstanding issuance of NTP2, D/B Contractor shall not be permitted to commence Construction Work on any portion of the Project until all the conditions to the commencement of Construction Work set forth in Section 7.1 have been satisfied.

5.2 **Guaranteed Completion.**

5.2.1 **Completion Deadline.**

5.2.1.1 Subject to the adjustments of the Interim Completion Deadline, Completion Deadline and Acceptance Deadline as provided in the Contract Documents, D/B Contractor shall achieve Substantial Completion of the Project no later than 1,515 Days after the issuance of NTP1.

5.2.1.2 The deadline for Substantial Completion set forth above, as it may be extended hereunder, is referred to herein as the "**Completion Deadline.**"

5.2.2 **Interim Completion Deadline.**

Subject to the adjustments of the Completion Deadline, Interim Completion Deadline, and Acceptance Deadline as provided in the Contract Documents, D/B Contractor shall achieve Interim Completion of the Interim Design/Build Work by no later than 1,190 Days after the issuance of NTP1. The deadline for Interim Completion, as it may be extended hereunder, is referred to herein as the "**Interim Completion Deadline.**"

5.2.3 **Acceptance Deadline.**

D/B Contractor shall achieve Final Acceptance of the Project within 120 Days after Substantial Completion of the Project. The deadline for Final Acceptance of the Project, as such deadline may be extended hereunder, is referred to herein as the "**Acceptance Deadline.**"

5.2.4 No Time Extensions.

Except as otherwise specifically provided in Section 14, the Mobility Authority shall have no obligation to extend the Interim Completion Deadline, Completion Deadline or Acceptance Deadline, and D/B Contractor shall not be relieved of its obligations to achieve (a) the milestones described in the Project Schedule; (b) Interim Completion of the Interim Design/Build Work by the Interim Completion Deadline; (c) Substantial Completion of the Project by the Completion Deadline; or (d) Final Acceptance by the Acceptance Deadline.

5.3 Project Schedule.

The planning, design, construction, development and completion of the Design/Build Work shall be undertaken and completed in accordance with the Project Schedule approved by the Mobility Authority in writing, as revised and updated from time to time. The Project Schedule shall be used by the Parties for planning and monitoring the progress of the Design/Build Work and as the basis for determining the amount of monthly progress payments to be made to D/B Contractor.

5.4 Project Schedule Submittals.

D/B Contractor shall deliver the Project Schedule submittals described in Technical Provision 5.

5.5 Recovery Schedule.

5.5.1 In accordance with Technical Provision 5, a Recovery Schedule is required at the request of the Mobility Authority, whenever D/B Contractor's Design/Build Work is delayed on any Critical Path deadline date for a period which exceeds the lesser of (a) 30 Days in the aggregate or (b) that number of Days which, in the aggregate, is equal to 5% of the Days remaining until the Completion Deadline for the Project, excluding Mobility Authority-Caused Delays and any other delays for which D/B Contractor is entitled to seek an extension.^{1/} In such event, D/B Contractor shall include, as part of the next Monthly Update revision submittal, a Recovery Schedule demonstrating D/B Contractor's program and proposed plan to address Project Schedule delays in order to achieve Interim Completion of the Interim Design/Build Work by the Interim Completion Deadline, Substantial Completion of the Project by the Completion Deadline and Final Acceptance of the Project by the Acceptance Deadline.

^{1/} For example, if there are 80 Days remaining to the Completion Deadline for the Project, 5% of that number would be 4 Days. In that case, D/B Contractor would be obligated to provide a Recovery Schedule if D/B Contractor was behind schedule by more than 4 Days.

5.5.2 All costs incurred by D/B Contractor in preparing and implementing the Recovery Schedule shall be borne by D/B Contractor and shall not result in a change to the Design/Build Price, except to the extent permitted in accordance with Section 14 or Section 5.5.3.

5.5.3 If a Recovery Schedule would be required in order to achieve either Interim Completion of the Interim Design/Build Work by the Interim Completion Deadline or Substantial Completion of the Project by the Completion Deadline as the result of an event described in Section 14 and D/B Contractor would be entitled under this D/B Contract to an increase in the Design/Build Price to implement such Recovery Schedule, the Mobility Authority shall have the right, in its sole discretion, to decide whether to allow a time extension or to require implementation of the Recovery Schedule without such time extension, provided that provision by D/B Contractor of such a Recovery Schedule is commercially reasonable. In such event, D/B Contractor shall submit to the Mobility Authority at least two alternative Change Order forms, one of which shall include a Recovery Schedule and show the proposed Acceleration Costs associated with the Recovery Schedule, and the other of which shall provide for an extension of the Completion Deadline without any increase in the Design/Build Price (except as provided in Section 14). If the Mobility Authority elects to implement the Recovery Schedule in lieu of a time extension, the Mobility Authority shall issue a Change Order increasing the Design/Build Price to account for and include the additional Acceleration Costs. If it is not feasible to regain the time lost under the Project Schedule so as to meet the Interim Completion Deadline or Completion Deadline or if D/B Contractor believes that the Acceleration Costs associated with such a recovery are prohibitive, then D/B Contractor shall recommend a time extension in the Change Order form.

5.5.4 If a Recovery Schedule is required hereunder, D/B Contractor shall provide such Recovery Schedule in writing within ten (10) Business Days of Mobility Authority's request.

5.5.5 Notwithstanding anything in the Contract Documents to the contrary, there shall be no Event of Default for D/B Contractor's unexcused delay in achieving the Interim Completion Deadline, Completion Deadline or Acceptance Deadline by the dates allowed under the Contract Documents or D/B Contractor's provision of a schedule showing an unexcused delay in achieving any such deadlines so long as (i) such delay is no greater than 180 Days and (ii) notwithstanding the liability cap contained in Section 18.3 hereof, the D/B Contractor pays Liquidated Damages to the Mobility Authority for each Day of actual delay beyond the applicable completion or acceptance deadline. Notwithstanding any approval rights that the Mobility Authority may have concerning a Recovery Schedule or anything else in the Contract Documents to the contrary, the amount of schedule recovery and D/B Contractor's means and methods of schedule recovery, shall be in the D/B Contractor's discretion so long as the D/B Contractor's unexcused delay meets the requirements set forth in the preceding sentence.

5.6 Float.

All Float contained in the Project Schedule shall be considered a Project resource available to either Party or both Parties, on an as-needed basis, to achieve Project Schedule milestones, Interim Completion by the Interim Completion Deadline, Substantial Completion by the Completion Deadline and/or Final Acceptance by the Acceptance Deadline. All Float shall be shown in the Project Schedule on each Project Schedule submittal. Identification of (or failure to identify) Float on the schedule shall be evaluated by the Mobility Authority in determining whether to approve the Project Schedule. Once identified, Float shall be monitored, accounted for and maintained in accordance with critical path methodology.

6. RIGHT OF WAY SERVICES.

6.1 Acquisition of Final ROW.

Acquisition of Final ROW shall be undertaken and completed in accordance with the requirements and obligations of this Section 6 and Technical Provision 7.

6.2 Costs of Acquisitions.

6.2.1 The parties hereto acknowledge that, as between the Mobility Authority and D/B Contractor, Mobility Authority shall be responsible for the purchase price for (i) all parcels, exclusive of Existing Utility Property Interests, within the Schematic ROW, and (ii) any real property outside of the Schematic ROW that must be acquired due to a Mobility Authority-Directed Change, and shall be responsible for all right of way engineering, administration, acquisition and related services for all such parcels, including all costs and expenses of negotiation and condemnation proceedings. Only TxDOT or the Mobility Authority may initiate condemnation proceedings.

6.2.2 D/B Contractor shall be responsible for all costs and expenses of performing the right of way services described in Technical Provision 7 in connection with acquiring all D/B Contractor-Designated ROW, Existing Utility Property Interests and New Utility Property Interests including the purchase price, and all costs and expenses of obtaining necessary Environmental Approvals, right of way engineering, administration, acquisition and related services. D/B Contractor shall pay all costs and expenses of D/B Contractor and all reasonable costs and expenses of the Mobility Authority (and TxDOT, if applicable) in connection therewith, whether the acquisition is by negotiation or condemnation, including the reasonable costs for private counsel retained by the Mobility Authority (or TxDOT) for such purposes. If the Mobility Authority (or TxDOT) incurs any such costs and expenses on D/B Contractor's behalf, the Mobility Authority (or TxDOT) may submit any invoices for such costs and expenses to D/B Contractor, in which case D/B Contractor shall pay the invoices prior to delinquency. If

the Mobility Authority (or TxDOT) pays any such costs and expenses on D/B Contractor's behalf, D/B Contractor shall reimburse the Mobility Authority (or TxDOT, as applicable) within 10 Days of the submittal to D/B Contractor of an invoice for such costs and expenses. Alternatively, the Mobility Authority may deduct the amount of such costs and expenses from any sums owed by the Mobility Authority to D/B Contractor pursuant to this D/B Contract.

6.2.3 All costs and expenses for the acquisition of any temporary right or interest in real property that D/B Contractor determines necessary or desirable for its convenience in constructing the Project, such as for work space, laydown areas, materials storage areas or temporary utility relocation, or for any permanent interest in real property that D/B Contractor may wish to acquire for its convenience which will not be part of the Final ROW, shall be D/B Contractor's sole responsibility, to be undertaken at D/B Contractor's sole cost and expense. The Mobility Authority shall have no obligations or responsibilities with respect to the acquisition, maintenance or disposition of such rights or interests, and is not required to use its powers of eminent domain in connection therewith. D/B Contractor will comply with all applicable Laws in acquiring and maintaining or disposing of any such property rights or interests. D/B Contractor shall cause the documentation of any such property interest to contain the grantor's express acknowledgment that the Mobility Authority shall have no liability with respect thereto.

6.2.4 D/B Contractor shall be responsible for all costs and expenses incurred by Utility Owners in acquiring New Utility Property Interests, excluding any such costs or expenses attributable to any Betterments.

6.3 Limiting Acquisition of Additional Properties.

D/B Contractor's recommendation regarding the acquisition of Additional Properties shall be subject to the following:

6.3.1 D/B Contractor shall use its Best Efforts to restrict and limit additional costs to the Project associated with Mobility Authority-Directed Changes. To the extent reasonably possible, consideration shall be given to using retaining walls or making other engineering adjustments as an alternative to the acquisition of Additional Properties. If it would be possible to use a retaining wall or other engineering adjustment to accommodate a Mobility Authority-Directed Change as an alternative to the acquisition of Additional Properties, D/B Contractor shall support its recommendation to acquire Additional Properties in lieu of constructing a retaining wall or otherwise modifying the Schematic Plan with an analysis demonstrating cost or time savings or other justification.

6.3.2 D/B Contractor shall not be entitled to any time extensions or cost increases for acquisition of D/B Contractor-Designated ROW unless there is a Mobility Authority-Caused Delay pursuant to subparagraph (b) of the definition of that term.

6.3.3 In all cases, D/B Contractor shall exercise particular care to avoid acquisition of land owned by a public entity and used for a use inconsistent with highway use.

6.4 Representations by D/B Contractor.

No member of the D/B Contractor Group shall represent himself or herself as an agent of the Mobility Authority or TxDOT while communicating with any of the owners or occupants of the Final ROW, any property in which D/B Contractor seeks to obtain a temporary right or interest or a permanent right that will not be part of the Final ROW, or at any other time in connection with performing the services described in Technical Provision 7. No member of the D/B Contractor Group shall appear before any owner or occupant of any Final ROW for the purposes of completing any of the documentation required under Technical Provision 7 without first presenting to that owner or occupant a letter, executed by the Mobility Authority or TxDOT, stating that the D/B Contractor Group is working for the Mobility Authority or TxDOT, as the case may be, for the purposes of the acquisition of the Final ROW; provided, however, that the execution of, and approvals concerning, any relevant documentation shall be made by the Mobility Authority. The D/B Contractor Group shall not represent itself as an agent for the Mobility Authority or TxDOT. Each member of the D/B Contractor Group shall at all times conform with applicable Law (including, to the extent applicable, the Uniform Act) in all communications and actions with the owners or the occupants of the Final ROW or any other real property in which D/B Contractor seeks to obtain any right or interest. D/B Contractor shall send to each affected property owner by certified mail, return receipt requested, a copy of the latest version of the State of Texas Landowner's Bill of Rights as found on the website of the Office of the Attorney General of Texas.

6.5 Negotiations and Condemnation Proceedings Relative to the Acquisition of D/B Contractor Designated ROW.

Negotiations for any D/B Contractor-Designated ROW shall be undertaken as set forth in Technical Provision 7. D/B Contractor shall obtain the Mobility Authority's written approval of any offer to be extended to an owner of any interest in D/B Contractor Designated ROW prior to making such offer, in accordance with Technical Provision 7. D/B Contractor shall notify the Mobility Authority in writing, for its concurrence, of the failure of negotiations with respect to the acquisition of any parcel of D/B Contractor Designated ROW and shall submit to the Mobility Authority for approval a condemnation package for the parcel as described in Technical Provision 7. The Mobility Authority shall have 15 Business Days either to (a) approve the package or (b) provide its comments and/or request for additional information to D/B Contractor

if the Mobility Authority determines that the condemnation package is incomplete or otherwise deficient. D/B Contractor shall incorporate any suggested changes and provide any additional information requested by the Mobility Authority and shall resubmit the condemnation package to the Mobility Authority for review and approval. The Mobility Authority shall have 10 Business Days to approve or provide comments to D/B Contractor on any resubmittals. Failure of the Mobility Authority to provide D/B Contractor with its approval or, in the event the condemnation package is incomplete or otherwise deficient, its comments and/or request for additional information, within 15 Business Days of the Mobility Authority's receipt of a condemnation packet shall be considered a Mobility Authority-Caused Delay. Condemnation proceedings for any D/B Contractor-Designated ROW will be initiated by the Mobility Authority, within a reasonable time following approval by the Mobility Authority of a complete condemnation package for the parcel. At no additional cost to the Mobility Authority, D/B Contractor shall cooperate in all respects with the Mobility Authority and TxDOT and shall cause all expert witnesses, appraisers, surveyors and other consultants utilized by D/B Contractor in connection with the acquisition of the D/B Contractor-Designated ROW subject to condemnation to be available to and assist the Mobility Authority and TxDOT in connection with the condemnation proceedings, including discovery, depositions, pre-trial preparation and trial testimony. Counsel engaged for negotiations and/or condemnation proceedings shall be designated by the Mobility Authority. Delays to the Critical Path due to failure of the Mobility Authority to make D/B Contractor Designated ROW available within 240 Days after approval of a condemnation packet shall be considered a Mobility Authority-Caused Delay. The term "make available", as used herein, shall mean to make available possession for construction free of occupancy by others and subject to any necessary demolition. The D/B Contractor shall comply in all respects with the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended with respect to its activities related to the acquisition of D/B Contractor Designated ROW.

6.6 Physical Possession of Final ROW; Failure by the Mobility Authority to Make Schematic ROW Available .

6.6.1 The Mobility Authority shall notify D/B Contractor of the availability of Schematic ROW, and provide access thereto, within five (5) Business Days after the Mobility Authority has received access to such Schematic ROW. D/B Contractor shall be responsible for being informed of and complying with any access restrictions that may be set forth in any documents granting access to any Schematic ROW, provided that the Mobility Authority has provided such documents to D/B Contractor. Upon obtaining knowledge of any anticipated delay in the dates for acquisition of any Schematic ROW, the Party obtaining knowledge shall promptly notify the other party in writing. In such event, D/B Contractor shall immediately determine whether the delay impacts the Critical Path and, if so, to what extent it might be possible to avoid such delay through alternative construction methods or otherwise. D/B Contractor shall promptly meet with the Mobility Authority to determine the best course of

action and prepare a written report setting forth its recommendations, which recommendations shall be subject to the written approval of the Mobility Authority. Notwithstanding anything in this D/B Contract to the contrary, D/B Contractor may not make a claim for a Change Order to extend the Interim Completion Deadline, the Completion Deadline or the Acceptance Deadline unless the Mobility Authority fails to make a parcel of Schematic ROW available for construction to D/B Contractor within 180 Days of the issuance of NTP1 and then only if such failure has a material adverse effect on the Critical Path. Any such failure by the Mobility Authority to make Schematic ROW available within 180 Days of issuance of NTP1 shall be considered a Mobility Authority-Caused Delay. In no event shall D/B Contractor be entitled to a Change Order to increase the Design/Build Price or extend the Interim Completion Deadline, the Completion Deadline or the Acceptance Deadline as a result of D/B Contractor's failure to make available any D/B Contractor-Designated ROW. All D/B Contractor - Designated ROW will be acquired in accordance with the procedures described in Technical Provision 7.

6.6.2 D/B Contractor shall be responsible for being informed of and complying with any covenants and restrictions set forth in the deeds and any other related real property purchase and sale documents pertaining to the Mobility Authority's or TxDOT's acquisition of any Final ROW, provided that the Mobility Authority has provided such documents to the D/B Contractor.

6.7 Rights of Early Access.

To the extent that D/B Contractor has not been provided with access to portions of the Schematic ROW prior to the date set forth on the Project Schedule, D/B Contractor shall work around such Schematic ROW with the goals of minimizing delay to the completion of the Project. Except for delays caused by the type of event described in clause (b) or clause (c) of the definition of "Mobility Authority-Caused Delay," D/B Contractor shall not be entitled to any time extension for delays caused by the failure or inability of the Mobility Authority to provide Schematic ROW. Where D/B Contractor makes a written request for access or rights of entry for any Schematic ROW for which access has not yet been acquired, D/B Contractor may, with the Mobility Authority's written consent, negotiate with property owners or occupants for early access or temporary use of land, provided there is no violation of applicable Law. D/B 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 the Mobility Authority, with the proviso that the Mobility Authority's consent may be withheld or withdrawn at any time, in the Mobility Authority's sole discretion. The Mobility Authority shall not be bound by the terms and conditions agreed upon by D/B Contractor and any property owner or occupant until such time as the Mobility Authority has expressly so indicated in writing (and, then, only to the extent expressly set forth therein).

7. COMMENCEMENT OF CONSTRUCTION; CONSTRUCTION PROCEDURES; HAZARDOUS MATERIALS; NEW ENVIRONMENTAL APPROVALS.

7.1 Commencement of Construction.

D/B Contractor shall not commence construction of any portion of the Project prior to occurrence of all the following events, except with the prior written approval of the Mobility Authority, in its sole discretion:

7.1.1 The Mobility Authority shall have approved (a) the Safety Plan; (b) the Hazardous Materials Management Plan; and (c) the CQMP.

7.1.2 All Governmental Approvals necessary for construction of the applicable portion of the Project shall have been obtained and all conditions of such Governmental Approvals which are a prerequisite to commencement of such construction shall have been performed.

7.1.3 All required insurance and bonds shall remain in full force and effect.

7.1.4 The Mobility Authority (either directly or through D/B Contractor) shall have acquired the real property upon which the construction will be conducted or the Mobility Authority or D/B Contractor shall have obtained approval to enter into physical possession of the property upon which work will be performed, including, where necessary, approval to enter by means of a right of entry; provided, however, that D/B Contractor shall not refrain from commencing construction on any portion of the Project based on any failure to obtain physical possession of one or more properties required for construction elsewhere on the Project.

7.1.5 D/B Contractor shall have completed all required investigations to establish and confirm the existence and location of Utilities in such portion of the Project.

7.1.6 The Mobility Authority shall have issued NTP2.

7.1.7 D/B Contractor shall have submitted the Preliminary (30%) Design Submittal for the entire Project and such submittal shall have been accepted by the Mobility Authority in accordance with Technical Provision 2, including an adequate response by D/B Contractor to all Mobility Authority comments.

7.1.8 Except as otherwise provided in Technical Provision 2.3.12 regarding Early Start of Construction, the Design Documents for the applicable portion of the Project shall have been accepted by the Mobility Authority in accordance with Technical Provision 2, and shall have been through the DQMP process.

7.1.9 D/B Contractor shall have met any other requirement specified in Technical Provisions 2 and 23 for commencement of construction operations.

Notwithstanding this Section 7.1, the D/B Contractor may commence construction directly related to Utility Adjustment Work prior to meeting the requirements of Sections 7.1.6 and 7.1.7 above.

7.2 Supervision and Construction Procedures.

7.2.1 D/B Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, procedures and Site safety and for coordinating all portions of the Design/Build Work under the Contract Documents, subject, however, to all requirements contained in the Contract Documents.

7.2.2 As between D/B Contractor and the Mobility Authority, D/B Contractor shall be solely responsible for implementing, maintaining and supervising the approved Safety Plan in accordance with Technical Provision 25. D/B 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: (a) all employees of D/B Contractor and its Subcontractors performing the Design/Build Work and other persons who are on the Site or would reasonably be expected to be affected by the Design/Build Work; (b) the Design/Build Work and materials and equipment to be incorporated therein; and (c) all other property within or adjacent to the Site; provided that D/B Contractor's responsibilities under this section are limited to those risks associated directly or indirectly with the Design/Build Work.

7.2.3 D/B Contractor shall use commercially reasonable efforts to cause all of its activities and the activities of its employees, agents, officers and Subcontractors and all other Persons for whom D/B Contractor may be legally or contractually responsible to be undertaken in a manner that will minimize the effect on surrounding property and the public.

7.3 Inspection and Testing.

7.3.1 D/B Contractor shall perform the inspection, sampling and testing necessary to comply with its obligations under the Contract Documents, in accordance with its approved CQMP and the Construction Quality Assurance Program. At all points in performance of the Design/Build Work at which specific inspections, acceptances or approvals by the Mobility Authority are required by the Contract Documents, D/B Contractor shall not proceed beyond that point until the Mobility Authority has completed such inspection, acceptance, or approval or waived its right to inspect, accept or approve, which waiver shall be in writing. Inspections shall be performed in accordance with the time limits specified in the CQMP and the Construction Quality Assurance Program.

7.3.2 As part of the Mobility Authority's Construction Quality Acceptance and oversight role as described in Technical Provision 2, all materials and each part or detail of the Design/Build Work shall also be subject to inspection and testing by the Mobility Authority. When any Governmental Entity, Utility Owner or Railroad is to accept or pay for a portion of the cost of the Design/Build Work, its respective representatives have the right to inspect the work. Such inspection does not make such Person a party to this D/B Contract nor will it change the rights of the parties hereto. D/B Contractor hereby consents to such inspection and testing. In the event that such inspection and testing results in a failed test, the Mobility Authority may require the D/B Contractor to reimburse the Mobility Authority for its reasonable costs related to retesting. Such reasonable costs may be deducted from payments to be made by the Mobility Authority pursuant to Section 13 hereof.

7.3.3 At all times before Final Acceptance, D/B Contractor shall remove or uncover such portions of the finished construction Design/Build Work as directed by the Mobility Authority. After examination by the Mobility Authority, D/B Contractor shall restore the Design/Build Work to the standard required by the Contract Documents. If the Design/Build Work exposed or examined is not in conformance with the requirements of the Contract Documents, then the cost of uncovering, removing and restoring the Design/Build Work and of recovery of any delay to the Critical Path occasioned thereby shall be at D/B Contractor's expense. Furthermore, any Design/Build Work done or materials used without adequate notice to and opportunity for prior inspection by the Mobility Authority, as required in Technical Provision 2, may be ordered uncovered, removed or restored at D/B Contractor's expense, even if the Design/Build Work proves acceptable and in conformance after uncovering. Except with respect to Design/Build Work done or materials used as described in the preceding sentence, if Design/Build Work exposed or examined under this Section 7.3.3 is in conformance with the requirements of the Contract Documents, then any delay in the Critical Path from uncovering, removing and restoring Design/Build Work shall be considered a Mobility Authority-Caused Delay, and D/B Contractor shall be entitled to a Change Order for the cost of such efforts and recovery of any delay to any Critical Path occasioned thereby, subject to the provisions of Section 14 hereof.

7.4 Correction of Nonconforming Work.

7.4.1 Subject to the Mobility Authority's unilateral right to accept or reject Nonconforming Work, rejected Nonconforming Work shall be removed and replaced so as to be acceptable to the Mobility Authority, at D/B Contractor's expense; and D/B Contractor shall promptly take all action necessary to prevent similar deficiencies from occurring in the future. The fact that the Mobility Authority may not have discovered the Nonconforming Work shall not constitute an acceptance of such Nonconforming Work. If D/B Contractor fails to correct any Nonconforming Work, or fails to provide an acceptable schedule to complete such Nonconforming Work and then begins such work, within five (5) Days of receipt of notice from

the Mobility Authority requesting correction, then the Mobility Authority may (i) impose a fee of \$2,500 per Day until D/B Contractor corrects such Nonconforming Work or provides an acceptable schedule for its completion, (ii) issue a stop work order until such correction is made or acceptable schedule for completion is provided, and/or (iii) cause the Nonconforming Work to be remedied or removed and replaced and may deduct the cost of doing so from any moneys due or to become due to the D/B Contractor and/or obtain reimbursement from D/B Contractor for such cost (plus interest thereon at the maximum rate allowable under applicable Law). The procedures for correction of Nonconforming Work set forth in the CQMP shall be consistent with the requirements of this Section 7.4.

7.4.2 The Mobility Authority may, but shall not be obligated to, accept any Nonconforming Work without requiring it to be fully corrected. In such event, the Mobility Authority shall be entitled to reimbursement of a portion of the Design/Build Price equal to the greater of (a) the diminution in value of the Project attributable to the Nonconforming Work, including the present value of future maintenance and repair costs that the Mobility Authority anticipates may be required as a result of the nonconformity, and (b) the difference between the cost of performing the work in question in accordance with the Contract Documents and the actual cost of performing the Nonconforming Work. In the event that the Mobility Authority determines that (b) is greater than (a) in the previous sentence, then the Mobility Authority shall allow D/B Contractor the option (exercisable within ten (10) Business Days of written notice from Mobility Authority of such determination) to provide reimbursement or to correct the Non-Conforming Work, at D/B Contractor's expense. Such reimbursement by D/B Contractor shall be made within ten (10) Days of the Mobility Authority's submittal to D/B Contractor of an invoice therefor and shall accrue interest at the maximum rate allowable under applicable Law. Alternatively, the Mobility Authority may deduct the amount owing from any sum owed by the Mobility Authority to D/B Contractor pursuant to this D/B Contract. Where applicable, the Mobility Authority shall apply TxDOT Standard Specifications and TxDOT Prices criteria in determining the amount of reduction in the Design/Build Price related to the Nonconforming Work.

7.5 Hazardous Materials Management.

7.5.1 Procedures and Compensation for Hazardous Materials Management.

7.5.1.1 If during the course of the Design/Build Work, D/B Contractor encounters material quantities of Hazardous Materials, D/B Contractor shall (a) promptly notify the Mobility Authority in writing and advise the Mobility Authority of any obligation to notify State or federal agencies under applicable Laws; and (b) take reasonable steps, including design modifications and/or construction techniques, to avoid excavation or dewatering in areas with Hazardous Materials. Where excavation or dewatering of Hazardous Materials is unavoidable, D/B Contractor shall utilize appropriately trained personnel and shall implement the most cost-

effective approach to Hazardous Materials Management, as directed by the Mobility Authority. D/B Contractor's plan for Hazardous Materials Management shall be subject to the prior written approval of the Mobility Authority and shall be in accordance with Technical Provision 9. For purposes of this section, the term "material quantities" means only quantities that would require reporting or other action under Federal or State Law. Wherever feasible and consistent with applicable Laws, contaminated soil and groundwater shall not be disposed off-site. All Hazardous Materials shall be managed in accordance with applicable Laws, Governmental Approvals, the Hazardous Materials Management Plan, the approved investigative work plan described in Technical Provision 9, the approved site investigation report described in Technical Provision 9 and the Safety Plan.

7.5.1.2 D/B Contractor shall afford the Mobility Authority the opportunity to inspect sites containing Hazardous Materials before any action is taken which would inhibit the Mobility Authority's ability to ascertain the nature and extent of the contamination.

7.5.1.3 Subject to the limitations and exceptions set forth in this Section 7.5, and Section 14, D/B Contractor shall be entitled to a Change Order as set forth in Section 14.8 with respect to additional costs and/or delays directly attributable to the discovery of (a) Unknown Hazardous Materials within the Schematic ROW, (b) Hazardous Materials other than as a result of Releases of Hazardous Material by the D/B Contractor on any parcels added to the Site by a Mobility Authority-Directed Change or (c) Hazardous Materials falling within the definition of a Force Majeure Event. The amount of additional compensation or extension of time in any Change Order allowed hereunder shall be determined in accordance with Section 14.8. Entitlement to compensation or a time extension shall be limited to costs of work performed pursuant to D/B Contractor's Hazardous Materials Management Plan, investigative work plan and site investigation report for such Hazardous Materials as approved by the Mobility Authority, in writing (provided that approval by the Mobility Authority shall not be required for costs incurred in connection with immediate or emergency response actions performed at the direction of the Environmental Team). No compensation or time extension shall be allowed with respect to (a) immaterial quantities of Hazardous Materials (for these purposes, quantities shall be considered immaterial if Direct Costs related to their removal would not reasonably exceed \$10,000), (b) any Hazardous Materials that could have been avoided by reasonable design modifications or construction techniques (provided the D/B Contractor shall be entitled to a Change Order for reasonable costs of redesign where the discovery of Hazardous Materials requires a change to D/B Contractor's already existing design plans), (c) any costs that could have been reasonably avoided, or (d) Hazardous Materials on any other Additional Properties or New Utility Property Interests. To the extent that any proceeds of insurance are available to pay the cost of any Hazardous Materials Management, D/B Contractor shall rely on insurance to provide compensation, in lieu of requesting a Change Order for additional costs. Notwithstanding any other provision of this D/B Contract, the Mobility Authority shall have the right to direct D/B Contractor to allow the Mobility Authority or its designee to provide some or

all Hazardous Materials management, in which case no Change Order for additional costs shall be issued for such work, but D/B Contractor may be entitled to a Change Order providing for a time extension in accordance with Section 14.8.

7.5.2 Hazardous Material Generator.

As between D/B Contractor and the Mobility Authority, and except as provided herein, the Mobility Authority shall be considered the generator of and arranger of (i) Hazardous Materials on the Final ROW as of the Effective Date, (ii) Hazardous Materials on any Additional Properties acquired after the Effective Date (other than D/B Contractor – Designated ROW) and (iii) any Releases of Hazardous Materials on the Final ROW by the Mobility Authority, and, subject to D/B Contractor's obligation to pay certain costs pursuant to Section 14.8, shall have the responsibility for all Hazardous Materials Management costs including assessment, containment and remediation expenses related thereto; provided, however, that the foregoing shall not preclude or limit any rights or remedies that the Mobility Authority may have against third parties and/or prior owners, lessees, licensees and occupants of the Final ROW. D/B Contractor shall be considered the generator of any Hazardous Materials which result from (a) Release(s) of Hazardous Material attributable to the negligence, willful misconduct, or breach of applicable Law or contract by any member of the D/B Contractor Group; and (b) Release(s) of Hazardous Materials arranged to be brought onto the Final ROW or elsewhere by any member of the D/B Contractor Group unless Mobility Authority is responsible for the Release of such Hazardous Materials pursuant to clause (iii) of the first sentence of this Section 7.5.2; provided, however, that the foregoing shall not preclude or limit any rights or remedies that the D/B Contractor may have against third parties.

7.5.3 Hazardous Materials Releases Caused by D/B Contractor.

Hazardous Materials Management costs, including assessment, containment, and remediation expenses, which result from (a) Release(s) of Hazardous Materials attributable to the actions, omissions, negligence, willful misconduct, or breach of applicable Law or contract by any member of the D/B Contractor Group; or (b) Release(s) of Hazardous Materials arranged to be brought onto the Final ROW or elsewhere by any member of the D/B Contractor Group shall not be the responsibility of the Mobility Authority or compensable to D/B Contractor, regardless of the cause of the Release of Hazardous Materials. D/B Contractor shall be fully responsible for all Hazardous Materials Management costs associated with such Hazardous Materials.

7.5.4 Materials Brought to Final ROW by D/B Contractor.

D/B Contractor shall be solely responsible for: (a) compliance with all Laws applicable to Hazardous Materials brought onto the Site by any member of the D/B Contractor Group; (b) use, containment, storage, management, transport and disposal of all such Hazardous Materials in

accordance with this D/B Contract and all applicable Laws and Environmental Approvals; and (c) payment of all penalties, expenses (including attorneys' fees and costs), costs, suits, judgments, claims, actions, damages (including damages to natural resources, property or Persons), delays and liability associated with, arising out of or related to such Hazardous Materials, including any of the foregoing incurred or suffered by the Mobility Authority.

7.5.5 Environmental Approvals Relating to Hazardous Materials.

It is the responsibility of D/B Contractor to obtain, on behalf of the Mobility Authority, all Governmental Approvals relating to Hazardous Materials Management performed by D/B Contractor at the direction of the Mobility Authority including federal and State surface water and groundwater discharge permits and permits for recycling or reuse of Hazardous Materials. D/B Contractor shall be solely responsible for compliance with such Governmental Approvals and applicable Laws, including those governing the preparation of waste profiles, waste manifests and bills of lading. The Mobility Authority has exclusive decision-making authority regarding selection of the destination facility to which the pre-existing Hazardous Materials will be transported. With regard to pre-existing Hazardous Materials, the Mobility Authority shall comply with the applicable standards for generators and arrangers including those found at 40 C.F.R., Part 262, including the responsibility to sign manifests for the transport of hazardous wastes. The foregoing shall not preclude or limit any rights, remedies or defenses that the Mobility Authority or D/B Contractor may have against any Governmental Entity or third parties, including prior owners, lessees, licensees and occupants of any parcel of land that is or becomes part of the Final ROW properties as of the Effective Date.

7.5.6 Indemnification.

To the extent permitted by applicable Law, the Mobility Authority shall indemnify, save, protect and defend D/B Contractor from third party claims, causes of action and Losses arising out of or related to generator or arranger liability for the pre-existing Hazardous Materials and Hazardous Materials from the Mobility Authority Release(s) of Hazardous Material for which the Mobility Authority is considered the generator and arranger pursuant to this Section, specifically excluding generator and arranger liability for actual and threatened D/B Contractor Releases of Hazardous Materials.

7.6 Environmental Compliance.

D/B Contractor shall be responsible for performance of all environmental mitigation measures (which term shall be deemed to include all requirements of the Environmental Approvals, including the Mobility Authority-Provided Approvals and similar Governmental Approvals, regardless of whether such requirements would be considered to fall within a strict definition of the term) for the Project (other than those which the Mobility Authority has

expressly agreed to perform under the Contract Documents). The Design/Build Price includes compensation for D/B Contractor's performance of all such mitigation measures provided, however, the Design/Build Price does not include compensation for D/B Contractor's performance of environmental mitigation matters for which D/B Contractor is entitled to additional time and/or monetary compensation under Section 14 or for which the Mobility Authority is responsible under this D/B Contract, or Hazardous Materials of which the Mobility Authority is the generator under Section 7.5.2.

7.6.1 Mobility Authority's Responsibility for Approvals.

7.6.1.1 All mitigation requirements contained in the final Mobility Authority-Provided Approvals shall automatically be deemed included in the scope of the Design/Build Work. In the event that the final Mobility Authority-Provided Approvals (inclusive of the final Environmental Documents) have been provided to D/B Contractor prior to the Proposal Due Date, and they incorporate mitigation requirements addressing any modification in the Project Design from the original design concept included in the draft Environmental Documents, such additional mitigation requirements shall be D/B Contractor's responsibility and shall not be considered a Mobility Authority-Directed Change or a Force Majeure Event.

7.6.1.2 D/B Contractor shall be responsible for obtaining any New Environmental Approvals required for the Project. In the event any New Environmental Approval is necessitated by a Mobility Authority-Directed Change or a Force Majeure Event, D/B Contractor shall be responsible for obtaining such New Environmental Approval and/or performing any additional mitigation requirements of such New Environmental Approval only if directed to do so by a Directive Letter or a Change Order. The Mobility Authority shall cooperate with D/B Contractor and support its efforts to obtain any such New Environmental Approval. Any Change Order covering a Mobility Authority-Directed Change or a Force Majeure Event shall include compensation to D/B Contractor for additional costs incurred by D/B Contractor to obtain the New Environmental Approval and to implement any changes in the Design/Build Work (including performance of additional mitigation measures) resulting from such New Environmental Approvals, as well as any time extension necessitated by a Mobility Authority-Directed Change or a Force Majeure Event, subject to the conditions and limitations contained in Section 14.

7.6.2 Approvals To Be Obtained by D/B Contractor.

7.6.2.1 If it is necessary to obtain a New Environmental Approval for any reason other than a Force Majeure Event or a Mobility Authority-Directed Change, D/B Contractor shall be fully responsible, at its sole cost and expense, for obtaining the New Environmental Approval and any other environmental clearances that may be necessary, and for all requirements resulting therefrom, as well as for any litigation arising in connection therewith.

8. DISADVANTAGED BUSINESS ENTERPRISE; CIVIL RIGHTS.

8.1 DBE Requirements.

8.1.1 The Mobility Authority has adopted a Disadvantaged Business Enterprise ("DBE") Policy Statement and a Business Opportunity Program and Policy ("BOPP") to facilitate and encourage the participation of disadvantaged and small businesses in Mobility Authority Procurements. The DBE Policy Statement is attached as Exhibit H. Pursuant to the BOPP, all Mobility Authority contracts funded in whole or in part with federal funds received from the United States Department of Transportation ("DOT"), including funds received through the Federal Highway Administration ("FHWA"), or funded in whole or in part with such federal funds received by the Mobility Authority through TxDOT, are subject to TxDOT's DBE Program, adopted by the Mobility Authority through a Memorandum of Understanding with TxDOT. The DBE Program provides DBEs full opportunity to participate in all Mobility Authority contracts in accordance with 49 C.F.R. Part 26. The goals for DBE participation are determined by the Mobility Authority and/or TxDOT in accordance with the requirements and formulas set forth in 49 C.F.R. Part 26 and applicable rules promulgated thereunder. D/B Contractor shall comply with all requirements set forth in (i) the Mobility Authority's DBE Program, and (ii) D/B Contractor's FHWA approved DBE Performance Plan adopted by D/B Contractor in accordance with (i).

8.1.2 The DBE participation goal with respect to design services included in the Design/Build Work is 11.7% of the Design/Build Price attributable to design and other related professional services including ROW acquisition services, if any. The DBE participation goal with respect to all other Design/Build Work is 11.7% of the Design/Build Price attributable to such work.

8.1.3 D/B Contractor shall include provisions to effectuate this Section 8 and Exhibit H in every Subcontract (including purchase orders and in every subcontract of any member of the D/B Contractor Group for Design/Build Work), and shall require that they be included in all Subcontracts at lower tiers, so that such provisions will be binding upon each Subcontractor. In the event D/B Contractor intends to perform operations and maintenance work with respect to the Project, D/B Contractor agrees to use good faith efforts to encourage DBE participation in the performance of such work.

8.1.4 D/B Contractor shall not cancel or terminate any Subcontract with a DBE firm except in accordance with all requirements and provisions applicable to cancellation or termination of Subcontracts with DBE firms set forth in TxDOT's DBE Special Provision.

8.2 Civil Rights.

8.2.1 D/B Contractor shall not, and shall cause the Subcontractors to not, discriminate on the basis of race, color, national origin or sex in the performance of the Design/Build Work under the Contract Documents. D/B Contractor shall carry out, and shall cause the Subcontractors to carry out, applicable requirements of 23 C.F.R. Part 230 in the award and administration of FHWA-assisted agreements. Failure by D/B Contractor to carry out these requirements is a material breach of this D/B Contract, which may result in the termination of the Contract Documents or such other remedy as the Mobility Authority or TxDOT deems appropriate.

8.2.2 In all solicitations either by competitive bidding or negotiation made by D/B Contractor for Design/Build Work to be performed by a Subcontractor, including procurement of materials or leases of equipment, D/B Contractor shall notify each potential Subcontractor of such Subcontractor's obligations under this Section 8.2 and of the federal regulations relative to nondiscrimination. D/B Contractor shall include Section 8.2.1 in every Subcontract (including purchase orders), and shall require that they be included in all Subcontracts at lower tiers, so that such provisions will be binding upon each Subcontractor. The Mobility Authority shall have the right to review all Subcontracts to assure compliance with this provision.

9. PERFORMANCE AND PAYMENT SECURITY.

D/B Contractor shall deliver to the Mobility Authority, and maintain in full force and effect at all times, security for performance of the Design/Build Work as described below (or other assurance satisfactory to the Mobility Authority in its sole discretion).

9.1 Proposal Bond.

D/B Contractor has provided a Proposal Bond to the Mobility Authority in the amount of \$10,000,000. The Proposal Bond shall remain in place as security for performance of D/B Contractor's obligations under the Contract Documents during the period prior to issuance of NTP1, including D/B Contractor's obligation to provide the Performance Bond and Payment Bond hereunder. Upon the Mobility Authority's receipt of the Performance Bond and the Payment Bond and all other documents required to be provided to the Mobility Authority on or before issuance of NTP1, the Mobility Authority shall release the Proposal Bond.

9.2 Performance Bond.

Upon the issuance by the Mobility Authority of NTP1, D/B Contractor shall deliver to the Mobility Authority a performance bond in the amount of the lesser of the Design/Build Price or \$250,000,000 and in the form attached hereto as Exhibit I (the "**Performance Bond**"). After Final Acceptance of the Project, the Mobility Authority shall provide a written release of the

Performance Bond, provided that all of the following have occurred: (a) D/B Contractor is in compliance with the terms of the Contract Documents and is not in default thereunder; (b) no event has occurred that with the giving of notice or passage of time would constitute a default by D/B Contractor hereunder or under the Contract Documents; and (c) the Mobility Authority has received the Warranty Bond.

9.3 Payment Bond.

Upon the issuance by the Mobility Authority of NTP1, D/B Contractor shall deliver to the Mobility Authority a labor and material payment bond in the amount of the lesser of the Design/Build Price or \$250,000,000 and in the form attached hereto as Exhibit J (the "**Payment Bond**"). The Mobility Authority shall provide a written release of the Payment Bond the later of (a) one year after Final Acceptance, provided that D/B Contractor has delivered to the Mobility Authority (i) evidence satisfactory to the Mobility Authority that all Persons performing the Design/Build Work have been fully paid, (ii) unconditional waivers of claims in form and substance satisfactory to the Mobility Authority, executed by all of such Persons, and (iii) the Warranty Bond; or (b) upon expiration of the statutory period for Subcontractors to file a claim against the bond for Design/Build Work, provided that the Mobility Authority has received the Warranty Bond.

9.4 Warranty Bond.

After Final Acceptance and subject to the requirements herein, D/B Contractor may obtain a release of the Performance and Payment Bonds by providing a warranty bond which shall guarantee performance of the Design/Build Work required to be performed during the Warranty period and which shall also constitute a payment bond guaranteeing payment to Persons performing such Design/Build Work ("**Warranty Bond**"). The Warranty Bond shall be in the amount of \$20,000,000 and shall be in the form attached hereto as Exhibit K.

9.5 Surety Financial Requirements.

Any bond provided in accordance with this Section 9 shall be issued by a Surety with an A.M. Best and Company rating level of A-minus (A-) or better, Class VIII or better, or as otherwise approved in writing by the Mobility Authority, in its sole discretion.

9.6 Performance by Surety or Guarantor.

Performance by a Surety or a Guarantor of any of the obligations of D/B Contractor shall not relieve D/B Contractor of any of its obligations hereunder.

9.7 Guarantee.

9.7.1 If at any time during the course of the D/B Contract the total combined Tangible Net Worth of D/B Contractor, its equity members and any Guarantors, if any, is less than \$100,000,000 (excluding Tangible Net Worth in excess of any applicable limit of liability stated in the guarantee), D/B Contractor shall provide one or more guarantees making up the difference. Each such guarantee shall be in the form attached to the Instructions to Proposers as Form N together with appropriate evidence of authorization thereof, and the total liability thereunder shall be equal to or greater than the difference between \$100,000,000 and such total combined Tangible Net Worth. Each guarantee must be provided by (a) a parent corporation, a shareholder or another Affiliate of D/B Contractor, or (b) a parent corporation or a shareholder of an equity member of D/B Contractor.

10. INSURANCE.

D/B Contractor shall purchase and continuously maintain in full force and effect through Project Final Acceptance, or such longer or shorter time as may be specifically provided below, the insurance coverages specified in this Section 10. These insurance coverage requirements are also subject to all other applicable sections of the Contract Documents. The insurance, except for professional liability and worker’s compensation, provided hereunder shall be available for the benefit of the Mobility Authority and D/B Contractor with respect to covered claims, but shall not be interpreted to relieve D/B Contractor of any obligations hereunder. All insurance required hereunder shall be procured from insurance or indemnity companies with an A.M. Best and Company rating level of A- or better, Class VIII or better, or as otherwise approved by the Mobility Authority and authorized or approved to do business in the State. All limits of liability set forth below are in U.S. dollars.

10.1 [Reserved].

10.2 Insurance After Issuance of NTP1.

During the period commencing with the date on which the Mobility Authority issues NTP1 and ending at Project Final Acceptance (unless otherwise specified herein), D/B Contractor shall provide and maintain insurance as specified in this Section 10.2.

10.2.1 Commercial General Liability Insurance.

(a) D/B Contractor shall provide and maintain commercial general liability coverage (for bodily injury, property damage, personal injury and advertising injury) during the period starting on the date on which the Mobility Authority issues NTP1 and ending on the date of Final Acceptance using an ISO CG 00 01 (12/07) occurrence form (or equivalent), specifically including coverage for contractual liability per standard ISO policy terms, premises operations,

independent contractors, products and completed operations, broad form property damage and hazards commonly referred to as "XCU," with limits of \$2,000,000 per occurrence and \$4,000,000 general per project aggregate. The policy shall not include any professional liability exclusion as it relates to "means and methods" of construction. The definition of "Insured Contract" in the policy should be amended to state that "professional services" does not include "means and methods" of construction. The policy shall include the Limited Exclusion-Contractors-Professional Liability Endorsement CG22-80, CG22-79, or their equivalent. There shall be no exclusion for work performed on or within 50 feet of any railroad property. The definition of "Insured Contract" in the policy shall include that part of any contract or agreement that indemnifies a railroad for bodily injury or property damage arising out of construction or demolition operations on or within 50 feet of any railroad property. The policy shall include a "Limited Coverage – Repair Work Endorsement" that shall extend coverage under the policy for warranty repair work from Final Acceptance until the end of the Warranty Period. The policy shall include products and completed operations extended coverage in the amount of \$4,000,000, and this coverage shall be maintained until the end of the Warranty Period. D/B Contractor shall be the named insured and each of the Indemnified Parties, including the Railroad(s), shall be additional insureds, on a primary and non-contributory basis. The policy deductibles shall not exceed 5% of the policy limits.

(b) If D/B Contractor's commercial general liability insurance or other form with a general aggregate limit is used, then the aggregate limits shall apply separately to the Project, or D/B Contractor may obtain separate project specific insurance to provide the required limit which shall not be subject to depletion because of claims arising out of any other project or activity of D/B Contractor. The policy terms, conditions, coverage and limit requirements for the project specific policy are the same as referenced in (a) above. Notwithstanding any other provision of the Contract Documents, the project policy shall not be cancellable, except for non-payment of premium, fraud, material misrepresentation, or non-compliance with reasonable loss control recommendations.

10.2.2 Umbrella Excess Liability.

(a) D/B Contractor shall provide and maintain umbrella excess liability coverage with limits of \$30,000,000 per occurrence and \$30,000,000 per project aggregate on the same basis as outlined in Sections 10.2.1 (a) or (b) above, 10.2.3 and 10.2.4. Any such umbrella excess insurance shall be at least as broad as D/B Contractor's primary insurance.

10.2.3 Workers' Compensation Insurance and Employer's Liability Insurance.

During the period commencing on the date on which the Mobility Authority issues NTP1 and ending on the date of Project Final Acceptance, D/B Contractor shall provide and maintain worker's compensation insurance in conformance with applicable Law and employer's liability

insurance (for bodily injury or disease) with limits of \$1,000,000 per accident for all of its employees involved with the performance of the Design/Build Work. D/B Contractor shall be the named insured on these policies. The worker's compensation coverage will contain the following endorsements:

- (a) An endorsement extending the policy to cover the liability of the insureds under the Federal Employer's Liability Act.
- (b) A voluntary compensation endorsement.
- (c) An alternate employer endorsement.
- (d) An endorsement extending coverage to all states operations on an "if any" basis.

10.2.4 Business Automobile Liability Insurance.

D/B Contractor shall provide and maintain business automobile liability insurance, commencing on the date on which the Mobility Authority issues NTP1 and ending upon the date of Project Final Acceptance, covering the D/B Contractor's legal liability arising out of the ownership, operation, maintenance or use of all owned/leased, non-owned and hired vehicles used in the performance of the Design/Build Work, including loading and unloading, with limits of not less than \$2,000,000 combined single limit for bodily injury and property damage liability; provided, however, that such coverage shall be maintained for vehicles used in performance of Warranty work until the expiration of the Warranties. D/B Contractor shall be the named insured and each of the Indemnified Parties shall be named as additional insureds, on a primary and non-contributory basis, with respect to liability arising out of the acts or omissions of any member of the D/B Contractor Group, whether occurring on or off of the Site. The policy shall include auto pollution liability coverage. The policy deductibles shall not exceed 5% of the policy limits.

10.2.5 Professional Liability Insurance.

D/B Contractor shall provide and maintain or cause its lead design Subcontractor to provide professional liability coverage, through a specific project professional liability policy, with limits not less than \$10,000,000 per negligent act, error or omission limit and \$10,000,000 aggregate. The professional liability coverage shall protect against any negligent act, error or omission arising out of design or engineering services performed by the D/B Contractor's lead design Subcontractor or its lower tier design subcontractors or subconsultants. The policy shall have a retroactive date no later than the date on which the RFDP Documents are issued and shall have a five-year extended reporting period from the date of Final Acceptance with respect to claims or suits which were not made or brought during the term of the policy. The coverage shall include the D/B Contractor's lead design Subcontractor and its design subcontractors and

subconsultants of any tiers. The policy shall include a Notice of Circumstance provision. The policy shall not contain any exclusion for cost estimates or delay in project completion. Notwithstanding any other provisions of the Contract Documents, the project policy shall not be cancellable, except for non-payment of premium, fraud, material misrepresentation, or pursuant to a material variance endorsement. As an alternative to the project specific coverage described above, the D/B Contractor may instead substitute the professional liability coverage that it or its lead design firm carries provided that (a) such coverage is in the amount of at least \$20,000,000 per negligent act, error or omission and \$20,000,000 aggregate, (b) such policy is maintained until at least five (5) years following Substantial Completion of the Project, and (c) the owner of the policy provides the Mobility Authority, on an annual basis, with a current certificate of insurance and a copy of its financial statements, including balance sheet, income statement, and statement of cash flow.

10.2.6 **Pollution Liability Insurance.**

D/B Contractor shall provide and maintain Contractor's Pollution Liability coverage on an occurrence basis, through a Specific Project Pollution Liability Policy, with limits not less than \$5,000,000 per "pollution incident" and \$5,000,000 aggregate. The pollution liability coverage shall protect against the D/B Contractor's legal liability arising out of any construction and related activities with respect to the Project, including off site activities related to transportation and/or disposal. The policy shall provide coverage from the date on which the NTP1 is issued until five (5) years from the date of Final Acceptance. The policy shall include coverage for damage (including loss of use of) to natural resources. Each of the Indemnified Parties shall be named as an additional insured, on a primary and non-contributory basis, to this policy with respect to liability arising out of the acts, errors, and omissions of any member of the D/B Contractor Group and Subcontractors whether occurring on or off of the site. Notwithstanding any other provisions of the Contract Documents, the project policy shall not be cancellable, except for non-payment of premium, fraud, material misrepresentation, or non-compliance with reasonable loss control recommendations.

10.2.7 **Builder's Risk.**

D/B Contractor shall procure and maintain builder's risk insurance for the Project as specified below. The insureds shall be D/B Contractor, all Subcontractors (excluding those solely responsible for design Design/Build Work) of any tier, and each of the Indemnified Parties, as their interests may appear. The insurance shall be maintained during the period starting on the date of commencement of construction and ending on the date of Substantial Completion.

10.2.7.1 **Minimum Scope:** A blanket builder's risk insurance policy on an "all risk" basis for the entire Project including: (1) coverage for resulting property damage

caused by faulty workmanship, use of Nonconforming Work materials, omission or deficiency in design or specifications; (2) coverage against damage or loss caused by the perils of fire (with extended coverage), earth movement, flood, theft, vandalism and malicious mischief and machinery accidents; (3) coverage for removal of debris, contaminants and pollutants (as defined in the policy) including demolition from the enforcement of any applicable local, state, or federal requirement, and insuring the buildings, structures, machinery, equipment, facilities, fixtures and all other properties constituting a part of the Project; (4) inland transit coverage (ocean marine coverage, if applicable, shall be provided through a separate Ocean Marine insurance policy unless insured by the supplier), with sub-limits sufficient to insure the full replacement value of any key equipment item; (5) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the Site, and (6) coverage for architect and engineering fees required as a result of a covered loss. Such insurance shall be on a form acceptable to the Mobility Authority and shall have a limit equal to the probable maximum loss to replace the completed Project plus "soft cost expense cover," as defined in the policy (including, at a minimum, attorneys' fees and fees and other costs associated with such damage or loss and with any Governmental Approvals), with a limit of \$5,000,000 and shall include flood insurance with a \$25,000,000 minimum annual aggregate limit. There shall be no coinsurance penalty provision in any such policy. Ocean Marine coverage, if applicable, shall be provided through this insurance or separate Ocean Marine insurance. Deductibles or self-insured retentions shall not exceed 5% of the policy limits.

10.2.8 Valuable Papers.

D/B Contractor shall provide valuable papers insurance with a limit of not less than \$200,000 each loss. Such insurance shall assure the restoration of any Plans, drawings, computations, field notes, or other similar data relating to the Design/Build Work and/or the Project in the event of loss or destruction until all such items and data are turned over to the Mobility Authority. Such insurance may be provided separately or as part of D/B Contractor's Builder's Risk policy.

10.3 General Insurance Requirements.

10.3.1 Premiums, Deductibles and Self-Insured Retentions.

D/B Contractor shall be responsible for payment of premiums for all insurance required under this Section 10. D/B Contractor shall be solely responsible for all other deductibles and self-insured retentions hereunder. D/B Contractor further agrees that for each claim, suit or action made against insurance provided hereunder, with respect to all matters for which D/B Contractor is responsible hereunder, D/B Contractor shall be solely responsible for amounts in excess of the coverage provided. With respect to all matters for which the Mobility Authority is

responsible hereunder, the Mobility Authority shall remain fully responsible for amounts in excess of the coverage provided.

10.3.2 Verification of Coverage.

(a) D/B Contractor Policies. Concurrently with the date on which coverage is required to be procured under this Section 10, D/B Contractor will deliver to the Mobility Authority original certificates of insurance, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s) must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the Mobility Authority. The Mobility Authority shall have no duty to pay or perform under this D/B Contract until such certificate(s) shall have been delivered to the Mobility Authority. Upon the Mobility Authority's request, duplicate copies of each of the insurance policies (including all endorsements and amendments) required under Section 10 shall be provided to the Mobility Authority; provided that where the D/B Contractor is permitted to provide certain coverages through its corporate program, instead of providing copies, the D/B Contractor may make such policies available for inspection by the Mobility Authority at the D/B Contractor's corporate offices.

(b) Renewal Policies. When applicable, not less than 30 Days prior to the expiration date of any policy of insurance required by this Section 10, D/B Contractor shall deliver to the Mobility Authority a binder or certificate of insurance with respect to each renewal policy. If requested by the Mobility Authority from time to time, certified duplicate copies of the renewal policy shall also be provided; provided that where the D/B Contractor is permitted to provide certain coverages through its corporate program, instead of providing copies, the D/B Contractor may make such policies available for inspection by the Mobility Authority at the D/B Contractor's corporate offices.

10.3.3 Subcontractor Insurance Requirements.

D/B Contractor shall cause each Subcontractor to provide insurance that complies with requirements for D/B Contractor-provided insurance set forth in this Section 10 in circumstances where the Subcontractor is not covered by D/B Contractor-provided insurance and provided that D/B Contractor shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors, which determination shall be made in accordance with reasonable and prudent business practices. D/B Contractor shall cause each such Subcontractor to include each of the Indemnified Parties as additional insureds on a primary and non-contributory basis, under such Subcontractor's commercial general liability, umbrella excess liability, and business automobile liability insurance policies. D/B Contractor shall require each such Subcontractor to

require that its insurer agree to waive any subrogation rights the insurers may have against the Indemnified Parties. The Mobility Authority shall have the right to contact the Subcontractors directly in order to verify the above coverage.

10.3.4 Endorsements and Waivers.

All insurance policies required to be provided by D/B Contractor hereunder shall contain or be endorsed to contain the following provisions, provided that, for the workers' compensation policy and the professional liability policy, only the following clause (d) shall be applicable:

(a) For claims covered by the insurance specified herein, said insurance coverage shall be primary insurance with respect to the insureds and additional insureds and shall specify that coverage continues notwithstanding the fact that D/B Contractor has left the Site. Any insurance or self-insurance beyond that specified in this D/B Contract that is maintained by an insured or additional insured shall be excess of such insurance and shall not contribute with such primary insurance.

(b) Any failure on the part of a named insured to comply with reporting provisions or other conditions of the policies, any breach of warranty, any action or inaction of a named insured or others, any foreclosure relating to the Project or any change in ownership of all or any portion of the Project shall not affect coverage provided to the other insureds or additional insureds.

(c) The insurance shall apply separately to each insured and additional insured against whom a claim is made or suit is brought, except with respect to the aggregate limits of the insurer's liability.

(d) Each policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, modified or reduced in coverage or in limits except after 30 days' prior written notice has been given to the Mobility Authority and D/B Contractor. Such endorsement shall not include any limitation of liability of the insurer for failure to provide such notice.

(e) All Commercial General Liability endorsements adding additional insureds shall be on forms CG-20-10 (latest edition) or an equivalent form providing additional insureds with coverage for premises/operations and CG 2037 (or equivalent) for completed operations.

(f) Each policy shall provide coverage on an "occurrence" basis and not a "claims made" basis (with the exception of professional liability policies).

10.3.5 Waivers and Subrogation.

The Mobility Authority and D/B Contractor waive all rights against each other, against each of their agents and employees and their respective members, directors, officers, employees, agents and consultants for any claims, but only to the extent covered by insurance obtained pursuant to this Section 10, except such rights as they may have to the proceeds of such insurance and provided further that D/B Contractor shall not be entitled to additional compensation or time extension under this D/B Contract to the extent compensated by any insurance specified herein. D/B Contractor shall cause all Subcontractors to provide similar waivers in writing each in favor of all other parties enumerated above. Each policy shall include a waiver of any right of subrogation against the additional insureds (and their respective members, directors, officers, employees, agents and consultants).

10.3.6 Changes in Requirements.

The Mobility Authority shall notify D/B Contractor in writing of any changes in the requirements applicable to insurance required to be provided by D/B Contractor. Pursuant to a Change Order, any additional cost from such change shall be paid by the Mobility Authority and any reduction in cost shall reduce the Design/Build Price.

10.3.7 No Recourse.

There shall be no recourse against the Mobility Authority for payment of premiums or other amounts with respect to the insurance required to be provided by D/B Contractor hereunder.

10.3.8 Support of Indemnifications.

The insurance coverage provided hereunder by D/B Contractor is not intended to limit D/B Contractor's indemnification obligations under Section 23.

10.3.9 Commercial Unavailability of Required Coverages.

If, in the future, through no fault of D/B Contractor, any of the coverages required in this Section 10 (or any of the required terms of such coverages, including endorsements and/or policy limits) are not available or become in the future unavailable as determined under a commercial reasonableness standard, the Mobility Authority will work with D/B Contractor to find commercially reasonable alternatives to the required coverages that are acceptable to the Mobility Authority and to the D/B Contractor. In the event any required coverage is not available and no reasonable alternative is acceptable, the Mobility Authority shall be entitled to a Change Order to reduce the Design/Build Price by the cost of any required insurance that is not obtained due to commercial unavailability.

10.4 Mobility Authority's Right to Remedy Breach by D/B Contractor.

If D/B Contractor or any Subcontractor fails to provide insurance as required herein, the Mobility Authority shall have the right, but not the obligation, to purchase such insurance. In such event, the amounts paid by the Mobility Authority shall, at the Mobility Authority's sole option, be deducted from amounts payable to D/B Contractor or reimbursed by D/B Contractor upon demand, with interest thereon at the maximum rate allowable under applicable Law from the date of payment by the Mobility Authority. Nothing herein shall preclude the Mobility Authority from exercising its rights and remedies under Section 17 as a result of the failure of D/B Contractor or any Subcontractor to satisfy the obligations of this Section 10.

10.5 Other Conditions.

10.5.1 Minimum Safety Compliance Requirements.

D/B Contractor shall be solely responsible for safety on the Site, and shall comply in all respects with the Safety Plan. Each Subcontractor, before performing any Design/Build Work, shall agree in writing to, and shall when performing any Design/Build Work, comply with the requirements of the Safety Plan. Any suspension of Design/Build Work by the Mobility Authority related to safety concerns, including the failure of any member of the D/B Contractor Group to comply with the Safety Plan, shall be considered a suspension for cause under Section 15.2.

10.5.2 Due Care Required.

Nothing contained in this Section 10 shall relieve D/B Contractor or any Subcontractors of its obligation to exercise due care in the performance of the Design/Build Work and to complete the Design/Build Work in strict compliance with this D/B Contract.

10.6 Prosecution of Claims.

Unless otherwise directed by the Mobility Authority in writing, D/B Contractor shall report and process all potential claims by the Mobility Authority or D/B Contractor against the insurance required to be provided hereunder. D/B Contractor agrees to report timely to the insurer(s) any and all matters which may give rise to an insurance claim and to promptly and diligently pursue any and all insurance claims on behalf of the Mobility Authority, whether for defense or indemnity or both. The Mobility Authority agrees to notify D/B Contractor of the Mobility Authority's incidents, potential claims, and matters which may give rise to an insurance claim by the Mobility Authority, to tender its defense or the claim to D/B Contractor, and to reasonably cooperate with D/B Contractor for D/B Contractor to fulfill its duties hereunder.

10.7 Commencement of Design/Build Work.

D/B Contractor shall not commence Design/Build Work under this D/B Contract until it has obtained the applicable insurance required under this Section 10 and such insurance has been approved by the Mobility Authority. D/B Contractor shall not allow any Subcontractor to commence work under its Subcontract until the insurance required of the Subcontractor has been obtained and approved by D/B Contractor. If the insurance provided by D/B Contractor fails to comply with the requirements listed herein, or if D/B Contractor fails to maintain such insurance, then the Mobility Authority maintains the right to suspend D/B Contractor's right to proceed until the Mobility Authority receives satisfactory evidence that the required insurance coverage has been procured in accordance with the terms hereof.

10.8 Disclaimer.

D/B Contractor and each Subcontractor have the responsibility to make sure that their insurance programs fit their particular needs, and it is their responsibility to arrange for and secure any insurance coverage which they deem advisable, whether or not specified herein.

10.9 Insurance During Warranty Period.

During the period following Final Acceptance and prior to expiration of D/B Contractor's Warranty, D/B Contractor shall make available all insurance as specified in Section 10.2, excluding builder's risk coverage, which coverage shall be reinstated by the D/B Contractor in the event of, and prior to the commencement of any required Warranty Work by D/B Contractor.

11. SITE SECURITY; RESPONSIBILITY FOR LOSS OR DAMAGE.

11.1 Site Security.

D/B Contractor shall provide appropriate security for the Site, and shall take all reasonable precautions and provide protection to prevent damage, injury, or loss to the Design/Build Work and materials and equipment to be incorporated therein, as well as all other property at or on the Site, whether owned by D/B Contractor, the Mobility Authority, or any other Person.

11.2 Risk of Loss or Damage; Maintenance and Repair of Design/Build Work.

The Design/Build Work includes maintenance throughout the entire period from D/B Contractor's placement of barricades anywhere for the Project until Final Acceptance in accordance with Technical Provision 24. In addition to such routine maintenance, D/B Contractor, at no additional cost to the Mobility Authority, shall maintain, rebuild, repair, restore or replace all Design/Build Work, including Design Documents, Construction Documents,

materials, equipment, supplies and maintenance equipment which are purchased for permanent installation in, or for use during construction of the Project that is injured or damaged prior to Substantial Completion, regardless of who has title thereto under the Contract Documents and regardless of the cause of the damage or injury, except to the extent that (a) the Mobility Authority is responsible for such costs in accordance with the terms of this D/B Contract, (b) control of such improvements has transferred to third parties (other than the Mobility Authority), or (c) D/B Contractor retains responsibility for loss and control of certain elements of the Project beyond Final Acceptance. D/B Contractor, at its cost and on the same conditions, shall also have sole responsibility during such periods for rebuilding, repairing and restoring all other property within the Final ROW whether owned by D/B Contractor, the Mobility Authority or any other Person. If insurance proceeds with respect to any loss or damage are paid to the Mobility Authority, then the Mobility Authority shall arrange for such proceeds to reimburse D/B Contractor as repair or replacement work is performed by D/B Contractor to the extent that the Mobility Authority has not previously paid for such repair or replacement work; provided, however, that release of such proceeds to D/B Contractor shall not be a condition precedent to D/B Contractor's obligation to perform such replacement or repair work or indicate that such replacement or repair work has been approved and accepted by the Mobility Authority. Notwithstanding this Section 11.2 or any other provision of this D/B Contract, D/B Contractor shall be entitled to a Change Order for any unreimbursed costs it incurs related to repairs resulting from the actions of any third parties as follows: (a) any unreimbursed expenses exceeding \$50,000 for any single incident; (b) any unreimbursed expenses that exceed \$750,000 in the aggregate for the first twenty (20) incidents; and (c) any unreimbursed expenses resulting from incidents in excess of the first twenty (20) incidents (regardless of whether the individual incident or aggregate thresholds have been exceeded). In no event shall D/B Contractor be entitled to a Change Order to extend the Completion Deadline or Interim Completion Deadline related to its obligations under this Section 11.2.

12. WARRANTIES.

12.1 Warranties.

12.1.1 The warranties set forth in Sections 12.1.1.1 and 12.1.1.2 shall individually be referred to herein as a "Warranty" and, collectively, as the "Warranties".

12.1.1.1 D/B Contractor warrants that for design Design/Build Work:

(a) all professional engineering services performed pursuant to the Contract Documents shall conform to all professional engineering principles generally accepted as standards of the industry in the State at the time the services are performed;

(b) the Project shall be free of errors or omissions and shall be free of Deviations not previously approved by the Mobility Authority in accordance with the Contract Documents;

(c) the Design/Build Work shall be designed so as to not require significant or unusual maintenance, including landslide/rock removal, drainage repair and mud removal due to erosion; and

(d) the Design/Build Work shall meet all of the requirements of the Contract Documents.

12.1.1.2 D/B Contractor warrants for construction Design/Build Work:

(a) each of the Warranty specifications set forth in Section 3.4 of Technical Provision 3; and

(b) the Design/Build Work shall meet all of the requirements of the Contract Documents.

12.1.1.3 Except as provided in Section 12.1.1.1 and 12.1.1.2, D/B Contractor makes no other warranties or guarantees, express or implied, with respect to the quality of the Design/Build Work. **IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE SPECIFICALLY DISCLAIMED AND EXCLUDED.**

12.1.2 The Warranties for the Project shall commence upon Interim Completion for the Interim Design/Build Work, and Final Acceptance for the remaining Work, and shall remain in effect until the time specified in Technical Provision 3.2 with respect to each of the general conditions set forth in such Technical Provision 3.2. If the Mobility Authority determines that any of the Design/Build Work has not met the standards set forth in this Section 12.1 and Technical Provision 3 at any time during the warranty period for such Design/Build Work, then D/B Contractor shall correct such Design/Build Work as specified in Technical Provision 3, even if the performance of such corrective work extends beyond the stated warranty period.

12.1.3 If D/B Contractor does not use its Best Efforts to effectuate a remedy within the agreed time, as set forth in Technical Provision 3, then the Mobility Authority shall have the

right to perform or have performed by third parties the necessary remedy, and the Mobility Authority shall, at its option, deduct from any moneys due or to become due D/B Contractor and/or obtain reimbursement from D/B Contractor for such cost, with interest thereon from the date of the Mobility Authority's disbursement until payment is received by the Mobility Authority at the lesser of (i) 12% per annum or (ii) the maximum amount allowable under applicable Law.

12.1.4 All costs of repairing, replacing or correcting Design/Build Work pursuant to the Warranties, including additional testing and inspections, shall be deemed included in the Design/Build Price. Should D/B Contractor fail to submit within five (5) Days following written notice from the Mobility Authority a reasonable work plan evidencing D/B Contractor's commitment to promptly begin performance of Warranty work as directed by the Mobility Authority, and the Mobility Authority is required to perform the same, D/B Contractor shall reimburse the Mobility Authority for all expenses, direct and indirect, incurred by the Mobility Authority as a result of such Warranty work, including any costs incurred by the Mobility Authority for independent quality assurance and/or quality control with respect to the Warranty work, within ten Days after D/B Contractor's receipt of invoices therefor (including, subject to the \$10,000,000 limitation in Section 18.3.1(c), any lost toll revenue arising from or relating to such repair, replacement or corrective work) with interest thereon from the date such costs are incurred by the Mobility Authority until payment is received by the Mobility Authority at the lesser of (i) 12% per annum or (ii) the maximum amount allowable under applicable Law. Alternatively, the Mobility Authority may, at its option, deduct such sums from any moneys due or to become due D/B Contractor. Any dispute relating to this Section 12 shall be subject to the dispute resolution provisions contained in Section 25 of this D/B Contract, provided that D/B Contractor shall proceed as directed by the Mobility Authority pending resolution of the dispute.

12.1.5 The procedures, processes, tests, inspections, materials, equipment, machinery, personnel and other actions and items utilized or required under this D/B Contract with respect to the Design/Build Work shall apply equally to any repaired, replaced or corrected Design/Build Work.

12.2 Applicability of Warranties to Repaired, Replaced or Corrected Design/Build Work.

The Warranties shall apply to all Design/Build Work repaired, replaced or corrected pursuant to the terms of this D/B Contract. The Warranties for repaired, replaced or corrected Design/Build Work shall apply for the longer of (i) the remainder of the Warranty term or (ii) one (1) year from the date of acceptance by the Mobility Authority of the repaired, replaced or corrected Design/Build Work.

12.3 Subcontractor and Extended Warranties.

12.3.1 Without in any way derogating the Warranties and D/B Contractor's other obligations with respect to the Design/Build Work, D/B Contractor shall obtain from all Subcontractors and cause to be extended to the Mobility Authority, for periods at least coterminous with the Warranties, appropriate representations, warranties, guarantees and obligations with respect to design, materials, workmanship, equipment, tools, supplies and other aspects of the Design/Build Work furnished by such Subcontractors. All representations, warranties, guarantees and obligations of Subcontractors (a) shall be written so as to survive all inspections, tests and approvals hereunder, and (b) shall run directly to and be enforceable by D/B Contractor, the Mobility Authority and/or their respective successors and assigns. D/B Contractor assigns to the Mobility Authority all of D/B Contractor's rights and interest in all extended warranties for periods exceeding the applicable Warranty period which are received by D/B Contractor from any of its Subcontractors. To the extent that any Subcontractor or Supplier warranty or guaranty would be voided by reason of D/B Contractor's negligence in incorporating material or equipment into the work, D/B Contractor shall be responsible for correcting such defect.

12.3.2 Upon receipt from the Mobility Authority of notice of a failure of any Design/Build Work performed by a Subcontractor to satisfy the requirements of the Contract Documents, D/B Contractor shall enforce or perform any such Subcontractor representation, warranty, guaranty or obligation, in addition to D/B Contractor's other obligations hereunder. The Mobility Authority's rights under this Section 12.3.2 shall commence at the time such representation, warranty, guaranty or obligation is furnished and shall continue until the expiration of the Warranties (including extensions thereof under Section 12.2). Until such expiration, the cost of any equipment, material, labor (including re-engineering) or shipping shall be at D/B Contractor's cost if such cost is covered by such a Subcontractor representation, warranty, guaranty or obligation and D/B Contractor shall be required to replace or repair defective equipment, material or workmanship furnished by Subcontractors.

12.3.3 The foregoing provisions concerning Subcontractor warranties are intended to provide the Mobility Authority with an additional Person and source in which to seek recourse if Design/Build Work fails to meet the requirements of the Contract Documents. In no event shall the foregoing provisions be interpreted to modify, limit, discharge, release, negate or waive the Warranties or D/B Contractor's obligations with respect to the Design/Build Work, and D/B Contractor shall not be entitled to use the existence of Subcontractor warranties as a defense to D/B Contractor's obligations under this D/B Contract and the other Contract Documents.

12.4 Effect of the Mobility Authority or Maintenance Contractor Activities on Warranties.

D/B Contractor acknowledges and agrees that the Mobility Authority, TxDOT, or a maintenance contractor hired by the Mobility Authority or TxDOT and their respective agents may perform certain maintenance work during the period in which the Warranties are in effect and agrees that the Warranties shall apply notwithstanding such activities; provided that, the foregoing shall not be deemed to require D/B Contractor to repair, replace or correct problems to the extent caused by the Mobility Authority, TxDOT, a maintenance subcontractor hired by the Mobility Authority or TxDOT, or defective maintenance.

12.5 No Limitation of Liability.

Subject to Section 12.1.1.3, the Warranties are in addition to all rights and remedies available under the Contract Documents or applicable Law or in equity, and shall not limit D/B Contractor's liability or responsibility imposed by the Contract Documents or applicable Law or in equity with respect to the Design/Build Work, including liability for design defects, latent construction defects, strict liability, breach, negligence, willful misconduct or fraud; provided, however, that upon expiration of the Warranties, D/B Contractor shall have no further liability to the Mobility Authority for latent construction defects, unless the Mobility Authority has initiated a lawsuit for such latent defects within the applicable Warranty period or the applicable statute of limitations period under State law if such period is longer than the Warranty period.

12.6 Damages for Breach of Warranty.

If D/B Contractor fails or refuses to satisfy its obligations with respect to the Warranties, then, in addition to the Mobility Authority's other rights and remedies hereunder, at Law or in equity, D/B Contractor shall be liable for the cost of performance of such obligations by others, with interest thereon at the lesser of (i) 12% per annum or (ii) the maximum rate allowable by applicable Law.

12.7 Warranty Beneficiaries.

In addition to benefiting the Mobility Authority, and its successors and assigns, the Warranties and Subcontractors' warranties provided under this Section 12 shall inure to the benefit of and shall be directly enforceable by local agencies and Utility Owners, with respect to their facilities.

12.8 Transfer of Warranties to TxDOT.

D/B Contractor acknowledges that, pursuant to the Project Development Agreement between the Mobility Authority and TxDOT, ownership of the frontage roads included in the

Project, together with all rights of the Mobility Authority with respect to the enforcement of the Warranties described in this Section 12 and in Technical Provision 3 related to such frontage roads, will be transferred by the Mobility Authority to TxDOT following Final Acceptance of the Project hereunder. D/B Contractor hereby consents to such transfer of such Warranties and agrees that it shall be obligated to comply with all Warranty provisions under the Contract Documents, upon the terms and for the time periods specified herein, and that TxDOT shall be entitled to all rights of the Mobility Authority hereunder to enforce such Warranties.

13. PAYMENT.

13.1 Design/Build Price.

Subject to Sections 13.2, and 13.5, as full compensation for the Design/Build Work and all other obligations to be performed by D/B Contractor under the Contract Documents, the Mobility Authority shall pay to D/B Contractor a lump sum of \$581,545,700. Such sum, as it may be adjusted from time to time to account for Change Orders, is referred to herein as the "**Design/Build Price**".

13.1.1 The Design/Build Price shall be paid in accordance with Section 13.3 and may be changed only by a Change Order issued in accordance with Section 14, or Liquidated Damages pursuant to Section 18.1. D/B Contractor acknowledges and agrees that, subject only to D/B Contractor's rights under Section 14, the Design/Build Price includes (a) all designs, equipment, materials, labor, insurance and bond premiums, home office, jobsite and all other overhead, profit and services related to D/B Contractor's performance of its obligations under the Contract Documents, including all Design/Build Work, equipment, materials, labor and services provided by Subcontractors and all intellectual property rights necessary to perform the Design/Build Work; (b) performance of each and every portion of the Design/Build Work; (c) the cost of obtaining all Governmental Approvals and compliance with such Governmental Approvals and applicable Law; and (d) payment of any duties and other fees, costs and/or royalties imposed with respect to the Design/Build Work and any equipment, materials, labor or services included therein.

13.2 NTP1 and NTP2 Work Payments; Delay in Issuance of NTP1 and/or NTP2.

13.2.1 NTP1 and NTP2 Work Payments.

13.2.1.1 D/B Contractor acknowledges and agrees that (i) the Mobility Authority will not pay for NTP1 Design/Build Work prior to issuance of the NTP1, (ii) except for NTP1 Design/Build Work, the Mobility Authority will not pay for any other Design/Build Work prior to issuance of NTP2, (iii) any NTP1 Design/Build Work performed by D/B Contractor prior to the issuance of NTP1 and any other Design/Build Work performed by D/B

Contractor prior to issuance of NTP2 shall, therefore, be performed solely at D/B Contractor's risk and (iv) the Mobility Authority shall have no liability hereunder and no responsibility to pay D/B Contractor for any Design/Build Work performed by D/B Contractor unless and until the subject NTP is issued by the Mobility Authority, in its sole discretion.

13.2.2 Delay in Issuance of NTP1 and NTP2; Escalation.

13.2.2.1 The Mobility Authority intends to issue NTP1 on or about the date of execution of the Design/Build Contract, which will authorize D/B Contractor to proceed with the NTP1 Design/Build Work. The Mobility Authority intends to issue NTP2 for the remaining Design/Build Work on or about the Finance Closing Date. If NTP1 and NTP2 have not been issued by the Mobility Authority as of 210 Days after the Proposal Date, due to no fault of any member of the D/B Contractor Group, this D/B Contract shall remain in full force and effect, without any modification to the terms and conditions hereof, provided that D/B Contractor shall be entitled to an adjustment in the Design/Build Price for the Design/Build Work, based on the Engineering News Record Construction Cost Index for Construction Costs ("**ENR CCI**"), from a base date commencing as of the expiration of such 210 Day period and until the date of issuance of NTP calculated as follows:

$$\text{Adjusted DP} = (\text{Proposal DP}) \times (\text{ENR CCI})/(\text{BI})$$

The Base Index (BI) is the Engineering News Record Construction Cost Index for the calendar month which occurs 210 Days after the Proposal Date. The ENR CCI is the Engineering News Record Construction Cost Index for the month in which NTP2 is issued.

13.2.2.2 If NTP1 and NTP2 have not been issued as of 365 Days after the Proposal Date due to no fault of any member of the D/B Contractor Group, D/B Contractor may seek to negotiate a Change Order, including an extension in time for issuance of NTP1 and/or NTP2 and an increase in the Design/Build Price mutually acceptable to D/B Contractor and the Mobility Authority, provided that any extension in time for issuance of NTP2 beyond 365 Days after the Proposal Date shall be subject to the concurrence of Surety. If D/B Contractor does not wish to seek a Change Order as provided above or the Mobility Authority fails to issue a Change Order acceptable to D/B Contractor, then following 365 Days after the Proposal Date, D/B Contractor's sole remedy shall be to terminate this D/B Contract by delivery of notice of termination to the Mobility Authority.

13.2.2.3 If NTP2 has not been issued within 90 Days after the date of issuance of NTP1 through no fault of any member of the D/B Contractor Group, D/B Contractor may be entitled to a Change Order to extend the Interim Completion Deadline and/or the Completion Deadline to the extent D/B Contractor can demonstrate that the failure to issue NTP2 within such time period adversely affected D/B Contractor's Critical Path.

13.3 Payments.

Payment to D/B Contractor of the Design/Build Price shall be made in accordance with the procedures set forth in this Section 13.3.

13.3.1 Delivery of Draw Request.

On or about the fifth Business Day of each month, D/B Contractor shall deliver to the Mobility Authority five copies of a Draw Request in the form attached hereto as Exhibit L and meeting all requirements specified herein except as otherwise approved in writing by the Mobility Authority. Each Draw Request shall be executed by a designated and authorized representative of D/B Contractor appointed by D/B Contractor to have such authority in accordance with this D/B Contract. D/B Contractor acknowledges that the Mobility Authority will obtain funding for portions of the Design/Build Work from the federal government, local agencies, the D/B Contractor, if applicable, and other third parties, and D/B Contractor agrees to segregate Draw Requests for all such Design/Build Work in a format reasonably requested by the Mobility Authority and with detail and information as reasonably requested by the Mobility Authority. Each Draw Request shall be organized to account for applicable reimbursement requirements and to facilitate the reimbursement process.

13.3.2 Contents of Draw Request.

Each Draw Request must contain the following items:

- (a) Draw Request cover sheet;
- (b) Monthly progress report as described in Technical Provision 1;
- (c) Certification by the Design Quality Control Manager and the Construction Quality Control Manager that all Design/Build Work which is the subject of the Draw Request fully complies with the requirements of the Contract Documents subject to any exceptions identified in the certification;
- (d) Draw Request data sheet(s) and supporting documents, as required by the Mobility Authority to support and substantiate the amount requested (based on quantities and unit prices for unit priced Design/Build Work, based on time and materials for Time and Materials Change Orders, based on actual costs as evidenced by invoices for items to be paid from an allowance, and based on the Project Schedule of Values for all other Design/Build Work);
- (e) DBE utilization report in a format reasonably satisfactory to the Mobility Authority;

- (f) Cash flow curves and comparison to the Payment Curve;
- (g) A Mobility Authority approved and updated Project Schedule in accordance with Section 5 hereof and Technical Provision 5.
- (h) A waiver of lien from each applicable Subcontractor that was scheduled to be paid pursuant to the previous month's Draw Request;
- (i) Certified invoices for materials on hand in accordance with Section 13.3.12;
- (j) A Debarment Certificate in the form of Exhibit P hereto.
- (k) Such other items as the Mobility Authority reasonably requests.

In addition, no Draw Request shall be considered complete unless it: (1) describes in detail the status of completion as it relates to the Project Schedule; (2) sets forth in detail the related payments which are then due in accordance with the Project Schedule of Values, as of the end of the prior month; (3) in the case of amounts to be paid on a unit price basis, includes invoices, receipts or other evidence establishing the number of units delivered; (4) in the case of amounts invoiced on a time and materials basis, includes all supporting documentation described in Section 14.7; and (5) sets forth in detail the amounts paid to Subcontractors (including Suppliers and sub-subcontractors) from the payments made by the Mobility Authority to D/B Contractor with respect to the prior month's Draw Request, including executed unconditional waivers of claims with respect to all amounts so paid.

13.3.3 Draw Request Cover Sheet Contents.

The Draw Request cover sheet shall include the following:

- (a) Project number and title;
- (b) Request number (numbered consecutively starting with "1");
- (c) Total amount earned to date for the Project as a whole in order to allow the Mobility Authority to calculate, withhold, deposit, or release Retainage in accordance with the terms hereof; and
- (d) Authorized signature, title of signer, and date of signature.

13.3.4 Certification by Design Quality Control Manager and Construction Quality Control Manager.

With each Draw Request, D/B Contractor shall submit a certificate in the form attached hereto as Exhibit L and signed and sealed by the Design Quality Control Manager and Construction Quality Control Manager, certifying that:

(a) All Design/Build Work, including that of designers, Subcontractors, including Suppliers and fabricators, which is the subject of the Draw Request has been checked and/or inspected by the Design Quality Management team and the Construction Quality Management team;

(b) Except as specifically noted in the certification, all Design/Build Work which is the subject of the Draw Request conforms to the requirements of the Contract Documents, the Governmental Approvals and applicable Law;

(c) The DQMP and the Construction QMP and all of the measures and procedures provided therein are functioning properly and are being followed in all respects; and

(d) The design and construction quantities, percentages and cost indicated are accurate and correct.

13.3.5 [Reserved].

13.3.6 Draw Request Data Sheets.

Draw Request data sheets shall be subdivided into D/B Contractor-designated Project segments and shall be attached to a Project-wide report and Draw Request data sheet. It is the intent of the Mobility Authority to base payments on a mutually agreed estimate of percentage of Design/Build Work completed, not on measured quantities, except that cost plus or unit price Change Order work or items to be paid from an allowance may be paid based upon measured quantities. D/B Contractor's designation of activities, phases and Project segments and their representation on the final approved Project Schedule and the corrected monthly progress reports shall facilitate this basis of determining periodic payments. Where progress is measured by percentage complete and days remaining, the percentage shall be calculated using Primavera P8.3. D/B Contractor may present the format of the Draw Request data sheets for Mobility Authority approval at least twenty (20) Business Days prior to the submittal of the first Draw Request. Once the Draw Request format has been approved by the Mobility Authority, the format shall not change without prior written approval of the Mobility Authority.

13.3.7 Payment by the Mobility Authority.

Within fifteen (15) Business Days after the Mobility Authority's receipt of a complete Draw Request, the Mobility Authority will review the Draw Request and all attachments and certificates thereto for conformity with the requirements of the Contract Documents, and shall notify D/B 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. D/B Contractor may include such disapproved amounts in the next month's Draw Request after correction of the deficiencies noted by the Mobility Authority. All such disapproved amounts shall be deemed in dispute unless otherwise agreed. Within thirty (30) Business Days after submittal of a Draw Request in conformity with the requirements of the Contract Documents, the Mobility Authority shall pay D/B Contractor the amount of the Draw Request approved for payment less any applicable Retainage and less any amounts which the Mobility Authority is otherwise entitled to withhold or deduct. In no event shall D/B Contractor be entitled to (a) payment for any activity in excess of the value of the activity times the completion percentage of such activity (for non-unit priced Work), or (b) aggregate payments hereunder in excess of the overall completion percentage for the Project times the Design/Build Price (for non-unit-priced Work). Interest on late payments to D/B Contractor shall accrue and be paid thereon at the rate equal to the lesser of (i) 12% per annum or (ii) the maximum rate allowable under applicable Law.

13.3.8 Payment to Subcontractors.

D/B Contractor shall promptly pay each Subcontractor for Design/Build Work no later than ten (10) Days after receipt of payment for such Design/Build Work from the Mobility Authority, the amount to which such Subcontractor is entitled, less any retainage provided for in the Subcontract, as well as any other offsets and deductions provided in the Subcontract or by Law. D/B Contractor further agrees to pay retainage to each Subcontractor within ten Days after the Subcontractor's work is satisfactorily completed. For the purpose of this Section 13.3.8, satisfactory completion shall have been accomplished when:

(a) the Subcontractor has fulfilled the Subcontract requirements and the requirements under the Contract Documents for the subcontracted Design/Build Work, including the submission of all submittals required by the Subcontract and Contract Documents; and

(b) the Design/Build Work performed by the Subcontractor has been inspected and approved in accordance with the Contract Documents and the final quantities of the Subcontractor's work have been determined and agreed upon.

The inspection and approval of a Subcontractor's work does not eliminate or impair the D/B Contractor's responsibility for the Design/Build Work under this D/B Contract. Any delay

or postponement of payments to Subcontractors from the above-referenced time frames may occur only for good cause following written approval by the Mobility Authority. D/B Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub-subcontractors in a similar manner. The Mobility Authority shall have no obligation to pay a Subcontractor. Interest on late payments to Subcontractors shall be D/B Contractor's responsibility, and shall not be a part of the Design/Build Price. The foregoing payment requirements apply to all tiers of Subcontractors and shall be incorporated by D/B Contractor into all Subcontracts.

13.3.9 Continued Performance During Disputes.

Failure by the Mobility Authority to pay any amount in dispute shall not postpone, alleviate, diminish, release, alter or modify in any respect D/B Contractor's obligation to perform under the Contract Documents, including D/B Contractor's obligation to achieve Interim Completion by the Interim Completion Deadline, to achieve Substantial Completion by the Completion Deadline, to achieve Final Acceptance by the Acceptance Deadline and to complete all Design/Build Work in accordance with the Contract Documents, and D/B Contractor shall not cease or slow down its performance under the Contract Documents on account of any such dispute. Notwithstanding the foregoing, Mobility Authority shall be required to submit payment of those amounts not in dispute and/or approved for payment. Any dispute regarding such payment shall be resolved pursuant to Section 25 of this D/B Contract. Upon resolution of any such dispute, subject to the limitations specified in this Section 13, the Mobility Authority shall promptly pay to D/B Contractor any amount identified through the dispute resolution process as owing to D/B Contractor. If payment of disputed amounts is made after the 30th Day following the proper submission of a complete Draw Request, then the payment shall, subject to the limitations specified in this Section 13, include interest on the amount owing, from the date that the payment was due (based on the agreement of the Parties or the decision of the judge) until the date of payment, which shall accrue at the rate equal to the lesser of (i) 12% per annum or (ii) the maximum rate allowable under applicable Law.

13.3.10 Retainage.

13.3.10.1 The Mobility Authority shall not withhold funds as retainage from payments to be made to D/B Contractor for the Design/Build Work until such time as 98% of the Work has been completed and payment therefor has been made to the D/B Contractor. Following completion of and payment for 98% of the Design/Build Work, the Mobility Authority shall withhold, as retainage (the "Retainage"), the remaining 2% of the Design/Build Price pursuant to the terms described below.

13.3.10.2 The Retainage for Design/Build Work, subject to reduction as specified below, shall be held by the Mobility Authority until 60 Days after Final Acceptance of

the Project. At such time, and provided that D/B Contractor is not in breach or default hereunder, the Mobility Authority shall release to D/B Contractor all Retainage withheld in connection with Design/Build Work other than amounts applied to the payment of Losses or which the Mobility Authority deems advisable, in its sole discretion, to retain to cover any existing or written threatened claims, Liens and stop notices relating to the Project, including claims by Utility Owners and any Railroad, the cost of any uncompleted Design/Build Work and/or the cost of repairing any Nonconforming Work. Final payment of such Retainage not applied to Losses shall be made upon D/B Contractor's showing, to the Mobility Authority's satisfaction, that all such matters have been resolved, including delivery to the Mobility Authority of a certification representing and warranting that there are no outstanding claims of D/B Contractor or any claims, Liens or stop notices of any Subcontractor or laborer with respect to the Design/Build Work.

13.3.10.3 Prior to the release of any Retainage by the Mobility Authority pursuant to the terms hereof, such amounts shall be held by the Mobility Authority in a separate account. Upon the release of any Retainage, D/B Contractor shall not be entitled to any interest income that has accrued upon the amounts of Retainage released to D/B Contractor.

13.3.11 Deductions.

In addition to the deductions provided for above, the Mobility Authority may deduct from each payment to D/B Contractor under this D/B Contract the following:

(a) Any Mobility Authority or third party claims or Losses for which D/B Contractor is responsible under the Contract Documents or any Liquidated Damages which have accrued as of the date of payment, except to the extent an insurance claim therefor has been accepted by the insurer without any reservation of rights to deny coverage;

(b) Any sums expended by the Mobility Authority in performing any of D/B Contractor's obligations under this D/B Contract which D/B Contractor has failed to perform, with interest thereon from the date on which the Mobility Authority expended such sums at the lesser of (i) 12% per annum or (ii) the maximum rate allowable under applicable Law;

(c) Any existing or written threatened claims, Liens and stop notices of Subcontractors, laborers, Utility Owners and other third parties against D/B Contractor or against the Mobility Authority as a result of the actions or failure to act by D/B Contractor, relating to the Project; and

(d) Any other sums which the Mobility Authority is entitled to recover from any member of the D/B Contractor Group under the terms of this D/B Contract.

The failure by the Mobility Authority to deduct any of these sums from a payment to D/B Contractor shall not constitute a waiver of the Mobility Authority's right to recover such sums or to deduct such funds from future payments.

13.3.12 Materials On Hand.

The Mobility Authority will not pay for any material not yet incorporated in the Design/Build Work other than precast concrete, reinforcing steel, structural steel, precast concrete members, stone, gravel, sand or other non-perishable materials that will be permanently incorporated in the Design/Build Work. Payment for such items will be made only if all of the following conditions have been met:

13.3.12.1 Material shall be delivered to the Site, or delivered to D/B Contractor and promptly stored by D/B Contractor at a location approved by the Mobility Authority in its sole discretion. Prior to inclusion of such materials in any invoice, D/B Contractor shall submit certified bills for such materials to the Mobility Authority. The Mobility Authority shall allow only such portion of the amount represented by these bills as in its opinion is consistent with the reasonable cost of such materials. If such materials are stored at any site not approved by the Mobility Authority, D/B Contractor shall accept responsibility for and pay all personal and property taxes that may be levied against the Mobility Authority by any state or subdivision thereof on account of such storage of such material. The Mobility Authority will permit D/B Contractor, at its own cost, to in good faith contest the validity of any such tax levied against the Mobility Authority in appropriate proceedings and in the event of any judgment or decree of a court, D/B Contractor agrees to pay same together with any penalty or other costs, relating thereto.

13.3.12.2 All such materials so accepted shall be and become the property of the Mobility Authority. D/B Contractor at its own cost shall promptly execute, acknowledge and deliver to the Mobility Authority proper bills of sale or other instruments in writing in a form acceptable to the Mobility Authority conveying and assuring to the Mobility Authority title to such material included in any invoice, free and clear of all Liens. D/B Contractor at its own cost shall conspicuously mark such material as the property of the Mobility Authority, shall not permit such materials to become commingled with non-Mobility Authority-owned property and shall take such other steps, if any, as the Mobility Authority may require or regard as necessary to vest title to such material in the Mobility Authority free and clear of Liens.

13.3.12.3 Material included in an invoice but which is subsequently lost, damaged or unsatisfactory shall be deducted from succeeding invoices.

13.3.12.4 Payment for material furnished and delivered as indicated in this Section 13.3.12 will not exceed the amount paid by D/B Contractor as evidenced by a bill of sale

supported by paid invoice. The Mobility Authority shall withhold Retainage from such payment as specified in Section 13.3.10.

13.3.13 **Mobilization.**

D/B Contractor shall be entitled to mobilization payments in accordance with this Section 13.3.13 and Technical Provision 23.2. Payment for the cost of mobilization shall not exceed 10% of the Design/Build Price. Payment for such mobilization will be made in three (3) payments as follows, but in no event earlier than the first progress payment after the issuance by the Mobility Authority of NTP1 (a) First Payment (25% of mobilization cost) will be paid with the first progress payment after the issuance by the Mobility Authority of NTP1; (b) Second Payment (50% of mobilization costs) will be paid when at least 5% of the Design/Build Price (less mobilization and materials on hand) is earned; and (c) Final Payment (25% of mobilization costs) will be paid when at least 25% of the Design/Build Price (less mobilization and materials on hand) is earned.

13.3.14 **Equipment.**

The Mobility Authority will not pay for direct costs of equipment. Payment for equipment, whether new, used or rented, shall be allocated to and paid for as part of the mobilization payments allowed hereunder and/or as part of the compensation allowed for the activities with which the equipment is associated.

13.3.15 **Bond and Insurance Premiums.**

The amount payable to D/B Contractor for bond and insurance premiums shall be a dollar-for-dollar pass through of D/B Contractor's costs (not to exceed the line item for such premiums set forth in the Proposal), with any excess portion of the line item for such premiums set forth in the Proposal to be paid upon achievement of Substantial Completion of the Project and the opening of the Project.

13.4 **Compensation for Early Completion.**

As an inducement to D/B Contractor to achieve Substantial Completion and Interim Completion in advance of the original Completion Deadline and Interim Completion Deadline, the Mobility Authority agrees to pay D/B Contractor a bonus for early Substantial Completion of the Project prior to the original Completion Deadline and early Interim Completion prior to the original Interim Completion Deadline (the "**Incentive Payment**"), as follows:

13.4.1 If D/B Contractor achieves Substantial Completion of the Project in accordance with Section 20.1 prior to the original Completion Deadline, D/B Contractor shall be entitled to receive \$100,000 per Day up to an aggregate amount of \$6,000,000 for all Incentive Payments

payable for Substantial Completion of the Project. If D/B Contractor achieves Interim Completion of the Interim Design/Build Work in accordance with Section 20.2 prior to the Interim Completion Deadline, D/B Contractor shall be entitled to receive \$20,000 per day up to an aggregate of \$1,800,000 for all Incentive Payments payable for Interim Completion.

13.4.2 Incentive Payments under Section 13.4.1 shall be paid by the Mobility Authority to D/B Contractor in accordance with the draw request provisions contained in Section 13.3 hereof. The Mobility Authority shall have the right to offset any amounts owing from D/B Contractor to the Mobility Authority against amounts payable under this Section 13.4.

13.4.3 If the Completion Deadline or Interim Completion Deadline has been extended beyond the original deadline, and D/B Contractor achieves Substantial Completion or Interim Completion prior to said extended deadlines, D/B Contractor shall be entitled to receive an Incentive Payment for Substantial Completion or Interim Completion prior to such extended deadline and after the original Completion Deadline or Interim Completion Deadline. The amount of such payment shall be calculated in accordance with Section 13.4.1 (replacing references to the "original Completion Deadline" and "original Interim Completion Deadline" therein with references to the "extended Completion Deadline" and the "extended Interim Completion Deadline") and shall be subject to the other provisions of this Section 13.4.

13.5 [Reserved.]

13.6 Final Payment.

Final Payment for the Project will be made as follows:

13.6.1 On or about the date of Final Acceptance of the Project, D/B Contractor shall prepare and submit a proposed Final Draw Request to the Mobility Authority showing the proposed total amount due D/B Contractor, including any amounts owing from Change Orders, for Design/Build Work relating to the Project. In addition to meeting all other requirements for invoices hereunder, the Final Draw Request shall list all outstanding PCO Notices, stating the amount at issue associated with each such notice. The Final Draw Request shall be accompanied by (a) evidence regarding the status of all existing or written threatened claims, Liens and stop notices of Subcontractors, laborers, Utility Owners and railroads against D/B Contractor or against the Mobility Authority, (b) consent of any Guarantors and Surety to Final Payment, (c) such other documentation as the Mobility Authority may reasonably require; and (d) the release described in Section 13.6.4, executed by D/B Contractor. Prior applications and payments shall be subject to correction in the Final Draw Request. PCO Notices filed concurrently with the Final Draw Request must meet all requirements under Sections 14 and 25.

13.6.2 If the Final Draw Request shows no existing or written threatened claims, Liens and stop notices of Subcontractor, laborers, Utility Owners or railroads against D/B Contractor or against the Mobility Authority, and provided the Final Draw Request has been approved, the Mobility Authority, in exchange for an executed release meeting the requirements of Section 13.6.4 and otherwise satisfactory in form and content to the Mobility Authority, will pay the entire sum found due on the approved Final Draw Request, less the amount of any Losses that have accrued as of the date of the Final Payment.

13.6.3 If the Final Draw Request lists any existing or written threatened claims, Liens and stop notices of Subcontractors, laborers, Utility Owners or railroads against D/B Contractor or against the Mobility Authority, or if any is thereafter filed, the Mobility Authority may withhold from the payment of the amounts set forth on the approved Final Draw Request such amount as the Mobility Authority deems advisable to cover any amounts owing to the Mobility Authority by D/B Contractor, including costs to complete or remediate uncompleted Design/Build Work or Nonconforming Work, and the amount of any existing or threatened claims, Liens and stop notices of Subcontractors, laborers, Utility Owners and railroads against D/B Contractor or against the Mobility Authority.

13.6.4 The executed release from D/B Contractor shall be from any and all claims arising from the Design/Build Work, and shall release and waive any claims against the Indemnified Parties, excluding only (i) those matters identified in any PCO Notices listed as outstanding in the Final Draw Request and (ii) any other disputes previously identified in writing to the Mobility Authority by the D/B Contractor, provided such disputes are not otherwise by the Contract Documents required to be the subject of a PCO Notice. The release shall be accompanied by an affidavit from D/B Contractor certifying:

(a) that all Design/Build Work has been performed in strict accordance with the requirements of the Contract Documents;

(b) that D/B Contractor has resolved any claims made by Subcontractors, Utility Owners, any railroad and others against D/B Contractor or the Project except as to claims against the Payment Bond;

(c) that D/B Contractor has no reason to believe that any Person has a valid claim against D/B Contractor or the Project which has not been communicated in writing by D/B Contractor to the Mobility Authority as of the date of the certificate; and

(d) that all guarantees, Warranties and the Payment Bond and the Performance Bond are in full force and effect.

Said release and the affidavit shall survive Final Payment.

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13.6.5 All prior Draw Requests shall be subject to correction in the Final Draw Request.

13.6.6 The Mobility Authority will review D/B Contractor's proposed Final Draw Request, and changes or corrections will be forwarded to D/B Contractor for correction within 15 Business Days. The Mobility Authority shall pay any undisputed amounts, less any Losses that have accrued as of the date of the Final Payment, within 30 Days after its approval of such amounts on the application for Final Payment, but not earlier than the date of Final Acceptance. If no changes or corrections are required, the Mobility Authority will accept the Final Draw Request and make such payment within 30 Days after its acceptance thereof.

13.7 Taxes.

13.7.1 D/B Contractor shall pay, prior to delinquency, any and all sales and use taxes, property taxes and other taxes, fees, charges or levies (not based on income) imposed by a Governmental Entity on D/B Contractor which are related to the Design/Build Work; provided, however, that D/B Contractor shall not be in breach of this Section 13.7 for failure to make such payments prior to delinquency to the extent that (i) such failure is due to a good faith dispute by D/B Contractor as to whether D/B Contractor is subject to such taxes or the amount thereof; (ii) D/B Contractor seeks expeditiously to resolve such dispute; (iii) such taxes will not become a Lien against the Project and/or the Final ROW; (iv) failure to pay such taxes during the pendency of such dispute shall not adversely affect the Project; and (v) D/B Contractor posts such bonds or other security reasonably requested by the Mobility Authority.

13.7.2 D/B Contractor and the Mobility Authority acknowledge that Mobility Authority is exempt from paying sales tax on Expendable Materials purchases within the State with respect to the Project. If material and equipment purchases for the Design/Build Work are not wholly used or expended on the Project, D/B Contractor shall be responsible for applicable sales taxes.

13.8 Value Added Concepts.

The proposals submitted by the D/B Contractor to the Mobility Authority for Value-Added Concepts shall be valid for a period of 365 days from the Proposal Date; provided, however, that D/B Contractor shall not be required to implement a Value-Added Concept for the price proposed in its Proposal if the D/B Contractor specified in its Proposal that such Value-Added Concept could only be implemented if accepted by Mobility Authority at execution of this D/B Contract. If the Mobility Authority does not incorporate the terms of a Value-Added Concept into the D/B Contract as a contractual obligation during finalization/execution of this D/B Contract then it may do so as a Change Order under this D/B Contract. The scope contained in the Value-Added Concept shall be unchanged within the 365 day period; any changes shall be agreed to in writing by both parties. The price contained in the Value-Added Concept shall initially be valid for acceptance by the Mobility Authority for a period of 210 days after the

Proposal Date. The Mobility Authority shall have the right to extend this date for up to an additional 155 days, provided that the Value-Added Concept price will be subject to increase or decrease based on the *Engineering News Record Construction Cost Index* ("**ENR CCI**"), commencing as of the expiration of the 210-day period. The procedure for determining the increase or decrease in the Value-Added Concept price shall be the same as set forth in Section 13.2.2.1 above.

14. CHANGES IN THE DESIGN/BUILD WORK.

This Section 14 sets forth the requirements for obtaining all Change Orders under this D/B Contract. D/B Contractor acknowledges and agrees that the Design/Build Price constitutes full compensation for performance of all Design/Build Work, subject only to those express exceptions specified in this Section 14, and that the Mobility Authority is subject to constraints which limit its ability to increase the Design/Build Price or to extend contractual deadlines for performance. D/B Contractor unconditionally and irrevocably waives the right to any claim for a time extension or for any monetary compensation in addition to the Design/Build Price and other compensation specified in this D/B Contract for the Design/Build Work, except as expressly set forth in this Section 14. To the extent that any other provision of this D/B Contract expressly provides for a Change Order to be issued, such provision is incorporated into and subject to this Section 14. Provisions of this Section 14, including provisions incorporated into this Section 14, permitting or requiring the revision of either Completion Deadlines or the Design/Build Price shall be deemed to permit or require the revision of other terms and conditions of the Contract Documents if and as required to fully and equitably address the circumstances.

14.1 Change Orders.

14.1.1 Definition of and Requirements Relating to Change Orders.

14.1.1.1 Change Orders.

The term "**Change Order**" shall mean a written amendment to the terms and conditions of the Contract Documents issued in accordance with this Section 14. The Mobility Authority may issue unilateral Change Orders as specified in Section 14.2. Change Orders may be requested by D/B Contractor only pursuant to Section 14.3. Change Orders may be issued for the following purposes (or combination thereof):

- (a) to modify the scope of the Design/Build Work;
- (b) to revise the Interim Completion Deadline, the Completion Deadline or the Acceptance Deadline;
- (c) to revise the Design/Build Price; and

(d) to revise other terms and conditions of the Contract Documents.

Upon the Mobility Authority's approval of the matters set forth in the Change Order form, whether it is initiated by the Mobility Authority or D/B Contractor, the Mobility Authority shall execute such Change Order form.

14.1.1.2 Issuance of Directive Letter.

The Mobility Authority may, at any time, issue a letter to D/B Contractor in the event of any desired change in the Design/Build Work or in the event of any dispute regarding the scope of the Design/Build Work to be performed by D/B Contractor (a "**Directive Letter**"). The Directive Letter will describe the Design/Build Work in question and will state the basis for determining compensation, if any. D/B Contractor will proceed with the Design/Build Work in a manner and pursuant to a schedule as directed in the Directive Letter, pending the execution of a formal Change Order or, if the Directive Letter states that the Design/Build Work is within the original scope of the Design/Build Work, D/B Contractor will proceed with the Design/Build Work as directed, but shall have the right to submit the question of entitlement to a Change Order and the amount of allowable compensation and time to dispute resolution in accordance with Section 25 of this D/B Contract.

14.1.1.3 Prerequisites for Change Orders for Work Outside of Scope.

As a condition precedent to D/B Contractor's entitlement to a price increase or time extension for work which D/B Contractor believes is outside of the scope of the Design/Build Work, D/B Contractor shall have received either a Directive Letter from the Mobility Authority stating that it is issued pursuant to Section 14.1.1.2 or a Change Order for such item signed by the Mobility Authority. D/B Contractor shall not be entitled to additional compensation or time extension for any such work performed prior to receipt of a Directive Letter or Change Order, except to the extent that Section 14.3.2.2 preserves D/B Contractor's right to compensation for work performed following delivery of a Request for Change Order Resolution Meeting. D/B Contractor acknowledges that it will be at risk if it elects to proceed with any such work, since the Mobility Authority may later decide not to provide direction with regard to such work.

14.1.1.4 Additional Provisions Concerning Directive Letters.

In addition to provision of a Proposed Change Order ("**PCO**") Notice and subsequent Change Order request pursuant to Section 14.3.2, receipt of a Directive Letter from the Mobility Authority shall be a condition precedent to D/B Contractor's right to make a Claim that a Mobility Authority-Directed Change has occurred. However, the fact that a

Directive Letter was issued by the Mobility Authority shall not be considered evidence that a Mobility Authority-Directed Change has occurred. The determination as to whether a Mobility Authority-Directed Change has occurred shall be based on an analysis of the original requirements of the Contract Documents and a determination whether the Directive Letter constituted a change in those requirements. The foregoing requirements do not require that a Directive Letter be issued by the Mobility Authority in order for D/B Contractor to have the right to receive compensation for Design/Build Work within the original scope of the Design/Build Work (such as certain types of Utility Adjustment Work) for which additional compensation is specifically allowed under this Section 14.

14.1.2 Right of the Mobility Authority to Issue Change Orders.

The Mobility Authority may, at any time and from time to time, without notice to any Surety or Guarantor, authorize and/or require changes in the Design/Build Work within the general scope of the Design/Build Work pursuant to a Change Order. All additions, deductions or changes to the Design/Build Work as directed by Change Orders shall be executed under the conditions of the original Contract Documents.

14.2 Procedure for Issuance of Change Orders by the Mobility Authority.

This Section 14.2 concerns Change Orders issued by the Mobility Authority following a Request for Change Proposal and Change Orders unilaterally issued by the Mobility Authority.

14.2.1 Request for Change Proposal.

14.2.1.1 If the Mobility Authority desires to issue a Mobility Authority-Directed Change or to evaluate whether to initiate such a change, the Mobility Authority may, at its discretion, issue a Request for Change Proposal. The Mobility Authority may, at any time, ask D/B Contractor to provide two alternative Change Order forms in accordance with Section 14.3.3.

14.2.1.2 Within five Business Days after D/B Contractor's receipt of a Request for Change Proposal, the Mobility Authority and D/B Contractor shall arrange an initial consultation (at no charge to the Mobility Authority) concerning the estimated cost and time impacts. The D/B Contractor shall deliver a statement of costs and time impacts, as well as any other requested data, to the Mobility Authority no later than ten (10) Business Days after the D/B Contractor receives a Request for Change Proposal. The Mobility Authority, in its sole discretion, may extend this deadline. In the event that D/B Contractor does not deliver the requested statement of costs and time impacts and other requested data by the deadline, as extended, the Mobility Authority may impose a fee of \$5,000 per Day until the requested statement and related data are provided.

14.2.1.3 After the initial consultation and delivery by D/B Contractor of data and information as described in Section 14.2.1.2, the Mobility Authority shall notify D/B Contractor whether the Mobility Authority (a) wishes to issue a Change Order, (b) wishes to request D/B Contractor to prepare a Change Order form as discussed at the consultation, or (c) no longer wishes to issue a Change Order.

14.2.1.4 If so requested, D/B Contractor shall, within ten (10) Business Days after receipt of the notification described in Section 14.2.1.3 (as such deadline may be extended by the Mobility Authority), prepare and submit to the Mobility Authority a Change Order form, complying with all applicable requirements of Section 14.6.1 and incorporating and fully reflecting all requests made by the Mobility Authority. If D/B Contractor determines that it cannot meet the time allowed, D/B Contractor shall notify the Mobility Authority in writing of D/B Contractor's proposed deadline for providing the Change Order form, which deadline shall be subject to approval in writing by the Mobility Authority. In the event D/B Contractor fails to prepare and submit the required Change Order form by the deadline, as extended, the Mobility Authority may impose a fee of \$5,000 per Day until the Change Order form is provided. Development of the cost estimate and scope, including any modifications thereto requested by the Mobility Authority, shall be made at D/B Contractor's cost and expense, except that costs of design and engineering work required for preparation of plans or exhibits necessary to the Change Order form shall be included in the Change Order as reimbursable items. The Mobility Authority may, but shall not be obligated to, reimburse part or all of D/B Contractor's Change Order development costs and expenses if no Change Order is ultimately issued.

14.2.1.5 If the Parties agree that a change in the requirements relating to the Design/Build Work has occurred, but disagree as to whether the change results in an increase or decrease in compensation or time or disagree as to the amount of any increase or decrease to be made to the Design/Build Price or extension of time, the Mobility Authority may, in its sole discretion, order D/B Contractor to proceed with the performance of the Design/Build Work in question notwithstanding such dispute. Such order may, at the Mobility Authority's option, be in the form of: (a) a Time and Materials Change Order as provided in Section 14.7 or (b) a Directive Letter under Section 14.1.1.2, which shall specify the basis for determining compensation.

14.2.1.6 Any delay in issuance of NTP1 by the Mobility Authority shall be deemed to constitute a Request for Change Proposal with respect to such delay entitling D/B Contractor to a Change Order in accordance with Section 13.2.

14.2.1.7 In the event the Mobility Authority shall issue a Request for Change Proposal requesting that D/B Contractor implement a value added concept proposed by D/B Contractor in its Proposal, D/B Contractor shall be required to provide the additional Design/Build Work related to such Change Order so long as such Request for Change Proposal

is issued by the Mobility Authority within 365 Days of the Proposal Date. Any such Request for Change Proposal to implement a value added concept that is issued by the Mobility Authority more than 210 Days after the Proposal Date shall be subject to price adjustment based on the formula contained in Section 13.2.2.1. Notwithstanding the above, the D/B Contractor shall not be required to implement a value added concept for the price proposed in its Proposal if the D/B Contractor specified in its Proposal that such value added concept could only be implemented if accepted by the Mobility Authority at the time of the execution of this D/B Contract.

14.2.2 Unilateral Change Orders for Mobility Authority-Directed Changes.

The Mobility Authority may issue a Change Order for a Mobility Authority-Directed Change at any time, regardless of whether it has issued a Request for Change Proposal. Any such Change Order shall state that D/B Contractor shall be entitled to compensation in accordance with Section 14.7 or Section 14.6 (at the discretion of the Mobility Authority) for the additional Design/Build Work required thereby and an extension in the Interim Completion Deadline and/or the Completion Deadline if permitted pursuant to Section 14.3.1.1.

14.3 D/B Contractor-Requested Change Orders.

14.3.1 Eligible Changes.

14.3.1.1 D/B Contractor may request a Change Order to extend the Interim Completion Deadline, the Completion Deadline or the Acceptance Deadline only for delays directly attributable to (a) Mobility Authority-Caused Delays; (b) Force Majeure Events; (c) Hazardous Material Delays to the extent allowed pursuant to Section 14.8.3; or (d) discovery within the Schematic ROW of an Unidentified Utility (subject in all cases to a requirement to show that the delay actually extended the duration of a Critical Path so as to delay Interim Completion, Substantial Completion or Final Acceptance beyond the applicable deadline, and provided that if a Mobility Authority-Caused Delay is concurrent with another delay that is D/B Contractor's responsibility under the Contract Documents, then such delay shall be borne 100% by D/B Contractor and D/B Contractor shall not be entitled to a time extension for the concurrent Mobility Authority-Caused Delay).

14.3.1.2 D/B Contractor may request a Change Order to increase the Design/Build Price, subject to strict compliance with the requirements of this Section 14 and Section 13, only for increased costs of the Design/Build Work as follows:

(a) Additional costs directly attributable to additional Design/Build Work resulting from Mobility Authority-Directed Changes for which the Mobility Authority has not submitted a Change Order or a Request for Change Proposal;

(b) Additional costs directly attributable to Mobility Authority-Caused Delays (except for the Mobility Authority's failure to issue NTP2 within 90 Days of the date of issuance of NTP1 pursuant to Section 13.2.2.3 of this D/B Contract);

(c) Additional costs directly attributable to Force Majeure Events, excluding costs which are compensable by the builder's risk or any other insurance required to be provided hereunder, and subject to Section 14.10;

(d) Additional costs of Hazardous Materials Management, to the extent specified in Section 14.8, but subject to Section 7.5;

(e) Additional costs relating to Differing Site Conditions, to the extent specified in Section 14.9;

(f) Additional costs with respect to Utility Adjustment Work, to the extent specified in Section 14.12;

(g) Subject to prior approval by the Mobility Authority, additional costs related to redesign where discovery of Hazardous Materials requires a change to D/B Contractor's previously prepared design plans; and

(h) Additional costs related to repairs resulting from third party actions to the extent specified in Section 11.2.

14.3.2 Notification Requirements as Conditions Precedent.

In all circumstances except those involving a Request for Change Proposal or escalation pursuant to Section 13.2.2, D/B Contractor's entitlement to request a Change Order shall be contingent on its compliance with the requirements set forth in this Section 14.3.2.

14.3.2.1 Delivery of Requests for Change Order Resolution Meeting and PCO Notices.

D/B Contractor acknowledges the importance of providing prompt notification to the Mobility Authority upon occurrence of any event or thing entitling D/B Contractor to a Change Order under Section 14.3.1. Among other things, such notification serves the purpose of allowing the Mobility Authority to take action to mitigate adverse impacts. Such notification must be delivered as promptly as possible after the occurrence of such event or situation, through either (a) a PCO Notice as described in Section 14.3.2.3 or (b) if permitted by Section 14.3.2.2, a Request for Change Order Resolution Meeting followed by a PCO Notice if appropriate. D/B Contractor understands that it shall be forever barred from recovering against the Mobility Authority unless it gives such written notice(s) and, thereafter, files a request for

Change Order with the Mobility Authority and complies with the remaining requirements of this Section 14.3.2.

14.3.2.2 **Requests for Change Order Resolution Meeting.**

The term "**Request for Change Order Resolution Meeting**" shall mean a notice delivered by D/B Contractor requesting that the Mobility Authority schedule a meeting with D/B Contractor to discuss an event or situation that has occurred within the scope of Section 14.3.1.2. The Request for Change Order Resolution Meeting shall reference this Section 14.3.2.2 and shall describe the event or situation as well as action which D/B Contractor would like to take with respect thereto. The parties shall promptly meet and confer for the purpose of determining what action should be taken and also to determine whether the parties are in agreement as to entitlement to a Change Order. Either party may at any time terminate change order resolution discussions by delivery of written notice to the other, and change order resolution discussions shall automatically terminate 60 Days after delivery of the Request for Change Order Resolution Meeting unless both parties agree in writing to an extension. Within two (2) Business Days after termination of change order resolution discussions, if the Mobility Authority has not issued either a Directive Letter or Change Order, D/B Contractor must submit a PCO Notice in order to preserve its right to pursue a Change Order. The foregoing process is not available for events or situations involving a delay to the Critical Path. With regard to any such events or situations, D/B Contractor must submit a PCO Notice as provided in Section 14.3.2.3.

14.3.2.3 **PCO Notices.**

The term "**PCO Notice**" shall mean a proposed change order notice delivered by D/B Contractor, meeting the requirements set forth below, stating that an event or situation has occurred within the scope of Section 14.3.1.1 or Section 14.3.1.2 and stating which section thereof is applicable. The first notice shall be labeled "PCO Notice No. 1" and subsequent notices shall be numbered sequentially.

14.3.2.3.1 The PCO Notice shall: (a) state in detail the facts underlying the claim for a Change Order, the reasons why D/B Contractor believes additional compensation or time will or may be due and the date of occurrence, (b) state the name, title, and activity of each Mobility Authority representative knowledgeable of the facts underlying the claim for a Change Order, (c) identify, and include copies of, any documents and the substance of any oral communication involved in the claimed change, (d) state in detail the basis for any claim of the necessity to accelerate schedule performance, (e) state in detail the basis for any claim that work is not required by the Contract Documents, (f) identify particular elements of performance for which additional compensation may be sought under this Section 14, (g) identify any potential Critical Path impacts, (h) provide an estimate of the time within which

a response from the Mobility Authority to the PCO Notice is required to minimize cost, delay, or disruption of performance; and (i) to the degree possible, address price element(s) that have been or may be affected by the claimed change and provide a budget, such price estimate to be based on one of the following methods: (1) TxDOT Prices or (2) RS Means Heavy Construction Costs Data Book-Latest Edition.

14.3.2.3.2 If the claim relates to a decision which this D/B Contract leaves to the sole discretion of a Person or as to which this D/B Contract provides that such Person's decision is final, the PCO Notice shall set out in detail all facts supporting D/B Contractor's objection to the decision, including all facts supporting any contention that the decision was capricious or arbitrary or is not supported by the facts.

14.3.2.3.3 Within fifteen (15) Business Days after receipt of a complete PCO Notice that meets the requirements of this Section 14.3.2.3, the Mobility Authority will respond in writing to D/B Contractor to: (a) confirm that a change has occurred; (b) deny that a change has occurred or (c) advise D/B Contractor that the necessary information has not been submitted to decide which of the above alternatives applies, and indicate the needed information and date by which it is to be received for further review. Failure of the Mobility Authority to respond shall not affect D/B Contractor's obligation to provide a request for Change Order within the time periods specified in this Section 14. Any adjustments made to this D/B Contract shall not include increased costs or time extensions for delay resulting from D/B Contractor's failure to provide a complete PCO Notice or requested additional information under this Section 14.3.2.3.

14.3.2.4 **Waiver.**

14.3.2.4.1 If any PCO Notice is delivered later than (10) ten Days after D/B Contractor first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence which is described therein, or if it is delivered later than two Business Days following termination of change order resolution discussions, D/B Contractor shall be deemed to have waived (a) the right to collect any costs incurred prior to the date of delivery of the Request for Change Order Resolution Meeting (if applicable) or PCO Notice (if no Request for Change Order Resolution Meeting was submitted or if the PCO Notice was not timely submitted following termination of change order resolution discussions) and (b) the right to seek an extension of any deadline hereunder with respect to any delay in any Critical Path which accrued prior to the date of delivery of the PCO Notice. Furthermore, if the PCO Notice concerns any condition or material described in Section 7.5.1 or Section 14.10, D/B Contractor shall be deemed to have waived the right to collect any costs incurred in connection therewith if the Mobility Authority is not afforded the opportunity to inspect such material or condition before it is disturbed, unless D/B Contractor can demonstrate to Mobility Authority's reasonable

satisfaction that its actions with respect to such condition or material were necessary to prevent imminent danger to persons, property or the environment.

14.3.2.4.2 In addition to the limitations described in Section 14.3.2.4.1, D/B Contractor's failure to provide a PCO Notice within 60 Days after D/B Contractor first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence of a given event or situation shall preclude D/B Contractor from any relief, unless D/B Contractor can show, based on clear and convincing evidence, that the Mobility Authority was not prejudiced by the lack of the PCO Notice. For situations involving Requests for Change Order Resolution Meeting, the 60-Day period shall be extended until two Business Days following termination of the change order resolution period. In other words, if the requirements above are satisfied, D/B Contractor shall retain the right to receive a Change Order, but shall be deemed to have waived the right to collect any and all costs incurred prior to the date of delivery of the PCO Notice or Request for Change Order Resolution Meeting, as applicable, and shall be deemed to have waived the right to seek a time extension with respect to any delay in any Critical Path which accrued prior to the date of delivery of the PCO Notice. The following factors (among others) shall be considered in determining whether the Mobility Authority has been prejudiced by D/B Contractor's failure to provide notice in a timely fashion: (a) the effect of the delay on alternatives available to the Mobility Authority; that is, a comparison of alternatives which are available at the time notice was actually given and alternatives which would have been available had notice been given within the required time period; and (b) the impact of the delay on the Mobility Authority's ability to obtain and review objective information contemporaneously with the event.

14.3.2.5 **Delivery of Requests for Change Orders.**

D/B Contractor shall deliver all requests for Change Orders under this Section 14.3 to the Mobility Authority within thirty (30) Days after delivery of the PCO Notice, or such longer period of time as may be reasonably necessary, provided that D/B Contractor shall have notified the Mobility Authority in writing prior to expiration of said 30-Day period how much additional time is required and obtained the Mobility Authority's approval of the same. The Mobility Authority may require design and construction costs to be covered by separate Change Order requests. If D/B Contractor fails to deliver a complete request for Change Order or incomplete request for Change Order meeting all the requirements of Section 14.3.2.6 within the appropriate time period, D/B Contractor shall be required to provide a new PCO Notice before it may submit a request for Change Order and D/B Contractor shall not be entitled to increased costs or time extensions resulting from D/B Contractor's failure to deliver a complete request for Change Order.

14.3.2.6 Incomplete Change Orders.

Each request for Change Order delivered by D/B Contractor shall meet all requirements set forth in Section 14.4; provided that if any such requirements cannot be met due to the nature of the occurrence, D/B Contractor shall provide an incomplete Change Order which shall:

- (a) Comply with all requirements capable of being met;
- (b) Include a list of requirements which are not fulfilled together with an explanation reasonably satisfactory to the Mobility Authority stating why such requirements cannot be met;
- (c) Provide such information regarding projected impact on the Critical Path as is requested by the Mobility Authority; and
- (d) In all events include sufficient detail to ascertain the basis for the proposed Change Order and for any price increase associated therewith, to the extent such amount is then ascertainable.

D/B Contractor shall furnish, when requested by the Mobility Authority, such further information and details as may be required to determine the facts or contentions involved. D/B Contractor agrees that it shall give the Mobility Authority access to any and all of D/B Contractor's books, records and other materials relating to the Design/Build Work, and shall cause its Subcontractors to do the same, so that the Mobility Authority can investigate the basis for such proposed Change Order. D/B Contractor shall provide the Mobility Authority with a monthly update to all outstanding incomplete requests for Change Order, describing the status of all previously unfulfilled requirements and stating any changes in projections previously delivered to the Mobility Authority, time expenditures to date and time anticipated for completion of the activities for which the time extension is requested. The Mobility Authority may reject D/B Contractor's request at any point in the process. Once a complete request for Change Order is provided, the Mobility Authority's failure to respond thereto within fifteen (15) Business Days of receipt of the request shall be deemed a rejection of such request. Although the Mobility Authority intends to review incomplete Change Orders for the purposes described in this Section 14.3.2.6, the Mobility Authority shall have no obligation to review the back-up associated with any request for Change Order until a complete Change Order is provided.

14.3.2.7 Subcontractor Claims.

Prior to submission by D/B Contractor of any request for a Change Order which is based in whole or in part on any facts alleged in a submittal by any Subcontractor

to D/B Contractor, D/B Contractor shall review all such Subcontractor claims and determine in good faith whether the claims are justified as to both entitlement and amount, and D/B Contractor's request for a Change Order shall include only those items which D/B Contractor has determined are so justified and which otherwise meet all requirements hereunder for D/B Contractor-requested Change Orders. D/B Contractor shall include with its request for Change Order a summary of its analysis of all Subcontractor claims components. Notwithstanding the foregoing, where necessary to meet the notice requirements of this D/B Contract or avoid potential prejudice to the Mobility Authority, D/B Contractor may give a PCO Notice prior to making or completing its good faith determination.

14.3.3 Submission of Request for Change Order.

D/B Contractor shall initiate each request for a Change Order, after satisfaction of all conditions precedent set forth above, by submitting a Change Order form and supporting documentation to the Mobility Authority for its review and approval. If D/B Contractor submits a request for Change Order requesting a time extension, as permitted by Section 14.3, then D/B Contractor shall also provide an alternative Change Order form including a Recovery Schedule in accordance with Section 5.5.3.

14.3.4 Performance of Disputed Design/Build Work.

If the Mobility Authority refuses to issue a Change Order based on D/B Contractor's request, D/B Contractor shall nevertheless promptly perform all work as specified in an appropriate Directive Letter, with the right to submit the issue of entitlement to a Change Order to dispute resolution in accordance with Section 25 of this D/B Contract. D/B Contractor shall maintain and deliver to the Mobility Authority, upon request, contemporaneous records, meeting the requirements of Section 14.7, for all work performed which D/B Contractor believes constitutes extra work (including non-construction work), until all Disputes regarding entitlement or cost of such work are resolved.

14.4 Contents of Change Orders.

14.4.1 Form of Change Order.

Each Change Order shall (a) be prepared in form acceptable to the Mobility Authority, (b) otherwise meet all applicable requirements of this Section 14 and (c) be substantially in the form of Exhibit M. Each Change Order shall specify whether it is subject to contingencies and shall identify the applicable section of this Section 14 under which the Change Order is issued.

14.4.2 Contents of Change Order.

D/B Contractor shall prepare a scope of work, cost estimate, delay analysis and other information as required by this Section 14.4.2 for each Change Order, other than Change Orders issued unilaterally by the Mobility Authority.

14.4.2.1 The scope of work shall describe in detail satisfactory to the Mobility Authority all activities associated with the Change Order, including a description of additions, deletions and modifications to the existing requirements of the Contract Documents and, if requested by the Mobility Authority, a description of steps taken by D/B Contractor to mitigate the cost of the work and delay impact and a description of alternative courses of action considered by D/B Contractor, together with an explanation as to why the alternatives were not selected.

14.4.2.2 The cost estimate shall set out the estimated costs in such a way that a fair evaluation can be made. It shall include a breakdown for labor, materials, equipment, overhead (which includes all indirect costs) and profit, unless the Mobility Authority agrees otherwise. The estimate shall include costs allowable under Section 14.5.2, if any. If the work is to be performed by Subcontractors and if the work is sufficiently defined to obtain Subcontractor quotes, D/B Contractor shall obtain quotes (with breakdowns showing cost of labor, materials, equipment, overhead and profit) on the Subcontractor's stationery and shall include such quotes as back-up for D/B Contractor's estimate, provided that such Subcontractor quotes must be in accordance with Section 14.7.4 and must be commercially reasonable and cannot include labor rates, overhead or profit that is materially higher than the labor rates, overhead and profit the Subcontractor is currently charging for any non-Change Order Design/Build Work. No mark-up shall be allowed in excess of the amounts allowed under Sections 14.5 and 14.7. D/B Contractor shall identify all conditions with respect to prices or other aspects of the cost estimate, such as pricing contingent on firm orders being made by a certain date or the occurrence or non-occurrence of an event.

14.4.2.3 If D/B Contractor claims that such event, situation or change affects a Critical Path, it shall provide an impacted delay analysis indicating all activities represented or affected by the event, situation or change, with activity numbers, durations, predecessor and successor activities, resources and costs and a narrative report, in form satisfactory to the Mobility Authority, which compares the proposed new Project Schedule to the then-current approved Project Schedule.

14.4.2.4 D/B Contractor shall provide such other supporting documentation as may be required by the Mobility Authority.

14.4.3 Justification.

D/B Contractor shall provide a narrative justification to be included in each Change Order other than Change Orders issued unilaterally by the Mobility Authority, describing the circumstances underlying the proposed Change Order, identifying the specific provision(s) of Section 14 which permit a Change Order to be issued and describing the data and documents (including any required data and reports) which establish the necessity and amount of compensation and/or time extension sought by such proposed Change Order.

14.4.4 D/B Contractor Representation.

Each Change Order form shall contain a written representation by D/B Contractor in form acceptable to the Mobility Authority that the amount of time and/or compensation requested includes all known and anticipated direct, indirect and consequential impacts or amounts which may be incurred as a result of the event, occurrence or matter giving rise to such proposed Change Order, and that D/B Contractor has no reason to believe and does not believe that the factual basis for the Change Order is falsely represented.

14.5 Limitations on Change Orders.

14.5.1 Exclusion from Price Increase.

Any increase in the Design/Build Price pursuant to a Change Order shall exclude: (a) costs caused by the breach, default, fault, wrongful act, wrongful omission, negligence, recklessness, gross negligence or willful misconduct of any member of the D/B Contractor Group; (b) costs to the extent they are unnecessary or could reasonably be avoided by D/B Contractor or the other members of the D/B Contractor Group, including by resequencing, reallocating or redeploying its forces to other portions of the Design/Build Work or to other activities unrelated to the Design/Build Work; and (c) costs for any rejected Design/Build Work which failed to meet the requirements of the Contract Documents, applicable Law or the Governmental Approvals, or for any remedial work. Costs incurred for the purpose of mitigating damages as described in (b) above, and not otherwise disallowed hereunder, would be reimbursable.

14.5.2 Delay Damages and Acceleration Costs.

14.5.2.1 Acceleration Costs or other delay or disruption damages, including extended overhead, shall be compensable hereunder only in the case of Mobility Authority-Caused Delays or Force Majeure Events.

14.5.2.2 Before D/B Contractor may obtain any increase in the Design/Build Price to compensate for additional or extended overhead, Acceleration Costs or

other damages directly attributable to Mobility Authority-Caused Delays, D/B Contractor shall be required to demonstrate to the Mobility Authority's reasonable satisfaction that:

(a) The Project Schedule which defines the affected Critical Path was, in its inception, a reasonable method for completion of the Design/Build Work;

(b) The change, occurrence, event or situation which is the subject of the request for Change Order has caused or will result in an identifiable and measurable disruption of the Design/Build Work which has or will impact a Critical Path item; and

(c) The delay or damage was not caused by, related to, arising from or aggravated by any delay, breach, default, fault, act, omission, negligence, recklessness, gross negligence or willful misconduct of any member of the D/B Contractor Group and could not reasonably have been avoided by D/B Contractor or the other members of the D/B Contractor Group, including by resequencing, reallocating or redeploying its forces to other portions of the Design/Build Work.

In addition, as a condition to any Acceleration Costs or delay or disruption damages, D/B Contractor shall provide detailed documentation of such costs satisfactory to the Mobility Authority.

14.5.2.3 Acceleration Costs are permitted only with respect to Change Orders issued as an alternative to allowing an extension of a Completion Deadline as contemplated by Sections 14.3.1.1 and 14.3.3. If the Mobility Authority elects to have D/B Contractor accelerate the Project, no additional or extended overhead cost will be allowed.

14.5.2.4 Where delay damages are allowed pursuant to this Section 14.5.2, any extended overhead payable to D/B Contractor shall be limited to (a) Project Office rent and utility costs, and (b) salaries and benefits for administrative staff, including Category A Personnel, required to maintain the Project Office for the extended period associated with the delay.

14.5.3 Limitation on Time Extensions.

Any extension of time shall exclude any delay to the extent that it (a) was due to the delay, breach, default, fault, act, omission, negligence, recklessness, gross negligence or willful misconduct of any member of the D/B Contractor Group, or (b) could reasonably have been avoided by D/B Contractor or the other members of the D/B Contractor Group, including by resequencing, reallocating or redeploying its forces to other portions of the Design/Build Work. Costs incurred for the purpose of mitigating delays as described in (b) above, and not otherwise disallowed hereunder, would be reimbursable.

14.5.4 Design/Build Work Performed Without Direction.

To the extent that D/B Contractor undertakes any work or makes any payment that is not part of the Design/Build Work, unless D/B Contractor (a) has received from the Mobility Authority a Directive Letter or Change Order directing D/B Contractor to do such work or make such payment or (b) has preserved its rights by delivery of a Request for Change Order Resolution Meeting under Section 14.3.2.2, D/B Contractor shall be deemed to have performed such work or made such payment voluntarily and shall not be entitled to a Change Order in connection therewith.

14.6 Pricing of Change Orders.

The Mobility Authority and D/B Contractor (on its own behalf and on behalf of its Subcontractors) shall endeavor to negotiate, in good faith, a reasonable cost for each Change Order, provided that unilateral Change Orders are not subject to negotiations. The price of a Change Order shall be negotiated in accordance with this Section 14.6 or shall be based on time and materials records pursuant to Section 14.7. The price of a Change Order shall be based upon one of the following methods: (1) TxDOT Prices, (2) RS Means Heavy Construction Cost Data Book-Latest Edition, or (3) as may be agreed to by the parties, established production rates on the Project for like or similar activities.

14.6.1 Contents.

A negotiated Change Order shall specify scheduling requirements, time extensions and all costs of any nature arising out of the Design/Build Work covered by the Change Order. Notwithstanding the foregoing, the parties may mutually agree to use a multiple-step process involving issuance of a Change Order which includes an estimated construction cost and which provides for a revised Change Order to be issued after a certain design level has been reached, thus allowing a refinement and further definition of the estimated construction cost. The Mobility Authority shall have the right to require that any or all of the information submitted by D/B Contractor in the EPDs be used in evaluating the cost proposal.

14.6.2 Added Work.

When the Change Order adds work to D/B Contractor's scope, the increase in the Design/Build Price shall be based upon one of the following methods: (1) TxDOT Prices, (2) RS Means Heavy Construction Cost Data Book-Latest Edition, (3) as may be agreed to by the parties, established production rates on the Project for like or similar activities, or (4) shall be based on actual costs in accordance with Section 14.7, at the sole discretion of the Mobility Authority. Estimated costs shall not be based on costs contained in D/B Contractor's Proposal. For all Change Orders, except those pursuant to Section 14.2.2, mark-ups for profit and overhead

shall be consistent with Section 14.7, and risk associated with the work described in the Change Order shall be addressed through the assumptions contained therein regarding the scope of such work.

14.6.3 Deleted Work.

When the Change Order deletes work from D/B Contractor's scope (including deletion of any work described in the Scope of Work that is found to be unnecessary by the Mobility Authority, in its sole discretion), the amount of the reduction in the Design/Build Price shall be based upon one of the following methods: (1) TxDOT Prices or (2) RS Means Heavy Construction Cost Data Book-Latest Edition. Estimated costs shall not be based on costs contained in D/B Contractor's Proposal. When a deduction is involved, documented cancellation and restocking charges may be included in costs and subtracted from the price deduction.

14.6.4 Work Both Added and Deleted.

When the Change Order includes both added and deleted Design/Build Work that is logically related, D/B Contractor shall prepare a statement of the cost of labor, material and equipment for both added and deleted work using the methodology set forth in Sections 14.6.2 and 14.6.3.

(a) If the change results in a net increase in cost, the change shall be treated as work added and the provisions of Section 14.6.2 shall be used to determine mark-ups for overhead and profit. Mark-ups for overhead and profit will be allowed only for the net increase in cost in order to establish the amount to be added to the Design/Build Price.

(b) If the change results in a net decrease in cost, the change shall be treated as work deleted and the provisions of Section 14.6.3 shall be used on the net decrease in cost in order to establish the price to be deducted from the Design/Build Price.

(c) If the change results in a net change of zero, there will be no change in the Design/Build Price.

14.6.5 All-Inclusive Change Orders.

All Change Orders submitted by D/B Contractor shall be all-inclusive, comprehensive and complete and shall not include any conditions with respect to pricing or schedule.

14.7 Time and Materials Change Orders and Cost Data.

The Mobility Authority may, at its discretion, issue a Time and Materials Change Order at any time. The Time and Materials Change Order shall instruct D/B Contractor to perform

work as specified therein, indicating expressly the intention to allow compensation therefor, and setting forth the kind, character, and limits of the work in question insofar as they can be ascertained, the terms under which changes to the Design/Build Price will be determined and the estimated total change in Design/Build Price anticipated thereunder. Upon final determination of the allowable costs, the Mobility Authority shall issue a modified Change Order setting forth the final adjustment to the Design/Build Price. The following costs and mark-ups (and no others) shall be used for calculating the change in the Design/Build Price:

14.7.1 Labor Costs.

The cost of labor for workers used in the actual and direct performance of the Change Order work, whether provided by D/B Contractor or a Subcontractor, will equal the sum of the following:

(a) For construction-related labor, (1) the actual Direct Cost for direct labor; plus (2) for health, welfare and pension benefits and Social Security deductions, 55% of the actual direct labor cost; plus (3) 25% of the total of the amounts set forth in clauses (1) and (2) for profit and overhead.

(b) For non-construction-related work (professional services), (1) the actual wages (i.e. the base wage paid to the employee exclusive of any fringe benefits); plus (2) a labor surcharge in the amount of 145%, which shall constitute full compensation for all profit, overhead and all state and federal payroll, unemployment and other taxes, insurance, fringe benefits and all other payments made to, or on behalf of, the workers, in excess of actual wages.

(c) No additional payment will be made for Category A Key Personnel assigned to the Project or for Category B Personnel assigned to the Project on a full-time basis unless a time extension is granted by the Mobility Authority.

14.7.2 Material Costs.

Material costs for Change Order work shall be the Direct Cost of all materials to be used in the performance of construction work including normal wastage allowance as per industry standards, less salvage value, plus 15% for profit and overhead. The material prices shall be supported by valid quotes and invoices from the suppliers.

14.7.3 Equipment.

14.7.3.1 Costs for D/B Contractor-owned machinery, trucks, power tools or other similar equipment that are required for Change Order work will be allowed based on the following methodology:

(a) The Direct Cost of fuel, lubricants, repairs, parts, and depreciation will be considered without any additional compensation percentage for overhead and profit being added; and

(b) The equipment rental rates shall be those tabulated in the most recent version of the *Rental Rate Blue Book* (published by EquipmentWatch; 1735 Technology Drive, Suite 410, San Jose, California 95110). The rental rates to be used shall be the published monthly rate divided by 150 to yield an hourly rate, which hourly rate shall be further adjusted by multiplying by the *Rental Rate Blue Book* adjustment rate for the year the equipment was manufactured and by a factor of 0.85 and adding to that product the *Rental Rate Blue Book* estimated hourly operating cost rate.

D/B Contractor shall be considered to own such items if an ownership interest therein is held by (w) D/B Contractor, (x) any equity participant in D/B Contractor, (y) any Subcontractor performing construction work, or (z) any Affiliate of D/B Contractor, any equity participant in D/B Contractor or any such Subcontractor. If the publication of the *Rental Rate Blue Book* should be discontinued for any reason, the Mobility Authority may select a different publication from which to make the described calculations.

14.7.3.2 Costs for machinery, trucks, power tools or other similar equipment that are required for Change Order work rented from any commercial enterprises routinely offering equipment and tools for rent or lease to the public will be allowed in an amount equal to the direct rental rate for the equipment without any additional mark-up or increase for overhead and profit.

14.7.3.3 The time to be paid for use of equipment on the Site shall be the time the equipment is in operation on the Change Order work being performed. The time shall include the reasonable time required to move the equipment to the location of the Change Order work and return it to the original location or to another location requiring no more time than that required to return it to its original location. Moving time will not be paid for if the equipment is also used at the Site other than for Change Order work. Loading and transporting costs will be allowed, in lieu of moving time, when the equipment is moved by means other than its own power. No payment for loading and transporting will be made if the equipment is also used at the Site other than for Change Order work. Time will be computed in half and full hours. In computing the time for use of equipment, less than 30 minutes shall be considered one-half hour.

14.7.4 Subcontracted Work.

To the extent that any Change Order is intended to compensate D/B Contractor for the cost of work performed by Subcontractors, the Change Order shall provide for compensation equal to (1) the actual Direct Cost to D/B Contractor of such work (which shall be charged by the

Subcontractor on a time and materials basis in accordance with this Section 14.7, unless otherwise approved in writing by the Mobility Authority), plus (2) 5% of such cost. Notwithstanding the above, no 5% mark-up shall be applied to Subcontracts with Suppliers or Affiliates of the D/B Contractor.

14.7.5 Work Performed by Utility Owners.

To the extent that any Change Order is intended to compensate D/B Contractor for the cost of work performed by Utility Owners entitled to receive reimbursement for their costs from D/B Contractor, the Change Order shall provide for compensation to D/B Contractor equal to (1) the actual and reasonable amount paid by D/B Contractor to the Utility Owner for such work (but not greater than the amount allowed pursuant to the applicable Utility Adjustment Agreements), plus (2) 5% of such allowed actual amount. Back-up documentation supporting each cost item for this category shall be provided by D/B Contractor and approved by the Mobility Authority in writing prior to any payment authorization being granted.

14.7.6 Other Direct Costs.

For any justified change-related Direct Cost not covered by the categories of costs contained in Sections 14.7.1 through 14.7.5, D/B Contractor shall accept as full payment therefor an amount equal to the actual cost to D/B Contractor for such direct cost item. Without additional mark-up, back-up documentation supporting each cost item for this category shall be provided by D/B Contractor and approved by the Mobility Authority in writing prior to any payment authorization being granted.

14.7.7 Items Included in Mark-Ups.

The mark-ups specified herein constitute full and complete compensation for all overhead, tools or equipment having an individual replacement value of \$1,000 or less, consumables (items which are consumed in the performance of the Design/Build Work which are not a part of the finished product) and other indirect costs of the added or changed Design/Build Work, as well as for profit thereon, including any and all costs and expenses incurred due to any delay in connection with the added or changed Design/Build Work. D/B Contractor's mark-up percentages shall be considered to include, among other costs, bond premiums, incidental job burdens, bonuses not otherwise covered, field, jobsite and general home office expenses of all types (including timekeepers, bookkeepers and other general office help), supervisory expenses of all types (excluding only direct supervision of force account work) and all other overhead, general condition and indirect costs and expenses. With respect to non-construction related labor costs, overhead is included as part of the labor surcharge calculated in accordance with Section 14.7.1.(b), and includes accessories such as computer-

assisted drafting and design (CADD) systems, computers, facsimile transmission machines, scanners, paper, etc.

14.7.8 Change Order Data.

D/B Contractor shall contemporaneously collect, record in writing, segregate and preserve (a) all data necessary to determine the costs described in this Section 14.7 with respect to all Design/Build Work which is the subject of a Change Order or a requested Change Order (excluding negotiated Change Orders previously executed and delivered), specifically including costs associated with design work as well as D/B Contractor's costs for Utility Adjustment Work, and (b) all data necessary to show the actual impact (if any) on the Critical Path, the Project Schedule, and performance deadlines with respect to all Design/Build Work which is the subject of a Change Order or a proposed Change Order. Such data shall be provided to the Mobility Authority and any authorized representative of the Mobility Authority reviewing any Claim or Dispute regarding compensation for such Design/Build Work. D/B Contractor hereby waives the right to obtain compensation for any work for which cost data is required to be provided hereunder, if D/B Contractor fails to maintain and timely provide to the Mobility Authority cost data meeting the requirements of this D/B Contract.

14.7.8.1 D/B Contractor shall maintain its records in such a manner as to provide a clear distinction between (a) the direct cost of Design/Build Work for which it is entitled (or for which it believes it is entitled) to an increase in the Design/Build Price and (b) the costs of other operations. D/B Contractor shall furnish daily, on forms approved by the Mobility Authority, reports of all costs described in (a) above. The reports shall itemize all costs for labor, materials, and equipment rental and give total of costs through the date of the report. For workers, the reports shall include hours worked, rates of pay, names and classifications. For equipment, the reports shall include size, type, identification number, rental rate and actual working hours of operation. All such records and reports shall be made immediately available to the Mobility Authority upon its request. The cost of furnishing such reports are deemed to be included in D/B Contractor's overhead and fee percentages.

14.7.8.2 All reports shall be signed by D/B Contractor. The Mobility Authority will compare its records with D/B Contractor's reports, make the necessary adjustments and compile the costs of Design/Build Work completed under a Time and Materials Change Order. When such reports are agreed upon and signed by both Parties, they will become the basis of payment.

14.8 Hazardous Materials Management.

14.8.1 Basis for Compensation.

If compensation is payable to D/B Contractor pursuant to Section 7.5 with respect to Hazardous Materials Management, the amount of the Change Order shall either be a negotiated amount acceptable to the Parties, or an amount equal to 100% of the Reimbursable Hazardous Materials Costs for the work in question, subject to the limitations set forth in this Section 14.8, including the cost sharing provisions set forth in Section 14.8.

14.8.2 Determination of Reimbursable Amount.

Except as otherwise provided and subject to the limitations in this Section 14.8, the Mobility Authority shall compensate D/B Contractor for (i) 100% of D/B Contractor's reasonable, out-of-pocket costs and expenses directly attributable to the handling, transport, removal and disposal of Unknown Hazardous Materials encountered by D/B Contractor that exceed \$1,000,000 in the aggregate, and (ii) 100% of such total chargeable Hazardous Materials Management costs for Hazardous Materials encountered on Additional Properties acquired as a result of a Mobility Authority-Directed Change, and (iii) 100% of D/B Contractor's reasonable, out-of-pocket costs and expenses directly attributable to the handling, transport, removal and disposal of Hazardous Materials falling within the definition of Force Majeure Event.. D/B Contractor shall be responsible for all other costs related to Unknown Hazardous Materials.

D/B Contractor shall take all reasonable steps to minimize any such costs. Compensation shall be allowed only to the extent that D/B Contractor demonstrates to the Mobility Authority's reasonable satisfaction that: (a) the Hazardous Materials Management could not have been avoided by reasonable design modifications or construction techniques and (b) D/B Contractor's plan for the Hazardous Materials Management represents the approach which is most beneficial to the Project and the public. D/B Contractor shall provide the Mobility Authority with such information, analyses and certificates as may be requested by the Mobility Authority in order to enable a determination regarding eligibility for payment.

14.8.3 Time Extensions.

If D/B Contractor encounters Hazardous Materials for which D/B Contractor is entitled to compensation, and Hazardous Materials Management of such Hazardous Materials results in delays to the Critical Path ("**Hazardous Materials Delay**") of more than 20 Days per location or more than 90 Days for all locations, then the Mobility Authority shall bear 100% of the risk of such Hazardous Materials Delay for the number of days of delay in excess of 20 Days per location or 90 Days for all locations. If a Hazardous Materials Delay is concurrent with another delay which is D/B Contractor's responsibility hereunder, then such Hazardous Materials Delay

shall be borne 100% by D/B Contractor. The foregoing shall not preclude D/B Contractor from obtaining a time extension with respect to any Hazardous Material which qualifies as a Force Majeure Event.

14.8.4 Mobility Authority Right to Inspect.

Unless the Environmental Team determines that immediate or emergency response action is necessary, D/B Contractor shall be deemed to have waived the right to collect from the Mobility Authority any and all costs incurred in connection with any Hazardous Materials Management if the Mobility Authority is not afforded the opportunity to inspect sites containing Hazardous Materials before any action is taken which would inhibit the Mobility Authority's ability to ascertain, based on a site inspection, the nature and extent of the Hazardous Materials.

14.8.5 Insurance Proceeds.

If the cost of any Hazardous Materials Management is covered by the insurance described in Section 10, D/B Contractor shall be entitled to reimbursement of Reimbursable Hazardous Materials Costs from proceeds of insurance and self-insurance, up to the limits of the applicable policy, plus any deductibles payable under the applicable policy. To the extent that such proceeds are available, D/B Contractor shall not be entitled to payment hereunder on any other basis for such Hazardous Materials Management. If insurance proceeds are insufficient to reimburse D/B Contractor for the cost of Hazardous Materials Management, the Mobility Authority shall be responsible for any excess amount owed to D/B Contractor pursuant to the provisions of Section 7.5 and this Section 14.8.

14.8.6 Reimbursement from Third Parties.

To the extent that D/B Contractor incurs Hazardous Materials Management costs in connection with remediation of Hazardous Materials which are not eligible for a Change Order hereunder but which are eligible for reimbursement from a third party outside of the D/B Contractor Group, the Mobility Authority agrees to assign to D/B Contractor any causes of action held by the Mobility Authority against such third party for reimbursement of costs, subject to the Mobility Authority's prior written approval of any such action in each instance, provided that prior approval by the Mobility Authority shall not be required for costs incurred in connection with immediate or emergency response actions performed at the direction of the Environmental Team. D/B Contractor shall be responsible for identifying any potentially responsible parties. Unless the Mobility Authority otherwise informs D/B Contractor in writing, all costs associated with any action to recover Hazardous Materials Management costs from third parties will be borne by D/B Contractor. If D/B Contractor wishes to obtain such an assignment from the Mobility Authority, it shall deliver a notice requesting the same, and shall provide the Mobility Authority with a form of assignment acceptable to the Mobility Authority.

14.9 Differing Site Conditions.

14.9.1 Subject to the restrictions and limitations set forth in this Section 14, D/B Contractor shall be entitled to a Change Order for certain additional costs which are directly attributable to any Differing Site Conditions to the extent permitted in this Section 14.9. No time extension shall be available with respect to Differing Site Conditions, and no delay damages shall be recovered. To the extent that additional costs are incurred in connection with the Project due to changes in D/B Contractor's obligations relating to the Design/Build Work resulting from the existence of Differing Site Conditions and which are not reimbursed by insurance proceeds, the Mobility Authority and D/B Contractor shall share the risk as follows:

14.9.1.1 D/B Contractor shall be fully responsible for, and thus shall not receive a Change Order with respect to, up to \$100,000 per discovery of a Differing Site Condition and up to \$500,000 in aggregate additional costs incurred directly attributable to changes in D/B Contractor's obligations relating to the Design/Build Work resulting from the existence of Differing Site Conditions.

14.9.1.2 The Mobility Authority shall be fully responsible for any additional costs incurred in excess of \$100,000 per discovery and \$500,000 in the aggregate directly attributable to changes in D/B Contractor's obligations relating to the Design/Build Work resulting from the existence of Differing Site Conditions, and a Change Order shall be issued to compensate D/B Contractor for such additional costs.

14.9.2 During progress of the Design/Build Work, if Differing Site Conditions are encountered, D/B Contractor shall immediately notify the Mobility Authority thereof telephonically or in person, to be followed immediately by written notification. D/B Contractor shall be responsible for determining the appropriate action to be undertaken, subject to concurrence by the Mobility Authority. In the event that any Governmental Approvals specify a procedure to be followed, D/B Contractor shall follow the procedure set forth in the Governmental Approvals. If the discovery of Differing Site Conditions necessitates a change in the design of the Project, such change shall be submitted to the Mobility Authority for its written approval.

14.9.3 D/B Contractor hereby acknowledges and agrees that it has assumed all risks with respect to the need to work around locations impacted by Differing Site Conditions. D/B Contractor shall bear the burden of proving that a Differing Site Condition exists and that it could not reasonably have worked around or mitigated the Differing Site Condition so as to avoid additional cost. D/B Contractor shall track all costs associated with a Differing Site Condition in accordance with the requirements and limitations in Section 14.7.

14.9.4 Each request for a Change Order relating to a Differing Site Condition shall be accompanied by a statement signed by a qualified professional setting forth all relevant assumptions made by D/B Contractor with respect to the condition of the Site, justifying the basis for such assumptions, explaining exactly how the existing conditions differ from those assumptions, and stating the efforts undertaken by D/B Contractor to find alternative design or construction solutions to eliminate or minimize the problem and the associated costs. No time extension or costs will be allowed in connection with any work stoppage in affected areas during the investigation period described above.

14.10 Force Majeure Events.

Subject to the limitations contained in, and upon D/B Contractor's fulfillment of all applicable requirements of, this Section 14, the Mobility Authority shall issue Change Orders (a) to compensate D/B Contractor for additional costs incurred arising directly from Force Majeure Events (excluding Acceleration Costs or delay and disruption damages other than for any Force Majeure Events which are included in the definition of Mobility Authority-Caused Delay), and (b) to extend the applicable Interim Completion Deadline, Completion Deadline, and/or Acceptance Deadline as the result of any delay in the Critical Path directly caused by a Force Majeure Event, to the extent that it is not possible to work around the problem.

14.10.1 Notwithstanding the foregoing, D/B Contractor shall be fully responsible for, and thus shall not receive a Change Order with respect to, any delays of up to 120 Days per location or an aggregate amount of 120 Days for all such delays, resulting from the need to work around locations impacted by the type of event described in clause (c) of the definition of "Force Majeure Event" (that is, the discovery of previously unknown archeological, paleontological or cultural resources on the Site). The Mobility Authority shall not be responsible for any Acceleration Costs or other costs attributable to any delays relating to such event or situation, other than any Acceleration Costs and other incremental costs directly attributable to the portion of the type of delay described above in excess of 120 Days per location or in excess of an aggregate amount of 120 Days for all such delays; provided that, D/B Contractor shall be entitled to a Change Order for additional costs and/or time only where there is a delay to the Critical Path after expiration of such 120 Day work-around period. If a delay resulting from the need to work around a previously unknown archeological, paleontological or cultural resource is concurrent with another delay which is D/B Contractor's responsibility hereunder, then such delay shall be borne 100% by D/B Contractor and shall not be counted towards the 120-Day aggregate cap. If a delay resulting from the need to work around a previously unknown archeological, paleontological or cultural resource is concurrent with another delay resulting from the need to work around another previously unknown archeological, paleontological or cultural resource, only one of the delays shall be applied to the 120-Day period of D/B Contractor's responsibility or the 120-Day aggregate cap. The foregoing shall not be deemed to preclude D/B Contractor from obtaining a Change Order with respect to any requirement that it perform mitigation

measures relating to any such resources or materials which are not otherwise its responsibility under the terms of the Contract Documents.

14.10.2 D/B Contractor shall be fully responsible for, and thus shall not receive a Change Order with respect to, any delays of up to 45 Days per feature or an aggregate amount of 45 days for all such delays, resulting from the need to cooperate and coordinate with the Mobility Authority and to work around locations impacted by the type of event described in clause (i) of the definition of "Force Majeure Event" (that is, imposition of temporary no work restrictions resulting from the discovery within the Site of any karst features requiring investigation under Technical Provision 9). The Mobility Authority shall not be responsible for any Acceleration Costs or other costs attributable to any delays relating to such event or situation, other than any Acceleration Costs and other incremental costs directly attributable to the portion of the type of delay described above in excess of 45 Days per location or in excess of an aggregate amount of 45 Days for all such delays; provided that, D/B Contractor shall be entitled to a Change Order only for delays to the Critical Path after expiration of such 45 day work around period. If a delay resulting from the need to work around a previously unknown karst feature is concurrent with another delay which is D/B Contractor's responsibility hereunder, then such delay shall be borne 100% by D/B Contractor and shall not be counted towards the 45 day aggregate cap. If a delay resulting from the need to work around a previously unknown karst feature is concurrent with another delay resulting from the need to work around another previously unknown karst feature, only one of the delays shall be applied to the 45 day period of D/B Contractor's responsibility or the 45 day aggregate cap. The foregoing shall not be deemed to preclude D/B Contractor from obtaining a Change Order entitling D/B Contractor to additional compensation and/or extension of time for any event described in clause (d) of the definition of "Force Majeure Event" (that is, the discovery of any species listed as threatened or endangered under the federal or state endangered species act or similar Law), which shall be deemed to have occurred at the time of discovery of such species.

14.11 **Eliminated Design/Build Work.**

Deletion of any Design/Build Work shall not invalidate this D/B Contract or the bonds required under Section 9.

14.12 **Utility Adjustment Work.**

D/B Contractor agrees that (a) the Design/Build Price (as it may be increased pursuant to this Section 14.12) covers all of the Utility Adjustment Work and payments which are D/B Contractor's responsibility pursuant to Technical Provision 8 and/or in this Section 14.12, (b) it is feasible to obtain and/or perform all necessary Utility Adjustments within the time deadlines of the Contract Documents, and (c) the Design/Build Price includes contingencies deemed adequate by D/B Contractor to cover the possibility that the Reference Documents do not

accurately identify all Utilities impacted by the Project, taking into consideration the fact that D/B Contractor is entitled to Change Orders only in specified situations. Except as permitted by this Section 14.12, D/B Contractor assumes all risk of increased costs and of delays to the Project Schedule associated with the Utility Adjustment Work, without regard to who (as between D/B Contractor and the affected Utility Owner) is assigned the responsibility to perform such Utility Adjustment Work. Accordingly, subject to the limitations, restrictions and procedures set forth elsewhere in this Section 14, D/B Contractor shall be entitled to receive a Change Order for additional costs and delays associated with Utility Adjustment Work only as permitted by this Section 14.12 or in circumstances for which such a Change Order is otherwise permitted under the other provisions of this Section 14, such as for Mobility Authority-Directed Changes which increase the Utility Adjustment Work to be furnished, performed or paid for by D/B Contractor. D/B Contractor's entitlement to any Change Orders pursuant to the other provisions of this Section 14 relating to the Utility Adjustment Work shall be subject to any applicable limitations and restrictions set forth in this Section 14.12, and D/B Contractor's entitlement to any Change Orders pursuant to this Section 14.12 shall be subject to the limitations, restrictions and procedures set forth elsewhere in this Section 14.

14.12.1 Inaccuracies in Existing Utility Information.

The parties' entitlement to Change Orders on account of inaccuracies in the Existing Utility Information shall be determined in accordance with this Section 14.12.1.

14.12.1.1 D/B Contractor shall be entitled to an increase in the Design/Build Price and the issuance of a Change Order in connection with increases in the cost of the Design/Build Work due to Unidentified Utilities within the Schematic ROW. The amount of the Design/Build Price increase in any Change Order issued under this Section 14.12.1.1 for each such Unidentified Utility facility shall be equal to the Cost Differential for that facility less \$50,000. By way of example, if the Cost Differential for a Unidentified Utility facility is \$75,000, the D/B Contractor would be entitled to a \$25,000 Change Order, but if the Cost Differential related to a particular Unidentified Utility facility is less than \$50,000, then D/B Contractor would not be entitled to a Change Order. In no event shall D/B Contractor be required to pay more than an aggregate of \$150,000 with respect to Unidentified Utilities.

14.12.1.2 No time extension will be allowed on account of any delays attributable to any inaccuracy(ies) in the Existing Utility Information, except, subject to the limitations on time extensions in Section 14.3.1.1, for the discovery within the Schematic ROW of an Unidentified Utility..

14.12.1.3 All Cost Differential calculations submitted by D/B Contractor shall be supported by detailed cost proposals and supporting documentation (for all estimates used in such calculations) meeting the requirements of Section 14.6 of this D/B Contract. The

Mobility Authority shall have the right to require that any or all of the information submitted by D/B Contractor in the EPDs be used in evaluating the cost proposals.

14.12.1.4 D/B Contractor shall use its Best Efforts to minimize costs for which D/B Contractor is entitled to compensation pursuant to this Section 14.12.1. Generally, such efforts will require avoidance of an Unidentified Utility where feasible rather than its removal and/or reinstallation in a new location; however, D/B Contractor may, upon the Mobility Authority's prior approval, remove and/or reinstall an Unidentified Utility in a new location even if avoidance is feasible, if the burden imposed on D/B Contractor by such avoidance would be unreasonable in light of the benefits to the Mobility Authority and the Project which would result therefrom. The provisions of this Section 14.12.1.4 are in all cases subject to D/B Contractor's obligation to comply with all applicable requirements of the Contract Documents, including the requirements described in Technical Provision 8.

14.12.2 **Utility Enhancements.**

Utility Enhancements shall be addressed as provided in this Section 14.12.2 and in Technical Provision 8.

14.12.2.1 If a Utility Owner requests that D/B Contractor design and/or construct a Betterment, then subject to Section 14.12.2.4, D/B Contractor shall use its Best Efforts to negotiate in good faith an agreement with the Utility Owner providing for D/B Contractor to perform such work at the Utility Owner's expense, with payments to be made directly by the Utility Owner to D/B Contractor. Any such agreement shall be set forth in the applicable Utility Adjustment Agreement. Any such Betterment shall be deemed added to the scope of the Design/Build Work upon execution by the Utility Owner and D/B Contractor and approval by the Mobility Authority of a Utility Adjustment Agreement or Utility Adjustment Agreement Amendment identifying and providing for performance of such Betterment. Any change in the scope of the Design/Build Work pursuant to this Section 14.12.2.1 shall not be treated as a Mobility Authority-Directed Change. Except as otherwise set forth in this Section 14.12.2 or in Technical Provision 8, all the terms and conditions of the Contract Documents which apply to the Utility Adjustment Work being performed by D/B Contractor shall apply to any Betterment added to the Design/Build Work pursuant to this Section 14.12.2.1.

14.12.2.2 The Design/Build Price shall not be increased on account of any Betterment added to the Design/Build Work. Instead, D/B Contractor shall have the right to collect payment for such work directly from the Utility Owner, subject to the provisions of the applicable Utility Adjustment Agreement or Utility Adjustment Agreement Amendment. The amount of compensation payable by the Utility Owner to D/B Contractor for a Betterment shall be determined pursuant to the process set forth in the applicable Utility Adjustment Agreement form (see Exhibit D-Item 8e). D/B Contractor shall submit to the Mobility Authority a copy of

each invoice delivered to a Utility Owner pursuant to this Section 14.12.2.2, concurrently with its delivery to the Utility Owner.

14.12.2.3 If a Utility Owner requests that D/B Contractor design and/or construct a Utility Owner Project, then subject to Section 14.12.2.4, D/B Contractor shall use its Best Efforts to negotiate in good faith an agreement with the Utility Owner providing for D/B Contractor to perform such work at the Utility Owner's expense, with payments to be made directly by the Utility Owner to D/B Contractor. Any such agreement shall be a separate construction contract between D/B Contractor and the Utility Owner; and any such Utility Owner Project shall be performed outside of this D/B Contract and the Design/Build Work, without any impact on the Design/Build Price. The compensation payable by the Utility Owner to D/B Contractor for a Utility Owner Project shall be determined in a manner acceptable to both D/B Contractor and the Utility Owner.

14.12.2.4 D/B Contractor is fully responsible for coordinating its efforts with Utility Owners and for addressing requests by Utility Owners that D/B Contractor design and/or construct Utility Enhancements. Under no circumstances shall D/B Contractor proceed with any Utility Enhancement which is incompatible with the Project or which cannot be performed within the other constraints of applicable Law, the Governmental Approvals and the Contract Documents, including the Completion Deadlines. Under no circumstances will D/B Contractor be entitled to any Design/Build Price increase or time extension hereunder as the result of any Utility Enhancement, whether performed by D/B Contractor either outside of this D/B Contract or as part of the Design/Build Work, or by the Utility Owner or its contractors. D/B Contractor shall promptly notify the Mobility Authority of any requests by Utility Owners which D/B Contractor considers to be Betterments, and shall keep the Mobility Authority informed as to the status of negotiations with Utility Owners concerning such requests. D/B Contractor shall provide the Mobility Authority with such information, analyses, and certificates as may be requested by the Mobility Authority in order to determine compliance with this Section 14.12.2.

14.12.3 **Utility Agreements.**

14.12.3.1 Utility Adjustment Agreements entered into by D/B Contractor (as the same may be amended, modified or supplemented) shall not be considered Contract Documents. D/B Contractor shall not be entitled to any increase in the Design/Build Price or to any time extension on account of the terms of any Utility Adjustment Agreement or of any amendment, modification or supplement thereto.

14.12.3.2 Any Utility MOU's entered into by the Mobility Authority and/or TxDOT with Utility Owners are not Contract Documents, although D/B Contractor may have certain obligations with respect to such Utility MOU's as described in Technical Provision 8. D/B Contractor shall not be entitled to any increase in the Design/Build Price or to any time

extension on account of the terms of any Utility MOU entered into by TxDOT or D/B Contractor prior to the date of this D/B Contract.

14.12.4 City of Austin Utilities.

The contractual arrangements for the Adjustment of certain City of Austin Utilities will be different than for other Utilities, as more particularly described in Technical Provision 8. Notwithstanding any such differences, the Design Build Price includes all costs associated with the Adjustment of City of Austin owned Utilities and the D/B Contractor shall bear 100% of the risk of Critical Path delays resulting from the Adjustment of City of Austin owned Utilities. Accordingly, the D/B Contractor shall not be entitled to a Change Order for any increased costs or delays attributable to the Adjustment of City of Austin owned Utilities.

14.12.5 Delays by Utility Owners.

14.12.5.1 D/B Contractor shall use Best Efforts to obtain the cooperation of each Utility Owner as necessary for the Project. D/B Contractor shall notify the Mobility Authority immediately if (a) D/B Contractor reasonably believes that any Utility Owner would not undertake or permit a Utility Adjustment in a manner consistent with the timely completion of the Project, (b) D/B Contractor becomes aware that a Utility Owner is not cooperating in a timely manner to provide the needed work or approvals, or (c) any other dispute arises between D/B Contractor and any Utility Owner with respect to the Project, despite D/B Contractor's diligent efforts to obtain such Utility Owner's cooperation or otherwise resolve such dispute. Such notice may include a request that the Mobility Authority assist in resolving the dispute or in otherwise obtaining the Utility Owner's timely cooperation. D/B Contractor shall provide the Mobility Authority with such information regarding the Utility Owner's failure to cooperate and the effect of any resulting delay on the Project Schedule as is requested by the Mobility Authority. The Mobility Authority's obligation to assist hereunder is subject to D/B Contractor's provision of evidence reasonably satisfactory to the Mobility Authority that the Adjustment is necessary, the time for completion of the Adjustment in the Project Schedule was, in its inception, a reasonable amount of time for completion of such Design/Build Work, and that D/B Contractor has made Best Efforts to obtain the Utility Owner's cooperation but has not been able to obtain such cooperation. Following the receipt of such evidence by the Mobility Authority, the Mobility Authority shall take reasonable steps to obtain the cooperation of the Utility Owner or resolve the dispute; however, the Mobility Authority shall have no obligation to prosecute eminent domain or other legal proceedings, unless the Mobility Authority elects to do so in its sole discretion. After delivery of any notice or request for assistance pursuant to this Section 14.12.5.1, D/B Contractor shall continue to use Best Efforts to pursue the Utility Owner's cooperation. Any assistance provided by the Mobility Authority shall not relieve D/B Contractor of its sole and primary responsibility for the satisfactory compliance with its obligations and

timely completion of all Utility Adjustment Work, except as otherwise expressly set forth in this Section 14.12.5.

14.12.5.2 In the event that the Mobility Authority objects in writing to D/B Contractor's request for assistance pursuant to Section 14.12.5.1, based on D/B Contractor's failure to satisfy the Mobility Authority that (a) the Adjustment is necessary for the Project, (b) the time for completion of the Adjustment in the Project Schedule was, in its inception, a reasonable amount of time for completion of such Design/Build Work, (c) D/B Contractor has made diligent efforts to obtain the Utility Owner's cooperation, or (d) the Utility Owner is not cooperating, D/B Contractor shall take such action as D/B Contractor deems advisable during the next 45 days to obtain the Utility Owner's cooperation and shall then have the right to submit another request for assistance with an Adjustment. This process shall be followed until D/B Contractor succeeds in obtaining the Utility Owner's cooperation or in otherwise resolving the dispute or until the Mobility Authority determines, based on evidence presented by D/B Contractor, that the Adjustment is necessary, D/B Contractor has made diligent efforts to obtain the Utility Owner's cooperation and the Utility Owner is uncooperative. D/B Contractor shall have the right to submit the question of the reasonableness of the Mobility Authority's determination through the dispute resolution process described in Section 25.

14.12.5.3 D/B Contractor shall bear 100% of the risk of Critical Path delays caused by a Utility Owner's failure to timely comply with the requirements of a Utility Adjustment Agreement which has been executed by D/B Contractor, TxDOT or the Mobility Authority and such Utility Owner. D/B Contractor shall bear 100% of the risk of each Utility Owner Delay.

14.12.5.4 No Change Order for delay to the Critical Path shall be allowable for purposes of this Section 14.12.5.

14.12.5.5 D/B Contractor shall not be entitled to extension of the Interim Completion Deadline the Completion Deadline or the Acceptance Deadline on account of any delays caused by a Utility Owner. D/B Contractor shall not be entitled to any increase of the Design/Build Price or reimbursement of any additional costs which it may incur as a result of any delays caused by a Utility Owner.

14.12.6 Amounts Owed by Utility Owners to D/B Contractor.

If for any reason D/B Contractor is unable to collect any amounts owed to D/B Contractor by a Utility Owner (whether for a Utility Enhancement or otherwise): (a) the Mobility Authority shall have no liability for such amounts; (b) D/B Contractor shall have no right to collect such amounts from the Mobility Authority or to offset such amounts against amounts otherwise owing from D/B Contractor to the Mobility Authority; and (c) D/B

Contractor shall have no right to stop work or to exercise any other remedies against the Mobility Authority on account of such Utility Owner's failure to pay D/B Contractor.

14.12.7 Additional Restrictions on Change Orders.

In addition to all of the other requirements and limitations contained in this Section 14.12 and in the other provisions of this Section 14, the rights and obligations of D/B Contractor under this Section 14.12 shall be subject to the following:

14.12.7.1 As part of the Design/Build Work, D/B Contractor is responsible for causing all Utility Adjustment Work to occur, for reimbursing the Utility Owners for their costs of performing or furnishing Utility Adjustment Work (excluding the cost of Utility Enhancements), and for scheduling all Utility Adjustment Work (whether performed by D/B Contractor or the affected Utility Owner) so as to meet the Interim Completion Deadline, the Completion Deadline and the Acceptance Deadline herein. Accordingly, if a Utility Owner performs or furnishes Utility Adjustment Work that was initially anticipated to be performed or furnished by D/B Contractor, or if D/B Contractor performs or furnishes Utility Adjustment Work that was initially anticipated to be performed or furnished by the Utility Owner, there shall be no resulting time extension and no resulting change in the Design/Build Price (either up or down).

14.12.7.2 D/B Contractor assumes all risk of, and shall not be entitled to receive any time extension or increase in the Design/Build Price on account of, any delays caused by any Utility Owner. D/B Contractor shall not be entitled to receive any time extension or increase in the Design/Build Price on account of any failure by a Utility Owner to comply with the terms and conditions of any Utility MOU. Any action or inaction by the Mobility Authority as described in Section 14.12.5.1 shall have no bearing on the restriction set forth in this Section 14.12.7.2.

14.12.7.3 D/B Contractor shall not be entitled to a Change Order for any costs or delays which it may incur that are attributable to (a) any errors, omissions, inaccuracies, inconsistencies or other defects in designs furnished by any Utility Owner, and/or (b) any defect in construction performed by any Utility Owner.

14.12.7.4 D/B Contractor shall not be entitled to a Change Order for any costs or delays resulting from the performance of Utility Adjustment Work (including Incidental Utility Adjustment Work) by the D/B Contractor or any Utility Owner (including with respect to Unidentified Utilities).

14.12.7.5 Any Change Order increasing the Design/Build Price pursuant to this Section 14.12 shall include only the incremental costs arising from the circumstances giving rise to such Change Order.

14.12.7.6 D/B Contractor shall not be entitled to any increase in the Design/Build Price for any costs of coordinating with Utility Owners (including with respect to Unidentified Utilities).

14.12.7.7 Any information with respect to Utilities provided in the Existing Utility Information or in any other materials included in the Reference Documents is for D/B Contractor's reference only, has not been verified, and shall not be relied upon by D/B Contractor, except as expressly set forth in Section 14.12.1. Accordingly, D/B Contractor shall not be entitled to any increase in the Design/Build Price or to any time extension on account of any inaccuracies in the Reference Documents with respect to any Identified Utilities. Further, D/B Contractor shall not be entitled to any increase in the Design/Build Price on account of inaccuracies in the Reference Documents with respect to Unidentified Utilities except to the extent that they are reflected in the calculation of the Cost Differential for Unidentified Utilities as described in Exhibit A to this D/B Contract (and subject to the thresholds and any other limitations set forth in Section 14.12.1). Without limiting the generality of the foregoing, except as set forth in the preceding sentence, D/B Contractor shall not be entitled to any increase in the Design/Build Price and/or time extension as a result of any of the following:

(a) any increase in the extent or change in the character of the Utility Adjustment Work necessary to Adjust any Utility from that anticipated by D/B Contractor;

(b) any difference in the cost to Adjust a Utility from that anticipated by D/B Contractor;

(c) any inaccuracy in the information included in the Reference Documents as to the existence, location, ownership, type, and/or any other characteristic of any Utility;

(d) any inaccuracy in the Reference Documents as to whether any Utility is located within privately owned property or public right of way; and/or

(e) any inaccuracy in the Reference Documents as to the existence or nature of any rights or interests relating to the occupancy of any real property by any Utility.

14.12.7.8 If D/B Contractor elects to make payments to Utility Owners or to undertake any other efforts which are not required by the terms of the Contract Documents, D/B Contractor shall not be entitled to a Change Order in connection therewith.

14.13 Restrictions and Limitations on Change Orders.

D/B Contractor acknowledges and agrees that the Mobility Authority shall bear responsibility only for limited matters involving delays and costs and the consequences resulting therefrom as set forth in this Section 14. D/B Contractor shall bear responsibility for all other matters, including, but not limited to, the following:

(a) errors, omissions, inaccuracies, inconsistencies or other defects in the RFDP Documents, including, but not limited to, the Schematic Plan and any requests for Change Orders;

(b) any design changes requested by the Mobility Authority as part of the process of overseeing and accepting the Design Documents for consistency with the requirements of the Contract Documents, TxDOT, FHWA or other Governmental Approvals and/or applicable Law;

(c) defective or incorrect schedules of Design/Build Work or changes in the planned sequence of performance of the Design/Build Work;

(d) action or inaction of other contractors, Subcontractors or sub-subcontractors (including failure to organize and integrate their work with the Design/Build Work);

(e) subsurface moisture content and Site conditions (including geological, soil conditions, ground elevations and/or topography differing from those indicated in the RFDP Documents), except to the extent that the Mobility Authority has agreed in Section 14.9 to be responsible for any such conditions which constitute Differing Site Conditions;

(f) 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 to the extent resulting from a Force Majeure Event;

(g) all costs covered by insurance proceeds received by or on behalf of D/B Contractor;

(h) correction of Nonconforming Work and review and acceptance thereof by the Mobility Authority, including rejected design submittals;

- (i) failure by any member of the D/B Contractor Group to comply with the requirements of the Contract Documents, the Governmental Approvals and/or applicable Law;
- (j) any delay not on a Critical Path;
- (k) delays or costs arising out of, related to or caused by Adjacent Work;
- (l) delays in issuance of any Governmental Approval by any entity with jurisdiction over the subject matter of such Governmental Approval that is required to be obtained by D/B Contractor, except to the extent resulting from a Force Majeure Event;
- (m) delays caused by untimely provision of access to Final ROW, except to the extent the Mobility Authority has agreed in this Section 14 to be responsible for any such delays which constitute Mobility Authority-Caused Delays;
- (n) delays from any other situations (other than Force Majeure Events) which, while not within one of the categories delineated above, were or should have been anticipated by D/B Contractor because such situations are referred to elsewhere in this D/B Contract or arise out of the nature of the Design/Build Work; and
- (o) all events beyond the control of the Mobility Authority for which the Mobility Authority has not expressly agreed to assume liability hereunder.

D/B Contractor assumes responsibility for all such matters, and acknowledges and agrees that assumption by D/B Contractor of responsibility for such costs and delays, and the consequences and costs resulting therefrom, is reasonable under the circumstances of this D/B Contract. D/B CONTRACTOR EXPRESSLY WAIVES ALL RIGHTS TO ASSERT ANY AND ALL CLAIMS BASED ON ANY CHANGE IN THE DESIGN/BUILD WORK, DELAY OR ACCELERATION, INCLUDING ANY CONSTRUCTIVE CHANGE, DELAY, SUSPENSION OR ACCELERATION, FOR WHICH D/B CONTRACTOR FAILED TO PROVIDE PROPER AND TIMELY NOTICE AS REQUIRED BY SECTION 14.3 OR FAILED TO PROVIDE A TIMELY CHANGE ORDER FORM AS REQUIRED BY SECTION 14.3, AND AGREES THAT D/B CONTRACTOR SHALL BE ENTITLED TO NO CHANGE ORDER, COMPENSATION, DAMAGES OR TIME EXTENSIONS WHATSOEVER IN CONNECTION WITH THE WORK EXCEPT TO THE EXTENT THAT THE CONTRACT DOCUMENTS EXPRESSLY SPECIFY THAT D/B CONTRACTOR IS ENTITLED TO A CHANGE ORDER, COMPENSATION, DAMAGES OR A TIME EXTENSION.

14.14 Disputes.

The failure of the Mobility Authority and D/B Contractor to agree to any Change Order under this Section 14 shall be a dispute to be resolved pursuant to Section 25 of this D/B Contract. Except as otherwise specified in the Change Order, execution of a Change Order by the Parties shall be deemed accord and satisfaction of all claims by D/B Contractor of any nature arising from or relating to the Design/Build Work covered by the Change Order.

14.15 No-Cost Changes.

Changes in the Design/Build Work which have no net cost effect on the Design/Build Price and do not involve a material change in the scope of the D/B Work, may be approved in writing by the Mobility Authority as a Deviation, and in such event shall not require a Change Order. The Mobility Authority's determination as to whether a change in scope is material shall be subject to concurrence by TxDOT and FHWA.

14.16 No Release or Waiver.

14.16.1 No extension of time granted hereunder shall release or discharge any Surety or Guarantor from its obligations. Design/Build Work shall continue and be carried on in accordance with all the provisions of the Contract Documents, unless formally suspended or annulled in accordance with the terms hereof. Permitting D/B Contractor to finish the Design/Build Work or any part thereof after the applicable Completion Deadline or the applicable Acceptance Deadline, or the making of payments to D/B Contractor after such date, shall not constitute a waiver on the part of the Mobility Authority of any rights under this D/B Contract.

14.16.2 The Mobility Authority shall not be deemed to have waived any rights hereunder (including its right to abrogate this D/B Contract for abandonment or for failure to complete within the time specified, or to impose and deduct damages as may be provided herein) as the result of any grant of an extension of time beyond the date fixed for the completion of any part of the Design/Build Work, any acceptance of performance of any part of the Design/Build Work after the deadline therefor, or the making of any payments to D/B Contractor after such date.

14.17 Concurrence by TxDOT and FHWA Representatives.

An authorized representative of both TxDOT and FHWA must concur in any Change Order entered into by the parties pursuant to this D/B Contract. Prior approval of FHWA is required for any Major Change Order.

15. SUSPENSION OF ALL OR PART OF THE WORK.

15.1 Suspension for Convenience.

The Mobility Authority may order D/B Contractor in writing to suspend, delay, or interrupt all or any part of the Design/Build Work for a period of time not to exceed 24 hours, as the Mobility Authority may determine to be appropriate for the convenience of the Mobility Authority provided that such notice, to be effective, must be given at least 48 hours prior to the suspension. Any suspension for convenience in excess of 24 hours which results in a delay to the Critical Path will be considered a Mobility Authority-Directed Change.

15.2 Suspension for Other Reasons, Including Compliance with Governmental Approvals.

The Mobility Authority has the authority to suspend the Design/Build Work wholly or in part for such period as the Mobility Authority deems necessary because of the failure on the part of any member of the D/B Contractor Group to carry out orders given or to perform any requirements of the Contract Documents, the Governmental Approvals or applicable Law. D/B Contractor shall promptly comply with the written order of the Mobility Authority to suspend the Design/Build Work wholly or in part. The suspended Design/Build Work shall be resumed when corrective action satisfactory to the Mobility Authority has been taken.

15.3 Compensation and Time Extensions for Suspensions.

D/B Contractor shall not be entitled to any increase in the Design/Build Price or extension of the Completion Deadline, Interim Completion Deadline or Acceptance Deadline in connection with any suspension under this Section 15, except to the extent that the suspension is considered to be a Mobility Authority-Directed Change under Section 15.1. In such event, D/B Contractor may be entitled to compensation and/or a time extension in accordance with Section 14.

16. TERMINATION FOR CONVENIENCE.

16.1 D/B Contractor's Right to Terminate for Delay in Project Financing.

16.1.1 Subject to Section 13.2, D/B Contractor shall have the right to unilaterally terminate its obligations under this D/B Contract if NTP2 has not been issued by the Mobility Authority on or before 365 Days after the Proposal Date, due to no fault of any member of the D/B Contractor Group.

16.1.2 D/B Contractor shall have no right to unilaterally terminate any Contract Documents after the issuance of NTP2, including in the case of material default by the Mobility

Authority or delay in satisfaction of conditions precedent to commencing construction, except as set forth in Section 17.4.

16.2 Mobility Authority's Right to Terminate for Convenience.

The Mobility Authority may, in its sole discretion, terminate D/B Contractor's rights and obligations under the Contract Documents at any time subject to the provisions of this Section 16.

16.3 Notice of Termination.

The Mobility Authority shall notify D/B Contractor of its decision to terminate for convenience by delivering to D/B Contractor a written notice of termination ("**Notice of Termination**") specifying the extent of termination and its effective date. Termination (or partial termination) of this D/B Contract shall not relieve or release any Surety or Guarantor of its obligation for any claims arising out of the Design/Build Work performed as of the effective date of the termination (or thereafter in the case of a partial termination).

16.4 D/B Contractor's Responsibilities After Receipt of Notice of Termination.

After receipt of a Notice of Termination, and except as otherwise directed in writing by the Mobility Authority, D/B Contractor shall immediately proceed as follows, regardless of any delay in determining or adjusting any amounts due under this Section 16:

16.4.1 Stop Design/Build Work as specified in the notice;

16.4.2 Enter into no further Subcontracts or Utility Adjustment Agreements without the consent of the Mobility Authority;

16.4.3 Terminate all Subcontracts and Utility Adjustment Agreements to the extent they relate to the Design/Build Work terminated except to the extent that continuation of the Subcontract or Utility Adjustment Agreement is necessary in order to mitigate damages;

16.4.4 Assign to the Mobility Authority or its designee, in the manner, at the times, and to the extent directed by the Mobility Authority, all of D/B Contractor's right, title, and interest in the Subcontracts and Utility Adjustment Agreements so terminated, in which case the Mobility Authority will have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such Subcontracts and Utility Adjustment Agreements;

16.4.5 Settle all outstanding liabilities and claims arising out of such termination of Subcontracts and Utility Adjustment Agreements, with the approval or ratification of the Mobility Authority;

16.4.6 Assign to the Mobility Authority or its designee, in the manner, at the times, and to the extent directed by the Mobility Authority, all of D/B Contractor's right, title, and interest in any Utility Adjustment Agreements which relate to the terminated Design/Build Work but which the Mobility Authority has directed D/B Contractor not to terminate;

16.4.7 Transfer title and deliver to the Mobility Authority or its designee, in the manner, at the times, and as and to the extent, if any, directed by the Mobility Authority, (a) the Design/Build Work in process, completed Design/Build Work, supplies and other material produced or acquired for the Design/Build Work subject to the Notice of Termination for which payment has been made by the Mobility Authority, and (b) the Design Documents, Construction Documents and all other completed or partially completed drawings (including Plans, elevations, sections, details and diagrams), specifications, records, samples, information studies, reports, calculations, CADD files, and other property for which payment has been made by the Mobility Authority that would have been required to be furnished to the Mobility Authority if the Design/Build Work had been completed;

16.4.8 Complete performance in accordance with the Contract Documents of all Design/Build Work not terminated;

16.4.9 Take all action that may be necessary, or that the Mobility Authority may direct, for the protection and preservation of (a) the Project, (b) the Design/Build Work and (c) the equipment, machinery, materials and property related to the Project, the Design/Build Work and the Contract Documents that is in the possession of D/B Contractor and in which the Mobility Authority (or any Utility Owner) has or may acquire an interest; and

16.4.10 Subject to the written approval of the Mobility Authority, use its Best Efforts to sell, in a manner, at the times, at the price or prices and to the extent directed or authorized by the Mobility Authority, any property of the types referred to in clause (a) of Section 16.4.7; provided, however, that D/B Contractor (a) is not required to extend credit to any purchaser, and (b) may acquire the property under the conditions prescribed and at prices approved by the Mobility Authority. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Mobility Authority under the Contract Documents or paid in any other manner directed by the Mobility Authority.

16.5 Inventory.

D/B Contractor shall submit to the Mobility Authority a list of machinery, equipment, materials and inventory not previously disposed of and excluding items authorized for disposition by the Mobility Authority; and within 45 Days after delivery of the list, D/B Contractor shall deliver such items to the Mobility Authority and the Mobility Authority shall accept title to such items, except as otherwise directed by the Mobility Authority.

16.6 Settlement Proposal.

After receipt of a Notice of Termination, D/B Contractor shall submit a final termination settlement proposal to the Mobility Authority in the form and with the certification prescribed by the Mobility Authority. D/B Contractor shall submit the proposal promptly, but no later than 90 Days from the effective date of termination unless D/B Contractor has requested a time extension in writing within such 90-Day period and the Mobility Authority has agreed in writing to such extension. If D/B Contractor fails to submit the proposal within the time allowed, the Mobility Authority may conclusively determine, on the basis of information available to it, the amount, if any, due D/B Contractor because of the termination and shall pay D/B Contractor the amount so determined. The provisions of Section 17 shall govern any termination of this D/B Contract as a result of an Event of Default.

16.7 Amount of Termination Settlement.

Subject to the provisions of Section 16.6, D/B Contractor and the Mobility Authority may agree upon the amount to be paid to D/B Contractor by reason of the total or partial termination of Design/Build Work pursuant to this Section 16. Such negotiated settlement may include a reasonable allowance for profit solely on Design/Build Work which has been completed and accepted by the Mobility Authority as of the termination date. Such agreed amount, exclusive of settlement costs, shall not exceed the Design/Build Price less the amount of payments previously made to D/B Contractor and less the portions of the Design/Build Price related to Design/Build Work not terminated; provided, however, that if a termination occurs prior to issuance by the Mobility Authority of NTP1, no amount shall be payable to D/B Contractor. Upon determination of the settlement amount, D/B Contractor will be paid the agreed amount and this D/B Contract will be amended accordingly to implement the partial or total termination. The Mobility Authority's execution and delivery of any settlement agreement shall not affect any of its rights under the Contract Documents with respect to completed Design/Build Work, relieve D/B Contractor from its obligations with respect thereto, including Warranties, or affect the Mobility Authority's rights under the Performance Bonds and/or the Payment Bonds.

16.8 No Agreement as to Amount of Claim.

If D/B Contractor and the Mobility Authority fail to agree, as provided in Section 16.7, upon the amount to be paid to D/B Contractor by reason of the termination of Design/Build Work pursuant to this Section 16, the amount payable shall be determined pursuant to the procedures set forth in Section 25.

16.9 Reduction in Amount of Claim.

The amount otherwise due D/B Contractor under this Section 16 shall be reduced by (a) all unliquidated advances or other payments made to or on behalf of D/B Contractor with respect to any portion of the Design/Build Work or this D/B Contract that has been terminated, (b) the amount of any claim which the Mobility Authority may have against any member of the D/B Contractor Group in connection with this D/B Contract; (c) the amount of any Losses suffered by any Indemnified Party as a result of the actions, omissions, negligence, willful misconduct, or breach of applicable Law or contract by any member of the D/B Contractor Group; (d) any existing or threatened claims, Liens and stop notices relating to the Project; (e) the agreed price for, or the proceeds of sale of, any materials, supplies or other things acquired by D/B Contractor or sold, pursuant to the provisions of this Section 16, and not otherwise recovered by or credited to the Mobility Authority; and (f) any amounts due or payable by D/B Contractor to the Mobility Authority, plus any interest accrued thereon under the terms of this D/B Contract. D/B Contractor does not hereby waive any right to payment of amounts it may be owed to the extent withheld by the Mobility Authority pursuant to this Section 16.9.

16.10 Preservation of Records.

Unless otherwise provided for in this D/B Contract or by applicable Law, D/B Contractor shall, from the effective date of termination until the expiration of five years after final settlement under this D/B Contract, preserve and make available to the Mobility Authority at no cost to the Mobility Authority and at all reasonable times, all of its books, records, electronic files, documents and other evidence relating to the costs and expenses of D/B Contractor under this D/B Contract and relating to the Design/Build Work terminated hereunder, or, to the extent approved by the Mobility Authority, photographs, micrographs, or other authentic reproductions thereof.

16.11 Mobility Authority’s Unilateral Right to Issue NTPs.

16.11.1 Notwithstanding the foregoing, D/B Contractor acknowledges and agrees that the Mobility Authority has no obligation to issue either NTP1 or NTP2 hereunder. Furthermore, D/B Contractor acknowledges that any decision to issue NTP1 or NTP2 shall be in the sole discretion of the Mobility Authority.

17. DEFAULT.

17.1 Default of D/B Contractor.

17.1.1 D/B Contractor shall be in default under this D/B Contract upon the occurrence and continuance of any one or more of the following events or conditions, following notice and opportunity to cure (if applicable) as specified in Section 17.1.2:

CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY
BERGSTROM EXPRESSWAY (183 SOUTH) PROJECT

D/B CONTRACT
EXECUTION COPY

(a) D/B Contractor fails either (i) to begin any portion of the Design/Build Work under the Contract Documents following issuance of an NTP therefor, or (ii) to prosecute the Design/Build Work in accordance with a Project Schedule that has been agreed to by the parties; or

(b) D/B Contractor fails to perform the Design/Build Work with sufficient resources to assure Interim Completion within 180 Days following the Interim Completion Deadline, Substantial Completion within 180 Days following the Completion Deadline and Final Acceptance within 180 Days following the Acceptance Deadline; or

(c) D/B Contractor fails to perform and complete the Design/Build Work in accordance with the Contract Documents, the Governmental Approvals and applicable Law, or refuses to repair, remove and replace defective or rejected materials, Nonconforming Work or Design/Build Work that fails to conform with the requirements of the Contract Documents; or

(d) D/B Contractor suspends, ceases, stops or abandons the Design/Build Work or fails to continuously and diligently prosecute the Design/Build Work, excluding any work stoppage (i) due to termination by the Mobility Authority, (ii) due to and during the continuance of a Force Majeure Event or suspension by the Mobility Authority pursuant to Section 15.1; or (iii) due to and during the continuance of any suspension of work under Section 17.4.

(e) D/B Contractor fails to resume performance of Design/Build Work which has been suspended or stopped, within a reasonable time after receipt of notice from the Mobility Authority to do so or after cessation of the event preventing performance; or

(f) D/B Contractor fails to maintain the insurance required under Section 10 or fails to provide the Performance Bond, or the Payment Bond; or

(g) D/B Contractor breaches any other covenant, agreement, obligation, term or condition contained in the Contract Documents which is not otherwise specifically referenced in this Section 17.1.1; or

(h) D/B Contractor assigns or transfers the Agreement or any right or interest herein, except as expressly permitted hereunder; or

(i) D/B Contractor fails to discharge or obtain a stay within 10 days of any final judgment(s) or order for the payment of money against it in excess of \$100,000 in the aggregate arising out of the prosecution of the Design/Build Work; provided, however, that the posting of a bond in the amount of 125% of such judgment or order shall be deemed an effective stay; or

(j) D/B Contractor fails, absent a valid dispute, to make payment when due for labor, equipment or materials in accordance with its agreements with Subcontractors and applicable Law; or

(k) Any representation or warranty made by D/B Contractor or any Guarantor in the Contract Documents or any certificate, schedule, instrument, or other document delivered pursuant to the Contract Documents shall have been false or misleading when made; or

(l) D/B Contractor or any Guarantor is a party to fraud; or

(m) Any Guarantor revokes or attempts to revoke its obligations under its guarantee or otherwise takes the position that such instrument is no longer in full force and effect; or

(n) D/B Contractor or any equity member of D/B Contractor (each a "**D/B Contractor Party**") commences a voluntary case seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar Law now or hereafter in effect; seeks the appointment of a trustee, receiver, liquidator, custodian or other similar official of such D/B Contractor Party or any substantial part of such D/B Contractor Party's assets; files an answer admitting the material allegations of a petition filed against such D/B Contractor Party in any involuntary case commenced against D/B Contractor Party; consents to any such relief or to the appointment of or taking possession by any such official in any voluntary case commenced against such D/B Contractor Party; makes an assignment for the benefit of creditors; fails, is unable, or admits in writing the inability generally to pay such D/B Contractor Party's debts as they become due; or takes any action to authorize any of the foregoing; or any of the foregoing acts or events shall occur with respect to Guarantor; or

(o) An involuntary case is commenced against a D/B Contractor Party seeking liquidation, reorganization, dissolution, winding up, a composition or arrangement with creditors, a readjustment of debts or other relief with respect to such D/B Contractor Party or such D/B Contractor Party's debts under any bankruptcy, insolvency or other similar Law now or hereafter in effect; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of such D/B Contractor Party or any substantial part of such D/B Contractor Party's assets; seeking the issuance of a writ of attachment, execution, or similar process; or seeking like relief, and such involuntary case shall not be contested by such D/B Contractor Party in good faith or shall remain undismissed and unstayed for a period of sixty (60) Days; or any such involuntary case or cases shall be commenced against Guarantor (but not necessarily in the same proceeding or concurrently) and such case or cases shall not be contested by Guarantor in good faith or shall remain undismissed and unstayed for a period of sixty (60) Days; or

(p) D/B Contractor fails to timely submit to the Mobility Authority a Project Schedule as required under the Contract Documents.

(q) D/B Contractor is unable to provide the Debarment Certificate required pursuant to Section 13.3.2(j) in connection with a Draw Request.

17.1.2 D/B Contractor and Surety shall be entitled to fifteen (15) Days' written notice and opportunity to cure any breach before declaring an Event of Default, provided that no such notice and opportunity to cure is required for any breach which by its nature cannot be cured. Failure to provide notice to Surety shall not preclude the Mobility Authority from exercising its remedies against D/B Contractor. If a breach is capable of cure but, by its nature, cannot be cured within fifteen (15) Days, as determined by the Mobility Authority, such additional period of time shall be allowed as may be reasonably necessary to cure the breach so long as D/B Contractor commences such cure within such fifteen (15) Day period and thereafter diligently prosecutes such cure to completion; provided, however, that in no event shall such cure period exceed sixty (60) Days in total. D/B Contractor hereby acknowledges and agrees that the events described in Section 17.1.1(k) through (o) are not curable. Notwithstanding the foregoing, the Mobility Authority may, without notice and without awaiting lapse of the period to cure any default, in the event of existence of a condition on or affecting the Project which the Mobility Authority believes poses an immediate and imminent danger to public health or safety, rectify the dangerous condition at D/B Contractor's cost, and so long as the Mobility Authority undertakes such action in good faith, even if under a mistaken belief in the occurrence of such default, such action shall not expose the Mobility Authority to any liability to D/B Contractor and shall not entitle D/B Contractor to any other remedy, it being acknowledged that the Mobility Authority has a paramount public interest in providing and maintaining safe public use of and access to the Project. The Mobility Authority's good faith determination of the existence of such danger shall be deemed conclusive in the absence of clear and convincing evidence to the contrary.

17.2 Remedies.

17.2.1 If any breach described in Section 17.1.1 is not subject to cure or is not cured within the period (if any) specified in Section 17.1.2, the Mobility Authority may declare that an "Event of Default" has occurred. The declaration of an Event of Default shall be in writing and delivered to D/B Contractor with a copy to Surety. If an Event of Default shall occur, then D/B Contractor shall have the following obligations:

(a) The Mobility Authority may terminate this D/B Contract or a portion thereof, including D/B Contractor's rights of entry upon, possession, control and operation of the Project, in which case, the provisions of Section 16.4, Section 16.5 and Section 16.10 shall apply; and/or

(b) If requested by the Mobility Authority, D/B Contractor shall withdraw from the Final ROW and shall remove such materials, equipment, tools and instruments used by, and any debris or waste materials generated by, any member of the D/B Contractor Group in the performance of the Design/Build Work as the Mobility Authority may direct; and/or

(c) D/B Contractor shall deliver to the Mobility Authority possession of any or all Design Documents, Construction Documents and all other completed or partially completed drawings (including Plans, elevations, sections, details and diagrams), specifications, records, information, schedules, samples, shop drawings, electronic files and other documents and facilities related to the Final ROW that the Mobility Authority deems necessary for completion of the Design/Build Work; and/or

(d) D/B Contractor shall assign to the Mobility Authority the Subcontracts requested by the Mobility Authority and D/B Contractor shall terminate, at its sole cost, those Subcontracts not assigned to the Mobility Authority; and/or

(e) The Mobility Authority may deduct from any amounts payable by the Mobility Authority to D/B Contractor such amounts payable by D/B Contractor to the Mobility Authority, including Liquidated Damages or other damages payable to the Mobility Authority under the Contract Documents.

17.2.2 If an Event of Default shall occur, then the Mobility Authority shall have the following rights without further notice and without waiving or releasing D/B Contractor from any obligations:

(a) The Mobility Authority shall have the right, but shall not be obligated, to pay such amount and/or perform such act as may then be required.

(b) The Mobility Authority may appropriate any or all materials and equipment on the Site as may be suitable and acceptable and may, subject to the rights of Surety if the Mobility Authority elects to proceed against the Performance Bond, enter into an agreement for the completion of this D/B Contract according to the terms and provisions thereof with another contractor or the Surety, or use such other methods as may be required for the completion of this D/B Contract, including completion of the Design/Build Work by the Mobility Authority.

(c) If the Mobility Authority exercises any right to perform any obligations of D/B Contractor, in the exercise of such right it may, but is not obligated to, among other things: (i) perform or attempt to perform, or cause to be performed, such work; (ii) spend such sums as the Mobility Authority deems necessary and reasonable to employ and pay such architects, engineers, consultants and contractors and obtain materials and equipment as may be required for

the purpose of completing such work; (iii) execute all applications, certificates and other documents as may be required for completing the work; (iv) modify or terminate any contractual arrangements; (v) take any and all other actions which it may in its sole and absolute discretion consider necessary to complete the work; and (vi) prosecute and defend any action or proceeding incident to the Design/Build Work.

(d) All costs and charges incurred by the Mobility Authority, including without limitation any re-bid costs, throw away costs for unused portions of the D/B Contractor's design and increased financing costs due to delay of the Finance Closing Date, together with the cost of completing the Design/Build Work, will be deducted from any monies due or that may become due D/B Contractor. If such expense exceeds the sum which would be available from such monies, then D/B Contractor shall be liable and shall pay to the Mobility Authority the amount of such excess plus interest thereon at the lesser of (i) 12% per annum or (ii) the maximum rate allowable under applicable Law.

17.2.3 The rights and remedies of the Mobility Authority hereunder are in addition to any other rights and remedies provided by law or equity or provided under this D/B Contract, the Performance Bond, Payment Bond, or any guarantees hereunder, and the exercise or beginning of the exercise by the Mobility Authority of any one or more of any of such rights or remedies shall not preclude the simultaneous or later exercise by the Mobility Authority of any or all other such rights or remedies; provided, however, that if the Mobility Authority fails to notify the Surety of its intent to enforce the Performance Bond within 730 days after an Event of Default and the formal termination of D/B Contractor's right to complete the Design/Build Work, the Performance Bond shall be deemed voided and the Surety shall be released from any further obligation thereunder.

17.2.4 D/B Contractor and Surety shall not be relieved of liability for continuing Liquidated Damages on account of a breach or default by D/B Contractor hereunder or by the Mobility Authority's declaration of an Event of Default, or by actions taken by the Mobility Authority under this Section 17.2.

17.2.5 In the event that this D/B Contract is terminated for grounds which are later determined not to justify a termination for default, such termination shall be deemed to constitute a termination for convenience pursuant to Section 16.

17.3 Failure to Comply Caused by Delay Event.

Notwithstanding anything to the contrary contained herein, the Parties agree that the term "**Event of Default**" shall specifically exclude D/B Contractor's failure to meet the Project Schedule or achieve Interim Completion by the Interim Completion Deadline, Substantial Completion by the Completion Deadline or Final Acceptance by the Acceptance Deadline, if

such failure is caused directly by an event or events beyond D/B Contractor's control, which event was not due, in whole or in part, to the breach, default, fault, act, omission, negligence, recklessness, gross negligence or willful misconduct of any member of the D/B Contractor Group, and which delay could not have been avoided by due diligence and use of reasonable efforts by D/B Contractor. The foregoing circumstance is referred to herein as a "**Delay Event**," with the understanding that the term "**Delay Event**" does not apply in cases where the delay to the Critical Path is resolved by extension of the applicable completion deadline(s) under Section 14. If D/B Contractor fails to meet the Project Schedule as a result of a Delay Event, the Mobility Authority shall not be entitled to terminate this D/B Contract or exercise any of the remedies described in Section 17.2 above for such failure of D/B Contractor to perform, except as follows: (i) if D/B Contractor fails to perform or delays the performance of any Design/Build Work as the result of a Delay Event, then the Mobility Authority shall have the right, but not the obligation, to cause third parties to perform such Design/Build Work, and, in such event, the cost of such Design/Build Work shall be deducted from the Design/Build Price; and (ii) occurrence of a Delay Event shall not excuse D/B Contractor from its obligation to implement a Recovery Schedule or from its obligation to pay damages, including Liquidated Damages, for failure to achieve Interim Completion by the Interim Completion Deadline, Substantial Completion by the Completion Deadline or Final Acceptance by the Acceptance Deadline. D/B Contractor shall promptly notify the Mobility Authority in writing of any occurrence of a Delay Event and of the steps that D/B Contractor intends to implement to mitigate the delays arising therefrom.

17.4 Right to Stop Work for Failure by the Mobility Authority to Make Undisputed Payment.

In the event that D/B Contractor fails to receive a payment in the amount approved under Section 13.3.7 on the date specified for payment in Section 13.3.7, D/B Contractor shall promptly notify the Mobility Authority in writing. D/B Contractor shall have the right to suspend the Design/Build Work if payment is not made within five (5) Business Days after delivery of the notice of nonpayment, without limitation to any other recourse of the D/B Contractor. Any such suspension by D/B Contractor based on a failure of the Mobility Authority to make payment shall be considered a Mobility Authority-Caused Delay entitling D/B Contractor to a Change Order hereunder. D/B Contractor shall not have the right to terminate the D/B Contract for default in the event of the Mobility Authority's failure to make payments owing hereunder, but D/B Contractor shall have the right to declare a termination for convenience under Section 16 if such nonpayment by the Mobility Authority continues for more than 180 days, or as otherwise provide by law.

18. DAMAGES.

D/B Contractor understands and agrees that if D/B Contractor fails to complete the Design/Build Work in accordance with the Contract Documents, the Mobility Authority will

suffer substantial Losses. D/B Contractor agrees that it shall be liable for all such Losses. D/B Contractor and the Mobility Authority have agreed to require payment of Liquidated Damages with respect to certain types of Losses. D/B Contractor acknowledges and agrees that the Liquidated Damages provided for in the first paragraph of Section 18.1 are intended to compensate the Mobility Authority solely for D/B Contractor's failure to meet the deadlines set forth in Section 5.2 and shall not excuse D/B Contractor from liability from any other breach of requirements of the Contract Documents, including any failure of the Design/Build Work to conform to applicable requirements. D/B Contractor shall not be liable for any other damages in addition to the Liquidated Damages for D/B Contractor's failure to meet the completion deadlines set forth in Section 5.2.

18.1 Liquidated Damages.

18.1.1 D/B Contractor acknowledges and agrees that because of the unique nature of the Project, and the fact that inconvenience to the traveling public will be one of the significant impacts of any failure by D/B Contractor to achieve Interim Completion by the Interim Completion Deadline, Substantial Completion by the Completion Deadline and Final Acceptance by the Acceptance Deadline, it is impracticable and extremely difficult to ascertain and determine the actual Losses which would accrue to the Mobility Authority and the public if D/B Contractor fails to achieve Interim Completion by the Interim Completion Deadline, Substantial Completion by the Completion Deadline and Final Acceptance by the Acceptance Deadline. Therefore, D/B Contractor shall pay the Mobility Authority a liquidated amount (the "**Liquidated Damages**") as deemed compensation to the Mobility Authority for such Losses, in the amount of \$40,000 for each Day after the Interim Completion Deadline as its sole remedy for failure to meet the Interim Completion Deadline, \$125,000 for each Day after the Completion Deadline as its sole remedy for failure to meet the Completion Deadline, and \$12,000 for each Day after the Acceptance Deadline as its sole remedy for failure to meet the Acceptance Deadline.

18.1.2 Separate and apart from the Liquidated Damages described in Section 18.1.1, the D/B Contractor shall be liable for and pay to the Mobility Authority Liquidated Damages with respect to any failure to meet the deadlines for toll infrastructure installation and operational testing as set forth in Exhibit C – Technical Provision 5. Pursuant to such Technical Provision 5, toll infrastructure installation for the Interim Completion Toll Gantries must occur at least 90 Days prior to the Interim Completion Deadline and toll infrastructure installation for the Substantial Completion Toll Gantries must occur at least 90 Days prior to the Substantial Completion Deadline ("**Toll Infrastructure Installation Deadlines**") or Liquidated Damages will accrue at a rate of \$5,000 per Day per Toll Gantry from each Toll Infrastructure Installation Deadline until installation actually occurs. Additionally, the D/B Contractor shall pay to the Mobility Authority Liquidated Damages in the amount of \$5,000 per Toll Gantry for each Day after the Operational Testing Deadline for any failure of the D/B Contractor to complete the

Design/Build Work required for operational testing of the Toll Gantries and related toll equipment as more fully described in Technical Provision 5. The Operational Testing Deadline is 30 Days prior to the Interim Completion Deadline for the Interim Completion Toll Gantries and related toll equipment and 30 Days prior to the Substantial Completion Deadline for the Substantial Completion Toll Gantries and related toll equipment.

The Liquidated Damages pursuant to this Section 18.1.2 are meant to cover the costs to the Mobility Authority of increased oversight related to the Project and this D/B Contract and increased costs attributable to the Mobility Authority's contract with its SI, including but not limited to the cost of hiring additional SI work crews to complete the SI contract work. As such, these Liquidated Damages will continue to accrue and be payable to the Mobility Authority by the D/B Contractor after the Completion Deadline in addition to, and not in substitution for, the Liquidated Damages payable pursuant to Section 18.1.1 for failure to meet the Interim Completion Deadline and/or the Completion Deadline.

18.1.3 D/B Contractor shall also be liable and pay to the Mobility Authority Liquidated Damages for any tree, shrub, or grass area identified to be preserved/protected which, at Final Acceptance, is missing, severely damaged, or dead as a result of the actions of the D/B Contractor in connection with the Design/Build Work, as specified in detail in Exhibit C – Technical Provision 10.20 and in Exhibit C – Attachment 7 – Landscape and Aesthetic Requirements and Exhibit C – Attachment 8 – Preserved Tree Inventory.

18.1.4 D/B Contractor shall also be liable and pay to the Mobility Authority Liquidated Damages for certain lane closures as specified in detail in Exhibit C – Technical Provision 22. D/B Contractor understands and agrees that certain lane closures specified in such Technical Provision 22 are the subject of lane rentals and will be deducted from D/B Contractor's Lane Rental Bank, while certain other specified lane closures are subject to Liquidated Damages because it is the intent of the Mobility Authority to prohibit these latter lane closures due to the potential harm and detriment to Project users and the potential harm and detriment to the reputation of the Mobility Authority, which are difficult to quantify and prove.

18.1.5 D/B Contractor shall also pay to the Mobility Authority Liquidated Damages in accordance with Section 19.1 with respect to the unavailability of Category A Personnel.

18.1.6 D/B Contractor understands and agrees that any Liquidated Damages payable in accordance with this Section 18.1 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. D/B Contractor further acknowledges and agrees that Liquidated Damages may be owing as the result of a Delay Event, even though no Event of Default has occurred or been declared.

18.2 Payment Terms/Offset; Reduction; Waiver.

18.2.1 Liquidated Damages shall be payable by D/B Contractor to the Mobility Authority within thirty (30) Days after D/B Contractor's receipt of an invoice therefor from the Mobility Authority. Interest on such amounts shall accrue at the lesser of (i) 12% per annum or (ii) the maximum rate allowable under applicable Law following the expiration of such thirty (30) Day period. The Mobility Authority shall have the right, in its sole discretion, to deduct any amount owed by D/B Contractor to the Mobility Authority hereunder from any amounts owed by the Mobility Authority to D/B Contractor, including any Retainage which may be payable by the Mobility Authority to D/B Contractor.

18.2.2 Permitting or requiring D/B Contractor to continue and finish the Design/Build Work or any part thereof after the Interim Completion Deadline, Completion Deadline or Acceptance Deadline shall not act as a waiver of the Mobility Authority's right to receive Liquidated Damages hereunder or any rights or remedies otherwise available to the Mobility Authority.

18.3 Limitation of D/B Contractor's Liability.

18.3.1 D/B Contractor's liability to the Mobility Authority for damages, Losses, costs and expenses of any kind resulting from or relating to this D/B Contract or performance of the Design/Build Work (or failure to perform same), whether in contract, negligence or other tort, or any other theory of law, but excluding damages and Losses covered by insurance proceeds, and gross negligence, willful misconduct, fraud or criminal conduct on the part of the D/B Contractor, shall be limited to the sum of (a) all those costs reasonably incurred by the Mobility Authority or any party acting on the Mobility Authority's behalf in completing or correcting the Design/Build Work or having the Design/Build Work completed or corrected by another Person (provided that D/B Contractor shall be entitled to a credit against the damages otherwise payable to the Mobility Authority for amounts deducted and withheld by the Mobility Authority from the Design/Build Price for purposes of paying such completion and correction costs), plus (b) the amount of \$20,000,000 (which sum shall specifically include and act as a limit on Liquidated Damages paid pursuant to this Section 18 and Section 19.1, any fees paid pursuant to Sections 7.4, 14.2.1.2, and 14.2.1.4, and any payments made to or for the benefit of the Indemnified Parties pursuant to Section 23) plus (c) a maximum of \$10,000,000 for any payments for lost toll revenues pursuant to Section 12.1.4; provided, however, that D/B Contractor's liability to the Mobility Authority shall in no event exceed the amount of the Design/Build Price.

18.3.2 Except for lost toll revenues payable pursuant to Section 12.1.4 (as limited by Section 18.3.1 (c) above) and subject to subparagraphs (a) and (b) below, in no event shall D/B Contractor be liable to the Mobility Authority for any indirect, special or consequential damages (including, without limitation, loss of use, cost of capital, debt service, loss of profit on this or

related contracts, administrative costs, claims of taxpayers and other indirect damage) resulting from or relating to this D/B Contract or performance of the Design/Build Work (or failure to perform same), and Mobility Authority hereby releases the D/B Contractor from such liability.

The foregoing waiver of consequential damages shall apply to limit liability under actions brought under any theory of law, including actions in tort (including negligence) as well as in contract. The foregoing release of liability by the Mobility Authority shall extend to all members of the D/B Contractor Group.

The foregoing waiver of consequential damages shall not exclude or affect:

(a) Any liability for gross negligence, fraud, intentional misconduct, or criminal acts by D/B Contractor or liability for Liquidated Damages under this D/B Contract; and

(b) Any liability for any type of damage or loss, to the extent such loss or damage is covered by insurance D/B Contractor carries under project specific policies applicable to the Project and the Design/Build Work.

19. LABOR AND EMPLOYMENT REQUIREMENTS.

19.1 Key Personnel; Qualifications of Employees.

19.1.1 The Contract Documents identify certain job categories of Key Personnel for the Project. D/B Contractor shall not change, or permit any change in, any Key Personnel without the prior written consent of the Mobility Authority in accordance with Technical Provision 1.

19.1.2 All individuals performing Design/Build Work shall have the skill and experience and any licenses required to perform the Design/Build Work assigned to them. If the Mobility Authority determines, in its sole discretion, that any Person employed by D/B Contractor or any Subcontractor is not performing the Design/Build Work in a proper, desirable and skillful manner or is detrimental to the progress of the Design/Build Work and/or the Project, then, at the written request of the Mobility Authority, D/B Contractor shall remove such Person from the Project and such Person shall not be reemployed on the Project without the prior written approval of the Mobility Authority. If such Person is not removed or if D/B Contractor fails to ensure that skilled and experienced personnel are furnished for the proper performance of the Design/Build Work, then the Mobility Authority may suspend the affected portion of the Design/Build Work by delivery of written notice of such suspension to D/B Contractor. Such suspension shall in no way relieve D/B Contractor of any obligation contained in the Contract Documents or entitle D/B Contractor to a Claim or Change Order. Once compliance is achieved, D/B Contractor shall be entitled to and shall promptly resume the Design/Build Work. During

the period of any such suspension, D/B Contractor shall not be entitled to the payment of any portion of the Design/Build Price or any other payment hereunder.

19.1.3 D/B Contractor shall designate in writing who shall have onsite field and office authority to represent and act for D/B Contractor. An appropriately designated representative shall be present at the jobsite at all times while Design/Build Work is actually in progress. While any night work or shift work is to be performed by D/B Contractor, a superintendent shall be at the jobsite at all times. D/B Contractor shall provide phone and pager numbers for all Key Personnel. The Mobility Authority requires the ability to contact these key individuals 24 hours per Day, seven Days per week.

19.1.4 D/B Contractor acknowledges and agrees that the award of this D/B Contract by the Mobility Authority to D/B Contractor was based, in large part, on the qualifications and experience of the personnel listed in the Proposal and D/B Contractor's commitment that such individuals would be available to undertake and perform the Design/Build Work. D/B Contractor represents, warrants and covenants that such individuals are available for and will fulfill the roles identified for them in the Proposal in connection with the Design/Build Work. Unless otherwise agreed to by the Mobility Authority in writing, individuals filling Key Personnel roles shall devote 100% of their work time, as required herein, to the prosecution and performance of the Design/Build Work to the extent necessary to satisfactorily and timely complete their designated duties under the Contract Documents. By way of illustration and example, the Design Manager would be expected to devote full time to the Project until Final Design Plans are accepted by the Mobility Authority, but, thereafter, could reduce his or her commitment to such work time as is necessary to aid the Construction Manager and D/B Contractor Project Manager in completing construction of the Project.

19.1.5 If an individual filling one or more Category A Personnel roles is not available for the Design/Build Work and does not maintain active involvement in the prosecution and performance of the Design/Build Work and such individual has not been replaced by an individual approved by the Mobility Authority, D/B Contractor acknowledges that the Mobility Authority, the Design/Build Work and the Project will suffer significant and substantial additional Losses due to the unavailability of an approved individual to fill a Category A Personnel role and that it is impracticable and extremely difficult to ascertain and determine the actual Losses which would accrue to the Mobility Authority in such event. Therefore, for each day that a Category A Personnel role is not filled by an approved individual, the Mobility Authority may require that the D/B Contractor pay a liquidated amount of \$5,000.

19.1.6 D/B Contractor understands and agrees that any damages payable in accordance with this Section 19.1 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. The Mobility Authority shall have the right to deduct any amount owed by D/B Contractor to the Mobility

Authority hereunder from any amounts owed by the Mobility Authority to D/B Contractor, including any Retainage which may be payable by the Mobility Authority to D/B Contractor. Notwithstanding the foregoing, D/B Contractor shall not be liable for liquidated damages under this Section 19.1 if (i) D/B Contractor removes or replaces such personnel at the direction of the Mobility Authority; (ii) such individual is unavailable due to death, disability, retirement, injury or no longer being employed by the applicable member of the D/B Contractor Group (provided that moving to an affiliated company shall not be considered grounds for avoiding liquidated damages), or (iii) such individual is unavailable due to the Mobility Authority's failure to issue NTP2 within 210 Days of the Proposal Date; provided, however, in each such case, D/B Contractor shall promptly propose to the Mobility Authority a replacement for such personnel, which individual shall be subject to the Mobility Authority's review and written consent. In the event NTP2 has not been issued within 210 Days after the Proposal Date, D/B Contractor shall have thirty (30) Days after issuance of NTP2 to identify any change in Category A Personnel without incurring any liquidated damages, provided that such new Category A Personnel must be approved by the Mobility Authority and meet the requirements of Section 19.1.2.

19.1.7 The Mobility Authority may waive Liquidated Damages pursuant to this Section 19.1 in its sole discretion.

19.2 Responsibility for Employees and Subcontractors.

D/B Contractor shall supervise and be responsible for the actions, omissions, negligence, willful misconduct, or breach of applicable Law or contract by any member of the D/B Contractor Group, as though all such Persons were directly employed by D/B Contractor.

19.3 Subcontracts.

19.3.1 Each instrument evidencing any agreement of D/B Contractor with any Subcontractor shall provide, in terms and in form and substance satisfactory to the Mobility Authority that: (a) the rights of D/B Contractor under such instrument are assigned to the Mobility Authority contingent only upon delivery of written request from the Mobility Authority or its successor or assign following default by D/B Contractor or termination or expiration of this D/B Contract; and (b) all warranties (express and implied) of such Subcontract shall inure to the benefit of the Mobility Authority.

19.3.2 D/B Contractor shall provide the Mobility Authority with a list of all Subcontracts from time to time upon request, shall allow the Mobility Authority access to all Subcontracts and records regarding Subcontracts and shall deliver to the Mobility Authority, within ten Days after execution, copies of all Major Subcontracts and, within ten Days after receipt of a request from the Mobility Authority, copies of all other agreements or documents as may be requested.

19.3.3 The appointment of Subcontractors by D/B Contractor will not relieve D/B Contractor of its responsibility hereunder or for the quality of the Design/Build Work or materials provided by it. D/B Contractor will at all times be held fully responsible to the Mobility Authority for the actions, omissions, negligence, willful misconduct, or breach of applicable Law or contract by its Subcontractors and persons employed by them and no Subcontract entered into by D/B Contractor will impose any obligation or liability upon the Mobility Authority to any such Subcontractor or any of its employees. Nothing in this D/B Contract will create any contractual relationship between the Mobility Authority and any Subcontractor of D/B Contractor.

19.3.4 The following requirements shall apply to Subcontracts:

(a) D/B Contractor shall, within 30 days of execution of this D/B Contract, submit to the Mobility Authority for its review a procedure for the conduct of the selection and approval process applicable to Major Subcontracts. Such procedure may provide that award of any Major Subcontract will go to the lowest responsive bid by a responsible bidder, to the bidder providing the best value proposal or through a negotiation process. D/B Contractor may use procedures set forth in the TxDOT Specifications or may submit alternative competitive low bid procedures to the Mobility Authority for review, may submit a competitive best value selection procedure to the Mobility Authority for review, or may show why a negotiation process will provide the best value. D/B Contractor shall not enter into any Major Subcontracts except in accordance with the foregoing procedure. Once D/B Contractor has entered into any Major Subcontract, D/B Contractor shall not have the right to make any substitution of such Subcontractor except with the Mobility Authority's prior written approval.

(b) As soon as a potential Subcontractor has been identified by D/B Contractor, but in no event later than five Days after Subcontract execution, D/B Contractor shall notify the Mobility Authority in writing of the name, address, phone number and contact name of such Subcontractor that has not been previously identified as a Major Subcontractor in D/B Contractor's Proposal.

(c) Each Subcontract shall include terms and conditions sufficient to ensure compliance by the Subcontractor with the requirements of the Contract Documents, and shall include those terms that are specifically required by the Contract Documents to be included therein. All Subcontracts, including Subcontracts with Suppliers, shall incorporate terms substantially similar to those contained in this D/B Contract, specifically including an agreement by the Subcontractor or Supplier to participate in any dispute review proceeding pursuant to Section 25, if such participation is requested by either the Mobility Authority or D/B Contractor.

19.3.5 Each Subcontract shall:

(a) Set forth a standard of professional responsibility or a standard for commercial practice equal to prudent industry standards for work of similar scope and scale and shall set forth effective procedures for claims and change orders.

(b) Require the Subcontractor to carry out its scope of work in accordance with this D/B Contract, the Governmental Approvals and applicable Law, including the applicable requirements of the DBE Performance Plan.

(c) Set forth warranties, guaranties and liability provisions of the contracting party in accordance with good commercial practice for work of similar scope and scale.

(d) Be fully assignable without cost to the Mobility Authority or TxDOT, such assignability to include the benefit of all Subcontractor warranties, indemnities, guarantees and professional responsibility and include express requirements that: (i) it will maintain usual and customary books and records for the type and scope of operations of business in which it is engaged (e.g., constructor, equipment supplier, designer, service provider); (ii) permit audit thereof by D/B Contractor, and provide progress reports to D/B Contractor appropriate for the type of work it is performing sufficient to enable D/B Contractor to provide the reports it is required to furnish the Mobility Authority or TxDOT under this D/B Contract; and (iii) allow the Mobility Authority or TxDOT to assume the benefit of D/B Contractor's rights with liability only for those remaining obligations of D/B Contractor accruing after the date of assumption by the Mobility Authority or TxDOT.

(e) Not be assignable by the Subcontractor without D/B Contractor's prior written consent.

(f) With respect to any Subcontract which, when aggregated with all Subcontracts between D/B Contractor and such Subcontractor for the same Fiscal Year, is in excess of \$250,000: (i) be terminable by the Subcontractor only for cause; and (ii) include an indemnity from the Subcontractor in favor of D/B Contractor and the Indemnified Parties against any and all Losses arising out of, related to or associated with, the actions, omissions, negligence, willful misconduct, or breach of applicable Law or contract by the Subcontractor or any of its officers, employees, agents or representatives.

(g) Expressly require the Subcontractor to participate in meetings between D/B Contractor and the Mobility Authority, upon the Mobility Authority's request, concerning matters pertaining to such Subcontract or its work, provided that all direction to such Subcontractor shall be provided by D/B Contractor, and provided further that nothing in this

clause (g) shall limit the authority of the Mobility Authority to give such direction or take such action which, in its opinion, is necessary to remove an immediate and present threat to the safety of life or property.

(h) Expressly provide that all Liens, claims and charges of the Subcontractor and its subcontractors at any time shall not attach to any interest of the Mobility Authority in the Project or the Final ROW.

(i) Be consistent in all other respects with the terms and conditions of this D/B Contract to the extent such terms and conditions are applicable to the scope of work of such Subcontractors, and include all provisions required by the D/B Contract.

19.3.6 D/B Contractor shall not amend any Subcontract with respect to any of the foregoing matters without the prior written consent of the Mobility Authority.

19.3.7 D/B Contractor shall not enter into any Subcontracts with any Person then debarred or suspended from submitting bids by any agency of the State or the federal government.

19.3.8 D/B Contractor shall include a provision in each Subcontract requiring the Subcontractor to maintain all licenses required by applicable Laws.

19.3.9 All Subcontracts with Affiliates shall be arm's-length, and on terms no less favorable to D/B Contractor than to non-Affiliates of the Subcontractor.

19.3.10 In no event shall D/B Contractor enter into Subcontracts for more than 70% of the Design/Build Work, either in terms of the Design/Build Price or actual Design/Build Work.

20. COMPLETION AND ACCEPTANCE.

20.1 Substantial Completion.

20.1.1 D/B Contractor shall provide written notice to the Mobility Authority no later than ninety (90) Days prior to the date when all of the following will occur:

(a) D/B Contractor has completed the Design/Build Work, except for Punch List items, final cleanup and other items included in the requirements for Final Acceptance of the Project;

(b) D/B Contractor has ensured that all Design/Build Work relating to the Project has been performed in accordance with the requirements of the Contract Documents, the Governmental Approvals and applicable Law;

(c) The Project may be operated without damage to the Project, the Final ROW or any other property adjacent or nearby the Final ROW, and without injury to any Person;

(d) The Project (i) can be safely opened to public use, (ii) is fully signed and striped, and (iii) has all safety appurtenances installed; and

(e) All remaining Punch List work for the Project can be completed with no impact to traffic. If any lane closures are required to complete the Punch List items, D/B Contractor shall be only entitled to close lanes upon approval by the Mobility Authority, subject to lane rental fees identified in Technical Provision 22.

20.1.2 Substantial Completion of the Project shall be deemed to have occurred when:

(a) The items set forth in Section 20.1.1 (a) – (e) have occurred;

(b) D/B Contractor has corrected any defects and deficiencies in the Design/Build Work relating to the Project to the satisfaction of the Mobility Authority, and the Mobility Authority has notified D/B Contractor in writing of its acceptance, or waiver pending Final Acceptance, of such corrections and the concurrence that Substantial Completion of the Project has occurred;

(c) D/B Contractor has received all applicable Governmental Approvals required for the Project and to be obtained by D/B Contractor pursuant to this D/B Contract;

(d) All Adjustments have been accepted by the applicable Utility Owners;

(e) A Punch List to be performed prior to Final Acceptance of the Project has been mutually agreed to by the Mobility Authority and D/B Contractor;

(f) All equipment and other Design/Build Work to be provided by D/B Contractor with respect to toll collection systems has been provided, completed, tested, and is fully operational; and

(g) The Mobility Authority has issued a certificate of Substantial Completion to D/B Contractor acknowledging the satisfaction of the conditions set forth in (a) – (f) above. The Mobility Authority agrees to issue such certificate when such conditions have been satisfied.

20.1.3 Notification of Substantial Completion.

(a) D/B Contractor shall provide the Mobility Authority with not less than 20 days' prior written notification of the date D/B Contractor determines it will achieve Substantial Completion. During such 20-day period, D/B Contractor and the Mobility Authority shall meet and confer and exchange information on a regular cooperative basis with the goal being the Mobility Authority's orderly, timely inspection and review of the Project and the Final Design Documents and Construction Documents, and the Mobility Authority's issuance of a certificate of Substantial Completion.

(b) During such 20-day period, the Mobility Authority shall conduct an inspection of the Project and its components, a review of the Final Design Documents and Construction Documents and such other investigation as may be necessary to evaluate whether Substantial Completion is achieved.

(c) D/B Contractor shall provide the Mobility Authority a second written notification when D/B Contractor determines it has achieved Substantial Completion. Within five days after expiration of the 20-day period and the Mobility Authority's receipt of the second notification, the Mobility Authority shall either: (a) issue the Certificate of Substantial Completion (dated as of the date of D/B Contractor's second notification) or (b) notify D/B Contractor in writing setting forth, as applicable, why the Project has not reached Substantial Completion. If the Mobility Authority and D/B Contractor cannot agree as to the date of Substantial Completion, such dispute shall be resolved according to the dispute resolution procedures set forth in this D/B Contract.

20.2 Interim Completion.

20.2.1 D/B Contractor shall provide written notice to the Mobility Authority no later than 90 Days prior to the date when all of the following will occur:

(a) D/B Contractor has completed the Interim Design/Build Work, except for Punch List items;

(b) D/B Contractor has ensured that all Interim Design/Build Work relating to the Project has been performed in accordance with the requirements of the Contract Documents, the Governmental Approvals and applicable Law.

(c) The Interim Design/Build Work portion of the Project may be operated without damage to the Project, the Final ROW or any other property adjacent or nearby the Final ROW, and without injury to any Person;

(d) The Interim Design/Build Work portion of the Project (i) can be safely opened to public use, (ii) is fully signed and striped, and (iii) has all safety appurtenances installed; and

(e) All remaining Punch List work for the Interim Design/Build Work portion of the Project can be completed with no impact to traffic. If any lane closures are required to complete the Punch List items, D/B Contractor shall be only entitled to close lanes upon approval by the Mobility Authority, subject to lane rental fees identified in Technical Provision 22.

20.2.2 Interim Completion of the Project shall be deemed to have occurred when:

(a) The items set forth in Section 20.2.1 (a) – (b) have occurred;

(b) D/B Contractor has corrected any defects and deficiencies in the Interim Design/Build Work relating to the Project to the satisfaction of the Mobility Authority, and the Mobility Authority has notified D/B Contractor in writing of its acceptance, or waiver pending Final Acceptance, of such corrections and the concurrence that Interim Completion of the Interim Design/Build Work has occurred;

(c) D/B Contractor has received all applicable Governmental Approvals required for the Interim Design/Build Work and to be obtained by D/B Contractor pursuant to this Agreement;

(d) All Adjustments relative to the Interim Design/Build Work have been accepted by the applicable Utility Owners;

(e) A Punch List for remaining Interim Design/Build Work to be performed prior to Final Acceptance of the Project has been mutually agreed to by the Mobility Authority and D/B Contractor; and

(f) D/B Developer has asked for and received from the Mobility Authority a certificate of Interim Completion acknowledging the satisfaction of all conditions stated above for Interim Completion. The Mobility Authority agrees to issue such certificate when such conditions have been satisfied.

20.2.3 Notification of Interim Completion.

(a) D/B Contractor shall provide the Mobility Authority with not less than 20 days' prior written notification of the date D/B Contractor determines it will achieve Interim Completion. During such 20-day period, D/B Contractor and the Mobility Authority shall meet and confer and exchange information on a regular cooperative basis with the goal being the

Mobility Authority's orderly, timely inspection and review of the Project and the Design Documents and Construction Documents for the Interim Design/Build Work, and the Mobility Authority's issuance of a certificate of Interim Completion.

(b) During such 20-day period, the Mobility Authority shall conduct an inspection of the Project and its components, a review of the Interim Design/Build Work Design Documents and Construction Documents and such other investigation as may be necessary to evaluate whether Interim Completion is achieved.

(c) D/B Contractor shall provide the Mobility Authority a second written notification when D/B Contractor determines it has achieved Interim Completion. Within five days after expiration of the 20-day period and the Mobility Authority's receipt of the second notification, the Mobility Authority shall either: (a) issue the Certificate of Interim Completion (dated as of the date of D/B Contractor's second notification) or (b) notify D/B Contractor in writing setting forth, as applicable, why the Project has not reached Interim Completion. If the Mobility Authority and D/B Contractor cannot agree as to the date of Interim Completion, such dispute shall be resolved according to the dispute resolution procedures set forth in this D/B Contract.

20.3 Final Acceptance.

20.3.1 Promptly after Substantial Completion of all or an agreed specified portion of the Project, D/B Contractor shall perform all Design/Build Work, if any, which was deferred in connection with the Substantial Completion, and shall satisfy all of its other obligations under the Contract Documents, the Governmental Approvals and applicable Law, including ensuring that all equipment, materials, facilities, improvements, structures and components have been properly adjusted and tested. Final Acceptance of the Project shall be deemed to have occurred when all of the following have occurred:

(a) All requirements for Substantial Completion of the Project shall have been fully satisfied, as determined by the Mobility Authority;

(b) The Mobility Authority shall have received all Design Documents, Final Construction Plans, surveys, maintenance manuals, electronic files, test data and other deliverables relating to the Project required under the Contract Documents;

(c) All special tools, equipment, furnishings and supplies purchased and/or used by D/B Contractor solely for the Project as provided in the Contract Documents shall have been delivered to the Mobility Authority and all replacement spare parts shall have been purchased and delivered to the Mobility Authority, free and clear of Liens;

(d) All personnel, supplies, equipment, waste materials, rubbish and temporary facilities of each member of the D/B Contractor Group shall have been removed from the Final ROW, D/B Contractor shall restore and repair all damage or injury arising from such removal to the satisfaction of the Mobility Authority, and the Final ROW shall be in good working order and condition;

(e) D/B Contractor shall have delivered to the Mobility Authority a certification representing that there are no outstanding claims of D/B Contractor or claims, Liens or stop notices of any first tier Subcontractor, laborer, Utility Owner or railroads with respect to the Design/Build Work for the Project, other than any previously submitted unresolved claims of D/B Contractor on behalf of itself or on behalf of a first tier Subcontractor, laborer, Utility Owner or railroad. For purposes of such certificate, the term "claim" shall include all matters or facts which may give rise to a claim;

(f) The Punch List items for the Project shall have been completed to the satisfaction of the Mobility Authority, all of D/B Contractor's other obligations under the Contract Documents, the Governmental Approvals and applicable Law, other than obligations which by their nature are required to be performed after Final Acceptance of the Project, shall have been satisfied in full or waived;

(g) D/B Contractor shall have finalized and closed out all Governmental Approvals; and

(h) The D/B Contractor shall have requested and the Mobility Authority shall have issued a certificate of Final Acceptance to D/B Contractor acknowledging the satisfaction of the conditions set forth in clauses (a)-(g) above. The Mobility Authority agrees to issue such certificate when such conditions have been satisfied.

20.3.2 D/B Contractor shall provide the Mobility Authority with written notification when D/B Contractor determines it has achieved Final Acceptance. During the 15-day period following receipt of such notification, D/B Contractor and the Mobility Authority shall meet and confer and exchange information on a regular cooperative basis with the goal being the orderly, timely inspection and review of the Project and the Final As-Built Plans, and the Mobility Authority's issuance of a certificate of Final Acceptance for the Project.

20.3.3 During such 15-day period, the Mobility Authority shall conduct an inspection of the Punch List items, a review of the Final As-Built Plans and such other investigation as may be necessary to evaluate whether the conditions to Final Acceptance are satisfied.

20.3.4 Within five days after expiration of such 15-day period, the Mobility Authority shall either: (a) issue a Certificate of Final Acceptance for the Project or (b) notify D/B

Contractor in writing setting forth, as applicable, why Final Acceptance has not been achieved. If the Mobility Authority and D/B Contractor cannot agree as to the date of Final Acceptance, such dispute shall be resolved according to the dispute resolution procedures set forth in this D/B Contract.

20.3.5 The occurrence of Final Acceptance of the Project shall not relieve D/B Contractor of any of its continuing obligations under the Contract Documents, including Warranty obligations, or constitute any assumption of liability by the Mobility Authority.

20.4 Assignment of Causes of Action.

D/B Contractor shall assign to the Mobility Authority 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 shall be made and become effective at the time the Mobility Authority tenders Final Payment to D/B Contractor, without further acknowledgment by the Parties.

21. [RESERVED].

22. REPRESENTATIONS AND WARRANTIES.

22.1 Mobility Authority Representations and Warranties.

The Mobility Authority represents and warrants to D/B Contractor as follows:

(a) The Mobility Authority is duly organized and existing regional mobility authority under Chapter 370 of the Act, and has full power, right and authority to execute, deliver and perform its obligations under, in accordance with and subject to the terms and conditions of this D/B Contract and other Contract Documents to which it is a Party.

(b) Each Person executing this D/B Contract or any other Contract Document on behalf of the Mobility Authority to which the Mobility Authority is a Party has been or at such time will be duly authorized to execute each such document on behalf of the Mobility Authority.

(c) Neither the execution and delivery by the Mobility Authority of this D/B Contract and the other Contract Documents, nor the consummation of the transactions contemplated hereby or thereby, is in conflict with or will result in a default under or violation of any other agreements or instruments to which the Mobility Authority is a Party or by which it is bound.

(d) There is no action, suit, proceeding, or litigation pending and served on the Mobility Authority which challenges the Mobility Authority's authority to execute, deliver or perform, or the validity or enforceability of, this D/B Contract and the other Contract Documents to which the Mobility Authority is a Party, or which challenges the authority of the officials executing this D/B Contract or the other Contract Documents.

(e) EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, THE MOBILITY AUTHORITY EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, AS TO THE CONDITION OR QUALITY OF THE SITE OR THE PROSPECTS (FINANCIAL AND OTHERWISE), RISKS AND OTHER INCIDENTS OF THE SITE, THE DESIGN/BUILD WORK AND THE PROJECT AND THE MOBILITY AUTHORITY SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, USAGE, SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO THE SITE, THE DESIGN/BUILD WORK AND THE PROJECT, OR ANY PART THEREOF, OR COMPLIANCE WITH APPLICABLE LAWS OR GOVERNMENTAL APPROVALS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, THE MOBILITY AUTHORITY EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF ANY KIND REGARDING THE CONDITION OF THE SITE, OR THE SUITABILITY THEREOF IN CONNECTION WITH THE DESIGN/BUILD WORK AND THE PROJECT AND NO SCHEDULE OR EXHIBIT TO THIS D/B CONTRACT, NOR ANY OTHER MATERIAL OR INFORMATION PROVIDED BY OR COMMUNICATIONS MADE BY THE MOBILITY AUTHORITY, SHALL CAUSE OR CREATE ANY WARRANTY, EXPRESS OR IMPLIED, AS TO THE CONDITION OR QUALITY OF THE FINAL ROW OR THE ADDITIONAL PROPERTIES.

22.2 D/B Contractor Representations, Warranties and Covenants.

D/B Contractor represents, warrants and covenants to the Mobility Authority as follows:

(a) D/B Contractor has and throughout the term of this D/B Contract shall maintain all required authority, license status, professional ability, skills and capacity to perform D/B Contractor's obligations hereunder and shall perform them in accordance with the requirements contained in the Contract Documents.

(b) Except with respect to non-material deviations as permitted herein, the design for the Project can and shall be based on the Schematic Plan, and the Project can and shall be built in conformity with the Contract Documents, all applicable Laws and Governmental Approvals.

(c) D/B Contractor has evaluated the feasibility of performing the Design/Build Work within the deadlines specified herein and for the Design/Build Price, without relying on any information or item other than that which is expressly set forth in the Contract Documents, and has reasonable grounds for believing and does believe that such performance (including achievement of Interim Completion of the Interim Design/Build Work by the Interim Completion Deadline, Substantial Completion of the Project by the Completion Deadline and Final Acceptance by the Acceptance Deadline, for the Design/Build Price) is feasible and practicable.

(d) D/B Contractor has, prior to submitting its Proposal, in accordance with prudent and generally accepted engineering practices, reviewed the exploratory geotechnical information, inspected and, to the extent access was made available by the Mobility Authority, examined the Site and surrounding locations and undertaken other activities sufficient to familiarize itself with surface conditions and subsurface conditions discernible from the surface affecting the Project to the extent D/B Contractor deems necessary or advisable for performing its obligations under the Contract Documents, and as a result of such review, inspection, examination and other activities D/B Contractor is familiar with and accepts the physical requirements of the Design/Build Work. D/B Contractor acknowledges and agrees that it has been afforded the opportunity to review information and documents and, to the extent access was made available by the Mobility Authority, to conduct inspections and tests of the Site and surrounding locations as described above. Before commencing any work on a particular portion or aspect of the Project, D/B Contractor shall verify all governing dimensions of the Site and shall examine all adjoining work (including Adjacent Work) which may have an impact on such work. D/B Contractor shall ensure that the Design Documents and Construction Documents accurately depict all governing and adjoining dimensions.

(e) D/B Contractor acknowledges and agrees that it has familiarized itself with the requirements of any and all applicable Laws and the conditions and schedules contained in all Governmental Approvals prior to entering into this D/B Contract. D/B Contractor shall comply with the foregoing at its sole cost and expense and without any increase in the Design/Build Price or extension of any Completion Deadline or any Acceptance Deadline on account of such compliance, regardless of whether such compliance would require additional time for performance or additional labor, equipment and/or materials not expressly provided for in the Contract Documents. D/B Contractor has no reason to believe that any Governmental Approval required to be obtained by D/B Contractor will not be granted in due course and, thereafter, remain in effect in order to enable the Design/Build Work to proceed in accordance with the Contract Documents. If any Governmental Approval required to be obtained by D/B Contractor must formally be issued in the name of the Mobility Authority, D/B Contractor shall undertake all efforts to obtain such approvals, subject to the Mobility Authority's reasonable cooperation and assistance with D/B Contractor, including preparation and delivery of appropriate applications and other documentation in a form approved by the Mobility Authority.

(f) D/B Contractor shall comply with all requirements of the approved DQMP and the CQMP and all requirements of the Quality Assurance Program.

(g) All design and engineering work furnished by D/B Contractor shall be performed by or under the supervision of Persons licensed to practice architecture, engineering or surveying, as applicable, in the State, by personnel who are skilled, experienced and competent in their respective trades or professions, who are professionally qualified to perform the Design/Build Work in accordance with the Contract Documents, the Governmental Approvals and applicable Law and who shall assume professional responsibility for the accuracy and completeness of the Design Documents and Construction Documents prepared or reviewed by them.

(h) D/B Contractor shall, at all times, schedule and direct its activities to provide an orderly progression of the Design/Build Work to achieve completion within the specified time for completion and in accordance with the Project Schedule, including furnishing such employees, materials, facilities and equipment and working such hours, including continuous or extra shifts, overtime operations, Sundays and holidays as may be necessary to achieve such goal, all at D/B Contractor's own expense except as otherwise specifically provided in Section 14.

(i) At all times, including during the course of, and notwithstanding the existence of, any dispute, D/B Contractor shall perform as directed by the Mobility Authority, in a diligent manner and without delay, shall abide by the Mobility Authority's decision or order, and shall comply with all applicable provisions of the Contract Documents.

(j) D/B Contractor is an unincorporated Joint Venture comprised of (i) Fluor Enterprises, Inc., a corporation, duly formed, validly existing and in good standing under the Laws of the State of California, and (ii) Balfour Beatty Infrastructure, Inc., a corporation, duly formed, validly existing and in good standing under the Laws of the State of Delaware. D/B Contractor and each of its joint venturers are duly qualified to do business and are in good standing under the Laws of the State of Texas and will remain in good standing throughout the term of this D/B Contract and for as long thereafter as any obligations remain outstanding under the Contract Documents.

(k) D/B Contractor has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to execute and deliver this D/B Contract and to perform each and all of the obligations of D/B Contractor provided for herein.

(l) D/B Contractor has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under, this D/B Contract and the other Contract Documents.

(m) Each individual executing this D/B Contract or any other Contract Documents on behalf of D/B Contractor or any of its members has been or will at such time be duly authorized to execute each such document on behalf of such Person.

(n) Neither the execution and delivery of this D/B Contract and the other Contract Documents by D/B Contractor, nor the compliance by D/B Contractor with any provision hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby by D/B Contractor shall violate or conflict with, or result in a breach of, any provisions of the organizational documents of D/B Contractor or its members, any other agreements and instruments to which D/B Contractor or its members is a party or by which any such Person is bound, or any Law applicable to D/B Contractor or its members.

(o) No consent or approval of, filing with or notice to any Person is required to be obtained or made by D/B Contractor or its members in connection with D/B Contractor's execution, delivery and performance of this D/B Contract and the other Contract Documents, or the consummation of the transactions contemplated hereby or thereby, which, if not obtained or made, would prevent D/B Contractor from performing its obligations hereunder or thereunder.

(p) There is no action, suit, proceeding, or litigation pending and served on D/B Contractor or any of its members which challenges D/B Contractor's authority to execute, deliver or perform, or the validity or enforceability of, this D/B Contract and the other Contract Documents, or which challenges the authority of any individual executing this D/B Contract on behalf of D/B Contractor; and D/B Contractor has disclosed to the Mobility Authority any pending and unserved action, suit, proceeding, investigation or litigation with respect to such matters of which D/B Contractor has actual knowledge.

(q) D/B Contractor is in compliance with all Laws applicable to D/B Contractor or its activities in connection with this D/B Contract and the other Contract Documents.

(r) D/B Contractor owns, or will own, and has, or will have, good and marketable title to all materials, equipment, tools and supplies furnished, or to be furnished, by it and its Subcontractors that become part of the Project or are purchased for the operation, maintenance or repair thereof, free and clear of all Liens.

(s) D/B Contractor has delivered to the Mobility Authority true and complete copies of the financial information required under Section 26.3 ("**Audited Financial**

Statements"). The Audited Financial Statements have been prepared in conformity with generally accepted accounting principles, consistently applied, and present fairly the financial position and results of the operations and cash flows of the applicable entity(ies) at the dates and for the periods stated.

(t) The information, statements, certifications and materials set forth in the Proposal are true, complete and accurate in all material respects and are not misleading in any material respect.

(u) In entering into this D/B Contract, D/B Contractor has not relied on any representation, warranty, promise or statement, express or implied, of the Mobility Authority, or anyone acting for or on behalf of the Mobility Authority, other than as expressly set forth in this D/B Contract, and that all matters concerning the Site, the Design/Build Work and the Project have been or shall be independently verified by D/B Contractor, and that D/B Contractor has executed this D/B Contract and has agreed to undertake and complete the Design/Build Work based solely upon D/B Contractor's own prior investigations and examinations, or D/B Contractor's election not to do so.

23. INDEMNIFICATION; RELEASES.

23.1 Indemnification By D/B Contractor.

23.1.1 SUBJECT TO SECTION 18.3 HEREOF, D/B CONTRACTOR SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD EACH OF THE INDEMNIFIED PARTIES HARMLESS FROM AND AGAINST ANY AND ALL LOSSES ARISING OUT OF, RELATING TO OR RESULTING FROM:

(a) THE BREACH OR ALLEGED BREACH OF THIS D/B CONTRACT OR ANY OTHER CONTRACT DOCUMENTS BY D/B CONTRACTOR.

(b) THE FAILURE OR ALLEGED FAILURE BY ANY MEMBER OF THE D/B CONTRACTOR GROUP TO COMPLY WITH ANY APPLICABLE LAWS OR THE GOVERNMENTAL APPROVALS.

(c) ANY ALLEGED PATENT OR COPYRIGHT INFRINGEMENT OR OTHER ALLEGEDLY IMPROPER APPROPRIATION OR USE OF TRADE SECRETS, PATENTS, PROPRIETARY INFORMATION, KNOW-HOW, COPYRIGHT RIGHTS OR INVENTIONS IN PERFORMANCE OF THE DESIGN/BUILD WORK, OR ARISING OUT OF ANY USE IN CONNECTION WITH THE PROJECT OF METHODS, PROCESSES, DESIGNS, INFORMATION, OR OTHER ITEMS FURNISHED OR COMMUNICATED TO THE MOBILITY AUTHORITY OR ANOTHER INDEMNIFIED PARTY PURSUANT TO THE CONTRACT DOCUMENTS; PROVIDED THAT THIS INDEMNITY SHALL NOT

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D/B CONTRACT
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APPLY TO ANY INFRINGEMENT RESULTING FROM THE MOBILITY AUTHORITY'S FAILURE TO COMPLY WITH SPECIFIC WRITTEN INSTRUCTIONS REGARDING USE PROVIDED TO THE MOBILITY AUTHORITY BY D/B CONTRACTOR.

(d) THE ACTS, OMISSIONS, NEGLIGENCE, RECKLESSNESS, WILLFUL MISCONDUCT, BREACH OF CONTRACT OR LAW BY ANY MEMBER OF THE D/B CONTRACTOR GROUP.

(e) ANY AND ALL CLAIMS BY ANY GOVERNMENTAL ENTITY CLAIMING TAXES BASED ON GROSS RECEIPTS, PURCHASES OR SALES, THE USE OF ANY PROPERTY OR INCOME OF ANY MEMBER OF THE D/B CONTRACTOR GROUP WITH RESPECT TO ANY PAYMENT FOR THE DESIGN/BUILD WORK MADE TO OR EARNED BY D/B CONTRACTOR OR ITS SUBCONTRACTORS OR ANY OF THEIR RESPECTIVE AGENTS, OFFICERS OR EMPLOYEES UNDER THE CONTRACT DOCUMENTS.

(f) ANY AND ALL STOP NOTICES AND/OR LIENS FILED IN CONNECTION WITH THE DESIGN/BUILD WORK, INCLUDING ALL EXPENSES AND ATTORNEYS' FEES AND COSTS INCURRED IN DISCHARGING ANY STOP NOTICE OR LIEN.

(g) ANY (I) RELEASE(S) OF HAZARDOUS MATERIALS ATTRIBUTABLE TO THE ACTS, OMISSIONS, NEGLIGENCE, WILLFUL MISCONDUCT, RECKLESSNESS OR BREACH OF CONTRACT OR LAW BY ANY MEMBER OF THE D/B CONTRACTOR GROUP; OR (II) THE RELEASE OF ANY HAZARDOUS MATERIALS CAUSED TO BE PRESENT ON THE FINAL ROW OR ELSEWHERE BY ANY MEMBER OF THE D/B CONTRACTOR GROUP REGARDLESS OF WHETHER THOSE ARE THE PERSONS WHO ACTUALLY CAUSED THE RELEASE AND REGARDLESS OF THE CAUSE FOR THE RELEASE.

(h) ANY INCONVENIENCE, DISRUPTION, DELAY OR LOSS CAUSED BY INTERFERENCE BY ANY MEMBER OF THE D/B CONTRACTOR GROUP WITH OR HINDERING THE PROGRESS OR COMPLETION OF WORK BEING PERFORMED BY OTHER CONTRACTORS RELATING TO THE PROJECT, ANY OTHER PROJECT (INCLUDING ADJACENT WORK), OR FAILURE OF ANY MEMBER OF THE D/B CONTRACTOR GROUP TO COOPERATE REASONABLY WITH OTHER CONTRACTORS IN ACCORDANCE WITH THE REQUIREMENTS OF THE CONTRACT DOCUMENTS.

(i) ANY CLAIM, DEMAND, SUIT, PROCEEDING, INVESTIGATION OR CAUSE OF ACTION BROUGHT AGAINST THE MOBILITY AUTHORITY IN

CONNECTION WITH ALLEGED WRONGFUL ACTS OR OMISSIONS RELATED TO THE DESIGN AND/OR CONSTRUCTION OF THE PROJECT OR OTHER DESIGN/BUILD WORK, INCLUDING WITH RESPECT TO CONSTRUCTION ACCIDENTS.

(j) ANY CLAIM, DEMAND, SUIT, PROCEEDING, INVESTIGATION OR CAUSE OF ACTION BROUGHT AGAINST THE MOBILITY AUTHORITY IN CONNECTION WITH (I) D/B CONTRACTOR'S PERFORMANCE OF, OR FAILURE TO PERFORM ITS OBLIGATIONS UNDER, ANY UTILITY ADJUSTMENT AGREEMENT, (II) ANY CLAIM FOR REIMBURSEMENT FOR THE COST OF PERFORMING UTILITY ADJUSTMENT WORK MADE BY A UTILITY OWNER AGAINST THE MOBILITY AUTHORITY, OR (III) ANY DISPUTE AS TO WHETHER WORK RELATING TO A UTILITY ADJUSTMENT CONSTITUTES A BETTERMENT.

23.1.2 SUBJECT TO SECTION 23.2, D/B CONTRACTOR SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD EACH OF THE INDEMNIFIED PARTIES HARMLESS FROM AND AGAINST ANY AND ALL LOSSES RESULTING FROM ERRORS, OMISSIONS, INCONSISTENCIES OR OTHER DEFECTS IN THE DESIGN OR CONSTRUCTION, REGARDLESS OF WHETHER SUCH ERRORS, OMISSIONS, INCONSISTENCIES OR DEFECTS WERE ALSO INCLUDED IN THE SCHEMATIC PLAN OR OTHER REFERENCE DOCUMENTS.

23.2 Restrictions.

23.2.1 Subject to the releases and disclaimers herein (including Section 3.7), D/B Contractor's indemnity obligations hereunder shall not extend to any Losses incurred by an Indemnified Party to the extent caused by:

(a) the negligence, reckless or willful misconduct, bad faith or fraud of such Indemnified Party, or

(b) any material defect inherent in prescriptive design or prescriptive construction specifications included in the Contract Documents, provided D/B Contractor complied with such specifications and did not actually know, or would not reasonably have known, while exercising reasonable diligence, that it was deficient or, if D/B Contractor actually knew of the deficiency, unsuccessfully sought the Mobility Authority's waiver of or approval of a Deviation from such standard; or

(c) the Mobility Authority's material breach of any of its obligations under the Contract Documents.

23.2.2 Such indemnities shall not be construed to effect any extension of statutes of limitations otherwise applicable to causes of action for breach of contract held by the Mobility Authority against D/B Contractor.

23.2.3 Such indemnities shall apply to third party claims only and shall not be enforceable by the Indemnified Parties as an additional remedy for Losses otherwise compensable through a direct action of the Indemnified Parties against D/B Contractor due to D/B Contractor's actions or omissions.

23.3 Employee Claims.

In claims by an employee of any member of the D/B Contractor Group, the indemnification obligation under Section 23.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for D/B Contractor or a Subcontractor under workers' compensation, disability benefit or other employee benefits laws.

23.4 No Relief from Responsibility.

No rights of the Mobility Authority described in Section 23.1.1 above, no exercise or failure to exercise such rights, and no certificates or statements by the Mobility Authority regarding completion or acceptance, shall:

- (a) relieve D/B Contractor of its responsibility for the selection and the competent performance of all members of the D/B Contractor Group;
- (b) relieve D/B Contractor of any of its obligations or liabilities under the Contract Documents;
- (c) be deemed or construed to waive any of the Mobility Authority's rights and remedies under the Contract Documents, applicable Law or in equity; or
- (d) be deemed or construed as any kind of representation or warranty, express or implied, by the Mobility Authority.

23.5 Right to Rely.

Notwithstanding the provisions of Section 23.4, (a) D/B Contractor shall be entitled to rely on specific written Deviations the Mobility Authority gives under this D/B Contract, (b) the Mobility Authority is not relieved from any liability arising out of a material misrepresentation under any written statement the Mobility Authority knowingly and intentionally delivers, and (c) the Mobility Authority is not relieved from its obligations under the Contract Documents.

23.6 Survival.

The indemnifications and releases under this D/B Contract, including under this Section 23 shall survive the completion of the Project and/or expiration or termination of this D/B Contract and/or any other Contract Document(s).

23.7 Intent of Indemnity for Breach of Contract.

The requirement to provide indemnities for acts, omissions, errors, inconsistencies, defects, negligence and/or breach of contract set forth in Sections 23.1.1(a), 23.1.1(d) and 23.1.2 are intended to provide protection to the Mobility Authority with respect to third party claims associated with such breach. It is not intended to provide the Mobility Authority with an alternative cause of action for damages incurred directly by the Mobility Authority with respect to a breach by D/B Contractor, nor is this paragraph intended to limit the Mobility Authority's remedies other than as specifically stated herein.

24. TORT LIABILITY.

24.1 Notice of Claims.

The Parties agree to provide to each other's authorized representative written notice of any claim which such Party may receive from any third party relating in any way to the matters addressed in this D/B Contract, and shall otherwise provide notice in such form and within such period as is required by Law.

24.2 Limitation on Mobility Authority's Liability.

In no event shall the Mobility Authority or any other Indemnified Party be liable for injury, damage, or death sustained by reason of a defect or want of repair on or within the Site during the period D/B Contractor has operation and control of the Site, nor shall the Mobility Authority be liable for any injury, damage or death caused by the actions, omissions, negligence, willful misconduct, or breach of applicable Law or contract by any member of the D/B Contractor Group. D/B Contractor expressly acknowledges and agrees that the Mobility Authority's rights in this D/B Contract to take any action with respect to the Project, including the right to review, comment on, disapprove and/or accept designs, plans, specifications, work plans, construction, installation, traffic management details, safety plan and the like, are discretionary in nature and exist solely for the benefit and protection of the Mobility Authority and do not create or impose upon the Mobility Authority any standard or duty of care toward D/B Contractor or any other Person, all of which are hereby expressly disclaimed.

25. DISPUTE RESOLUTION.

25.1 General Dispute Resolution Provisions.

25.1.1 Nature of Process.

Partnering, as described in Section 2.3 and in Technical Provision 1, will be encouraged in preference to the more formal dispute resolution mechanisms provided in this D/B Contract. Partnering in this context is intended to be a voluntary, non-binding procedure available for use by the Parties to this D/B Contract to resolve any issues that may arise during performance of the Design/Build Work.

In the event partnering fails to resolve an issue and D/B Contractor elects to pursue a formal Dispute with the Mobility Authority, the Dispute shall be resolved using the procedures, methods and decision body provided by this Section 25.

25.1.2 Continuation of Design/Build Work.

At all times during this dispute resolution process or any subsequent administrative, arbitration or court proceeding, D/B Contractor and all Subcontractors shall proceed with the Project diligently, without delay, in accordance with this D/B Contract, and as directed by the Mobility Authority, so long as the Mobility Authority continues to pay D/B Contractor for that part of the Design/Build Work that is undisputed. D/B Contractor acknowledges that it shall be solely responsible for any Project delay that results from its actions or inactions during the dispute resolution process, even if D/B Contractor's position in connection with the Dispute ultimately prevails. In addition, all Parties shall continue to comply with all provisions of the Contract Documents, the Governmental Approvals and applicable Law.

25.1.3 Exclusive Jurisdiction and Venue.

D/B Contractor agrees that the exclusive jurisdiction and venue for any legal action or proceeding, at law or in equity, arising out of or relating to the Contract Documents or the Project, shall be the District Court in Austin, Texas. D/B Contractor waives all objections it might have to the jurisdiction or venue of such court and hereby consents to such court's jurisdiction, regardless of D/B Contractor's residence or domicile, for any such action or proceeding.

25.2 Purpose.

25.2.1 Purpose. A disputes review board (the "Disputes Board") will be established to assist in the resolution of disputes arising out of the Design/Build Work. This Section 25

describes the purpose, procedure, function, and key features of the Disputes Board. The execution of a Disputes Board Agreement will formalize the creation of the Disputes Board.

25.2.2 **Duties.** The Disputes Board will assist in and facilitate the timely and equitable resolution of disputes between the Mobility Authority and the D/B Contractor, in an effort to avoid construction delay and litigation. It is not the intent of the Dispute Board to serve as a channel for the Mobility Authority or the D/B Contractor to bypass or default on the normal responsibility to amicably and fairly settle their differences by indiscriminately forwarding or assigning them to the Disputes Board for resolution. It is intended that the Disputes Board encourage the Mobility Authority and the D/B Contractor to resolve potential disputes without resorting to this formal appeal procedure.

25.3 Disputes Board Membership.

25.3.1 **General.** A Disputes Board shall be established and begin operation upon D/B Contract execution by the Mobility Authority and the D/B Contractor, and shall terminate upon completion of all work required to be performed by the D/B Contractor on the Project unless sooner in accordance with applicable law.

25.3.2 **Board Members.** The Disputes Board shall initially consist of two members, one selected by the Mobility Authority and one selected by the D/B Contractor. The first duty of the Disputes Board shall be to select its third member. The third member selected shall be approved by both the Mobility Authority and the D/B Contractor. The third member will serve as the chairman for all Disputes Board activities. The goal in selecting the third member is to complement the dispute resolution experience of the first two and to provide leadership for the Disputes Board's activities.

25.3.3 **Experience.** It is desirable and required that all Disputes Board members be experienced with highway design, construction, and environmental compliance, as well as experience in the resolution of disputes involving interpretation of design-build contracts.

25.3.4 Selection Process.

Each Party shall select its Disputes Board member within six weeks after award of this D/B Contract and provide information regarding the selected individual to the other Party. Immediately upon approval of the first two members, the two members shall begin selection of the third member. The first two members shall ensure that the third member meets all of the criteria listed above. The third member shall be selected within four weeks after the first two members are notified to proceed with the selection. In the event of an impasse in selection of the third member, that member shall be selected by mutual agreement of the Mobility Authority and the D/B Contractor. In so doing, they may, but are not required to, consider the nominees

offered by the first two members. If the Mobility Authority and the D/B Contractor cannot agree in the selection of the third member, then each party may submit a list of up to five candidates to a court of competent jurisdiction, pursuant to Section 25.1.3, for judicial resolution of the selection of the third member.

25.3.5 Conflict of Interest.

It is imperative that Disputes Board members show no partiality to either the D/B Contractor or the Mobility Authority, or have any conflict of interest. Accordingly, the following rules are applicable:

25.3.5.1 Members must not have an ownership interest in the Mobility Authority or the D/B Contractor, or a financial interest in this D/B Contract or the Project, or in the outcome of any dispute decided on the Project, except for payment for serving on the Disputes Board.

25.3.5.2 No member shall have ever been previously employed (or have his/her employer employed) by the Mobility Authority, TxDOT, FHWA, the D/B Contractor or any affiliate, within two years prior to the Effective Date, except for fee-based consulting services on other projects which are disclosed to all parties, or having had financial ties to, any party to this D/B Contract.

25.3.5.3 No member shall have had substantial prior involvement in the Project or relationship with any party or affiliate of a nature which would be grounds for disqualification by a judge or which could otherwise compromise his or her ability to impartially resolve disputes.

25.3.5.4 No member shall accept employment with the Mobility Authority, TxDOT, FHWA, the D/B Contractor or any affiliate during the term of the Project and for so long thereafter as any obligations remain outstanding under the Contract Documents, except as a member of other disputes boards.

25.3.5.5 No member shall discuss employment with the D/B Contractor, any affiliate, the Mobility Authority, TxDOT, FHWA, or any consultants working on the Project during the term of the Project and for so long thereafter as any obligations remain outstanding under the Contract Documents.

25.3.5.6 Each Board Member, in the performance of his or her duties on the Disputes Board, is acting as an independent contractor and not as an employee of either the Mobility Authority or the D/B Contractor.

25.3.6 Submission of Disclosure Statements.

Before a Board Member appointment is final, the first two prospective members shall submit complete disclosure statements for the approval of both the Mobility Authority and the D/B Contractor. Each statement shall include a resume of experience, together with a declaration describing all past, present and anticipated or planned future relationships to the Project and with all parties involved in this D/B Contract, including disclosure of past or current professional or close personal relationships with TxDOT, FHWA, the D/B Contractor, any affiliate, the Mobility Authority or its consultants working on the Project, or with any key member of any such entity. The third Disputes Board member shall supply such a statement to the first two Disputes Board members and to the Mobility Authority and the D/B Contractor before his or her appointment is final.

25.3.7 Execution of Agreements.

Promptly upon approval of the Disputes Board members, the Mobility Authority, the D/B Contractor and the individual Disputes Board members shall enter into individual three-party Disputes Board Agreements which set forth the terms and conditions which apply to the services to be provided by the members. The Mobility Authority, the D/B Contractor, and all three members of the Disputes Board shall execute the Disputes Board Agreement within four weeks after the selection of the third member.

25.3.8 Withdrawal; Termination; Replacements.

Board Members may withdraw from the Disputes Board upon delivery of written notice of withdrawal to the Mobility Authority, the D/B Contractor, and the other Board Members. Notice shall specify a withdrawal date of at least 28 Calendar Days following the date of delivery of the notice. In addition, a member may be terminated by the Mobility Authority or the D/B Contractor if at any time that member fails to meet the qualifications set forth in this Section 25 of this D/B Contract. Should the need arise to appoint a replacement Board Member, the replacement member shall be appointed in the same manner as provided by this Section 25 for appointment of the original member. The selection of a replacement Board Member shall begin promptly upon notification of the necessity for a replacement, and shall be completed within 28 Calendar Days thereafter. The change in Disputes Board membership shall be evidenced by the new member's signature on the new three-party Disputes Board Agreement.

25.4 Disputes Board Operations.

The Disputes Board shall formulate its own rules of operation in accordance with the Disputes Board Agreement.

25.4.1 Progress Reports.

In order to keep abreast of design and construction development and progress, the members will be provided regular written progress reports and other relevant data mutually agreed upon by the Mobility Authority and the D/B Contractor.

25.4.2 Regular Meetings.

The Disputes Board shall visit the Project and meet with representatives of the Mobility Authority and the D/B Contractor at regular intervals and at times of critical events. The frequency of these visits shall be as agreed among the Mobility Authority, the D/B Contractor and the Disputes Board, depending on the progress of the Work. The regular meetings shall be held at the job site. Each meeting shall consist of an informal round table discussion followed by a field inspection of the Project. The round table discussion shall be attended by selected personnel from the Mobility Authority and the D/B Contractor. The agenda shall generally include the following:

- (a) Meeting convened by the chairman of the Disputes Board;
- (b) Opening remarks by the Mobility Authority's representative;
- (c) A description by the D/B Contractor of the Design/Build Work accomplished since the last meeting, current status of the Project Schedule, schedule for future Design/Build Work, potential disputes and proposed solutions for any problems;
- (d) Discussion by the Mobility Authority's representative of the Project Schedule as the Mobility Authority views it, potential disputes, and status of past disputes; and
- (e) Set tentative date for next meeting.

If it is considered necessary by all parties, the Disputes Board or the D/B Contractor will prepare minutes of regular meetings and circulate them for comments, revisions, and/or approval of all concerned.

The field inspection shall cover all active segments of the Design/Build Work. Representatives of both the Mobility Authority and the D/B Contractor shall have the right to accompany the Disputes Board on field inspections.

25.4.3 External Communications.

The Parties are expressly prohibited from seeking advice from, consulting with, or discussing any aspect of an existing or potential dispute with, any member of the Disputes

Board, unless duly authorized representatives of both Parties agree in writing. A Board Member who has external contact with a party or party representative shall be subject to removal from the Disputes Board for cause.

25.5 Schedule for Dispute Resolution.

25.5.1 Impartiality of Disputes Board.

The Disputes Board shall fairly and impartially consider disputes referred to it, and shall provide written recommendations to the Mobility Authority and the D/B Contractor, to assist in the resolution of disputes submitted to the Disputes Board.

25.5.2 Time Periods.

Disputes shall be considered as quickly as possible, taking into consideration the particular circumstances and the time required to prepare detailed documentation. Steps may be omitted as agreed by both parties, and the time periods stated below may be shortened in order to hasten resolution.

Dispute Escalation Tiers				
<i>Tier</i>	<i>Level of Authority and Responsibility</i>			<i>Time Limit*</i>
	<i>D/B Contractor</i>		<i>Mobility Authority</i>	
1	Design Discipline Lead or Superintendent	and	Design Lead or Lead Inspector	7 days
2	Design, Construction, or Project Controls Manager	and	Design, Construction, or Project Controls Manager	7 days
3	Project Manager	and	Project Manager	7 days
4	Designated D/B Contractor Executive	and	Designated Mobility Authority Staff Member	7 days
5	D/B Contractor CEO or other Designated Executive	and	Mobility Authority Director of Engineering	7 days

** Time (in working days) in which dispute must be resolved or passed on to the next tier.*

25.5.3 Disputes Board Submittals.

Before the D/B Contractor shall have the right to submit a dispute to the Disputes Board, it must first comply with the following procedures.

25.5.3.1 **Written Protest Procedure:** If the D/B Contractor objects to any decision, action or order of the Mobility Authority (including any rejection or modification of a proposed Change Order by the Mobility Authority), the D/B Contractor may file a written protest with the Mobility Authority, stating clearly, and in detail, the basis for the objection, within one week after the date on which the D/B Contractor first becomes aware of the decision, action or order. In the event any such protest is not filed within this time period, the D/B Contractor shall be deemed to have waived the right to collect any and all costs incurred prior to the date of delivery of the protest, and shall be deemed to have waived the right to seek an extension of the Completion Deadlines with respect to any delay in the Critical Path which occurred prior to the date of the protest. This waiver shall occur whether or not there is any showing of prejudice to the Mobility Authority resulting from the delay in filing the protest. In no event may D/B Contractor submit to the Disputes Board a decision with respect to the testing and adequacy of construction materials.

25.5.3.2 **Issuance of Mobility Authority Decision:** The Mobility Authority will consider the written protest and make its decision (the "Mobility Authority Decision") on the basis of the pertinent Contract Document requirements, together with the facts and circumstances involved in the Dispute. The decision will be furnished in writing to the D/B Contractor, within two weeks after receipt of the D/B Contractor's written protest, provided that if no written decision is issued, the Mobility Authority shall be deemed to have denied the D/B Contractor's written protest and a Mobility Authority Decision to that effect shall be deemed received by the D/B Contractor at the end of such two-week period. This decision shall be final and conclusive on the subject, unless a written appeal to Mobility Authority is filed by the D/B Contractor within 30 Days of receiving the Mobility Authority Decision.

25.5.3.3 **Finality of Decision:** If a written appeal is submitted to the Mobility Authority, both parties shall pursue the matter further to attempt to settle the dispute. If the Mobility Authority fails to issue a new decision within two weeks after the date on which the appeal is submitted, the existing Mobility Authority decision shall be final and conclusive at the end of such two-week period. If the Mobility Authority issues a new decision within such two-week period, such decision shall be the Mobility Authority decision and shall be final and conclusive on the date it is issued.

25.5.3.4 **Submittal of Dispute:** If the Mobility Authority decision does not resolve the Dispute, then either Party may submit the dispute to the Disputes Board, or, if the Disputes Board does not then exist, directly to the courts. The dispute shall be submitted to the

Disputes Board by written notice of appeal, delivered to the Disputes Board and simultaneously served upon the other party. The notice of appeal (or complaint if the Disputes Board does not exist) shall be filed and served within thirty (30) Calendar Days following the date on which the Mobility Authority decision becomes final, and shall state clearly and in full detail the specific issues of the dispute to be considered. If no notice of appeal or complaint is filed within thirty (30) Days following the date upon which the Mobility Authority decision is final, the Mobility Authority decision shall be final, conclusive and binding upon the parties.

25.5.3.5 Continuance of Work during Dispute: At all times during the course of the dispute resolution process, the D/B Contractor shall continue with the Design/Build Work as directed, in a diligent manner and without delay, or shall conform to the Mobility Authority's decision or order, and shall be governed by all applicable provisions of the Contract Documents. Records of the Design/Build Work shall be kept in sufficient detail to enable payment in accordance with applicable provisions in the Contract Documents, if this should become necessary.

25.5.4 Date of Hearing.

When a dispute is appealed to the Disputes Board, the Disputes Board, with input from the D/B Contractor and the Mobility Authority, shall first decide when to conduct the hearing. If the matter is not urgent, it may be heard at the next regular Disputes Board meeting. For an urgent matter, the Disputes Board shall meet at its earliest convenience.

25.5.5 Discovery and Evidence.

Once a notice of appeal is filed with the Disputes Board, discovery shall be permitted to the extent provided for in the Disputes Board Agreement. During the hearing, the D/B Contractor and the Mobility Authority shall each have ample opportunity to be heard and to offer evidence.

25.5.6 Disputes Board Recommendation.

The Disputes Board's recommendations for resolution of the dispute will be given in writing, to both the Mobility Authority and the D/B Contractor, within two weeks of completion of the hearings. In exceptionally difficult cases, this time may be extended by mutual agreement of all parties. Following delivery of the recommendation, if requested by either party, the Disputes Board shall meet with the Mobility Authority and the D/B Contractor to provide additional clarification of its recommendation.

25.5.7 Response.

Within two weeks of receiving the Board's recommendations, or such other time specified by the Disputes Board, both the Mobility Authority and the D/B Contractor shall respond to the other and to the Disputes Board in writing, signifying either acceptance or rejection of the Disputes Board's recommendations. The failure of either party to respond within the specified period shall be deemed an acceptance of the Disputes Board's recommendations. If with the aid of the Disputes Board's recommendations, the Mobility Authority and the D/B Contractor are able to resolve their dispute, the Mobility Authority will promptly process any required Change Orders.

25.5.8 Further Appeal.

Should the dispute remain unresolved, during the six-month period following issuance of the Disputes Board recommendations, either party may appeal the decision back to the Disputes Board, may submit the dispute to judicial resolution or may resort to other methods of settlement. If the dispute has not been submitted to judicial resolution within such six-month period, and there has been no agreement between the parties for resolution of the dispute, then the parties shall be deemed to have conclusively agreed to accept the recommendation made by the Disputes Board.

25.5.9 Disputes Board Recommendations Not Admissible.

Although both the Mobility Authority and the D/B Contractor should place great weight on the Disputes Board recommendations, no such recommendation will be admissible as evidence in any subsequent litigation or other dispute resolution proceeding, except where the parties agree to resolve the dispute as set forth in Section 25.5.7.

25.6 Hearing.

25.6.1 Location of Hearings.

Normally the hearing will be conducted near the jobsite. However, any location that would be more convenient and still provide all required facilities and access to necessary documentation is satisfactory. Private sessions of the Disputes Board may be held at any convenient location.

25.6.2 Conduct and Record of Hearing.

The third member of the Disputes Board will act as chairman of the hearing, or he or she may appoint one of the other members to be chairman. Normally each member keeps his or her own notes, and a formal transcript is not prepared. In special cases, when requested by either

party, the Disputes Board may allow preparation of a transcript by a court reporter. Audio or video recordings are not permitted without approval by both the Mobility Authority and the D/B Contractor.

25.6.3 Hearing Procedures.

The Mobility Authority and the D/B Contractor shall have representatives at all hearings. The D/B Contractor will first discuss the dispute, followed by the Mobility Authority. Each party will then be allowed successive rebuttals until all aspects are fully covered. The Disputes Board members may ask questions, request clarification, or ask for additional data. In large or complex cases, additional hearings may be necessary in order to consider and fully understand all the evidence presented by both parties. Both the Mobility Authority and the D/B Contractor shall be provided full and adequate opportunity to present all of their evidence, documentation and testimony regarding all issues before the Disputes Board. During the hearings, no Disputes Board member shall express any opinion concerning the merit of any facet of the case.

25.6.4 Recommendations of Disputes Board.

After the hearings are concluded, the Disputes Board shall meet to formulate its recommendations. All Disputes Board deliberations shall be conducted in private, with all individual views kept strictly confidential. The Disputes Board's recommendations, together with an explanation of its reasoning, shall be submitted as a written report to both parties. The recommendations shall be based on the pertinent Contract Documents requirements, applicable Laws, and the facts and circumstances involved in the dispute. The Disputes Board shall make every effort to reach a unanimous recommendation. If this proves impossible, the dissenting member may prepare a minority report.

25.7 Compensation.

Fees and expenses of all three members of the Disputes Board shall be shared equally by the Mobility Authority and the D/B Contractor. The Mobility Authority will provide administrative services, such as conference facilities and secretarial services, and will have the right to require the D/B Contractor to pay for half of the cost of these services. If the Disputes Board desires special services, such as legal consultation, accounting, data research, and the like, both parties must agree, and the costs will be shared by them as mutually agreed. The D/B Contractor shall pay the invoices of all Disputes Board members after approval by both parties. The D/B Contractor will then bill the Mobility Authority for 50% of such invoices.

No Board Member will be entitled to any employee benefits.

25.7.1 Expenses.

25.7.1.1 **Payment.** Payment for services rendered by each Board Member and for their direct, non-salary expenses shall be calculated in accordance with the payment schedule for Board Member as agreed upon by the Mobility Authority, the D/B Contractor, and the Board Member.

25.7.1.2 **Invoices.** Invoices for payment for work completed shall be submitted no more often than once per month. Such invoices shall be in a format approved by the Mobility Authority and accompanied by a general description of activities performed during this period. The value of work accomplished for payment shall be established from the billing rate and hours expended by the Board Member together with direct, non-salary expenses. Billings for expenses shall include an itemized listing supported by copies of the original bills, invoices, expense accounts, and miscellaneous supporting data.

25.7.1.3 **Records.** Each Board Member shall keep available for inspection, for a period of five years after final payment, the cost records and accounts pertaining to the Disputes Board Agreement.

25.8 Cooperation.

The parties shall diligently cooperate with one another and the Disputes Board, and shall perform such acts as may be necessary to obtain a prompt and expeditious resolution of the dispute. Participation in the Disputes Board process shall be a prerequisite to the filing of litigation by either party, except where necessary to meet any applicable statute of limitations.

25.9 Provisional Remedies.

Subject to Section 25.1.3, no party shall be precluded from initiating a proceeding in a court of competent jurisdiction for the purpose of obtaining any emergency or provisional remedy which may be necessary, to protect its rights, including temporary and preliminary injunctive relief, attachment, claim and delivery, receivership and any extraordinary writ.

25.10 Participation in Other Proceedings.

The D/B Contractor agrees that at the Mobility Authority's request, the D/B Contractor will allow itself to be joined as a participant in any arbitration or other proceeding that involves the Mobility Authority and any other participant in the design or construction of any part of the Project. This provision is for the benefit of the Mobility Authority and not for the benefit of any other party.

25.11 Governing Law.

The three-party Disputes Board Agreement shall be governed by and construed in accordance with the law of the State of Texas.

26. DOCUMENTS AND RECORDS.

26.1 Escrowed Proposal Documents.

Prior to execution of this D/B Contract, D/B Contractor delivered into escrow one copy of all documentary information used in preparation of the Design/Build Price (the "**EPDs**"). Upon execution of this D/B Contract, the EPDs shall be transferred from escrow and held in locked fire-proof cabinet(s) supplied by D/B Contractor and located in the Mobility Authority's Project offices or such other location agreed to by the Mobility Authority and D/B Contractor, with the key held only by D/B Contractor. Concurrently with approval of each Change Order or amendment to any Contract Document, one copy of all documentary information used in preparation of the Change Order or amendment shall be added to the cabinet to be held with the other EPDs. The EPDs will be held in such cabinet or otherwise maintained until all of the following have occurred: (a) 180 Days have elapsed from the later of Project Final Acceptance or termination of this D/B Contract, as applicable; (b) all disputes regarding the Design/Build Work have been settled; and (c) Final Payment has been made and accepted.

26.1.1 Availability for Review.

The EPDs shall be available during business hours for joint review by D/B Contractor, the Mobility Authority and any dispute resolver in accordance with Section 25, in connection with approval of the Project Schedule, negotiation of Change Orders and resolution of disputes under the Contract Documents, and also as described in Section 26.1.6. The Mobility Authority shall be entitled to review all or any part of the EPDs in order to satisfy itself regarding the applicability of the individual documents to the matter at issue.

26.1.2 Proprietary Information.

Although the EPDs will reside in the Mobility Authority's office, the EPDs are, and shall always remain, the property of D/B Contractor and shall be considered to be in D/B Contractor's possession, subject to the Mobility Authority's right to review the EPDs as provided in this Section 26. D/B Contractor will have and control the keys to the filing cabinet containing the EPDs. The Mobility Authority acknowledges that D/B Contractor may consider that the EPDs constitute trade secrets or proprietary information. The Mobility Authority agrees to maintain the confidentiality of information contained in the EPDs and not to use such information for any purpose other than in connection with the Project.

26.1.3 Representation.

D/B Contractor represents and warrants that the EPDs constitute all documentary information used in the preparation of its Design/Build Price. D/B Contractor agrees that no other price proposal preparation information will be considered in resolving disputes or claims. D/B Contractor further agrees that the EPDs are not part of the Contract Documents and that nothing in the EPDs shall change or modify any Contract Document.

26.1.4 Contents of EPDs.

The EPDs shall, inter alia, clearly detail how each price included in the Proposal has been determined and shall show prices and price elements in sufficient detail as is adequate to enable the Mobility Authority to understand how D/B Contractor calculated the Design/Build Price. The EPDs provided in connection with quotations and Change Orders shall, inter alia, clearly detail how the total price and individual components of that price were determined. The EPDs shall itemize the estimated costs of performing the required work separated into usual and customary items and cost categories and sub-items and cost categories to present a detailed estimate of costs, such as direct labor, repair labor, equipment ownership and operation, expendable materials, permanent materials, Subcontract costs, plant and equipment, indirect costs, contingencies, mark-up, overhead and profit. The EPDs shall itemize the estimated annual costs of insurance premiums for each coverage required to be provided by D/B Contractor under Section 10. The EPDs shall include all assumptions, detailed quantity price reductions, rates of production and progress calculations, and quotes from Subcontractors used by D/B Contractor to arrive at the Design/Build Price, amendment price or Change Order price.

26.1.5 Form of EPDs.

Except as otherwise provided in the RFDP, D/B Contractor shall submit the EPDs in such format as is used by D/B Contractor in connection with its Proposal. D/B Contractor represents and warrants that the EPDs provided with the Proposal were personally examined by an authorized officer of D/B Contractor prior to delivery, and that the EPDs meet the requirements of Section 26.1.4. D/B Contractor further represents and warrants that the EPDs provided in connection with quotations and Change Orders will be personally examined prior to delivery by an authorized officer of D/B Contractor, and that they shall meet the requirements of Section 26.1.4.

26.1.6 Review by Mobility Authority.

The Mobility Authority may at any time conduct a review of the EPDs to determine whether they are complete. If the Mobility Authority determines that any data is missing from an EPD, D/B Contractor shall provide such data within three Business Days after delivery of the

Mobility Authority's request for such data. At that time of its submission to the Mobility Authority, such data will be date stamped, labeled to identify it as supplementary EPD information and added to the EPD. D/B Contractor shall have no right to add documents to the EPDs except upon the Mobility Authority's request. The EPDs associated with any Change Order or amendment to this D/B Contract shall be reviewed, organized and indexed in the same manner described in Section 4.5 of the Instructions to Proposers.

26.2 Subcontract Pricing Documents.

D/B Contractor shall require each Subcontractor to preserve all documentary information used in establishing its Subcontract price and to provide such documentation to D/B Contractor and/or the Mobility Authority in connection with any claim exceeding \$250,000 made by such Subcontractor.

26.3 Reporting Requirements.

26.3.1 D/B Contractor shall deliver to the Mobility Authority financial and narrative reports, statements, certifications, budgets and information as and when required under this D/B Contract.

26.3.2 D/B Contractor shall furnish, or cause to be furnished, to the Mobility Authority such information and statements as the Mobility Authority may reasonably request from time to time for any purpose related to the Project, this D/B Contract or the other Contract Documents. In addition, D/B Contractor shall deliver to the Mobility Authority the following financial statements for each Guarantor, at the times specified below:

26.3.2.1 Within 60 Days after the end of each fiscal quarter, duplicate copies of the balance sheet and a consolidated statement of earnings of the Guarantor and its consolidated subsidiaries for such quarter and for the period from the beginning of the then current fiscal year to the end of such quarter, setting forth in comparative form the figures for the corresponding periods during the previous fiscal year, all in reasonable detail and certified as complete and correct, subject to changes resulting from year-end adjustments, by the chief financial officer of the Guarantor;

26.3.2.2 Within 120 Days after the end of each fiscal year, duplicate copies of the balance sheet and a consolidated statement of financial condition of the Guarantor and its consolidated subsidiaries at the end of such year, and statements of earnings, changes in financial position of the Guarantor and its consolidated subsidiaries for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and accompanied by an opinion thereon of an independent public accountant of recognized national standing selected by the Guarantor, which opinion shall state that such financial statements have

been prepared in accordance with generally accepted accounting principles consistently applied (except for changes in application in which such accountants concur), and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards, and accordingly, included such tests of the accounting records and such other auditing procedures as were considered necessary in the circumstances; and

26.3.2.3 Upon request of the Mobility Authority for particular fiscal quarters, copies of all other financial statements and information reported by the Guarantor to its shareholders generally and of all reports filed by the Guarantor with the Securities Exchange Commission under Sections 13, 14 or 15(d) of the Exchange Act, to be provided to the Mobility Authority as soon as practicable after furnishing such information to the Guarantor's shareholders or filing such reports with the Securities and Exchange Commission, as the case may be.

26.3.3 D/B Contractor shall cooperate and provide, and shall cause the Subcontractors to cooperate and provide, such information as determined necessary or desirable by the Mobility Authority in connection with the Project financing, including Bond financing, and applications for state and federal assistance (including TIFIA credit and other federal or state financial assistance). Without limiting the generality of the foregoing, D/B Contractor shall provide such information deemed necessary or desirable by the Mobility Authority for inclusion in the Mobility Authority's securities disclosure documents and in order to comply with Securities and Exchange Commission Rule 15c2-12 regarding certain periodic information and notice of material events. D/B Contractor shall provide customary representations and warranties to the Mobility Authority and the capital markets as to the correctness, completeness and accuracy of any information furnished.

26.3.4 D/B Contractor shall cooperate and provide, and shall cause the Subcontractors to cooperate and provide, such information as is necessary or requested by the Mobility Authority to assist or facilitate the submission by the Mobility Authority of any documentation, reports or analysis required by the State, TxDOT, USDOT, FHWA and/or any other Governmental Entity with jurisdiction over the Project.

26.3.5 All reports and information delivered by D/B Contractor under Sections 26.3.3 and 26.3.4 shall also be delivered electronically, to the extent electronic files exist, and be suitable for posting on the web.

26.4 Maintenance of, Access to and Audit of Records.

26.4.1 D/B Contractor shall maintain at its Project administration office a complete set of all books and records prepared or employed by D/B Contractor in its management, scheduling,

cost accounting and other activities related to the Design/Build Work and the Project. D/B Contractor shall grant to the Mobility Authority such audit rights and shall allow the Mobility Authority such access to and the right to copy such books and records as the Mobility Authority may request in connection with the issuance of Change Orders, the resolution of disputes, and such other matters as the Mobility Authority reasonably deem necessary for purposes of verifying compliance with this D/B Contract and applicable Law.

26.4.2 Where the payment method for any Design/Build Work is on a time and materials basis, such examination and audit rights shall include all books, records, documents and other evidence and accounting principles and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of such Design/Build Work. If an audit indicates D/B Contractor has been overpaid under a previous progress report or progress payment, the excess payment will be credited against current progress reports or payments.

26.4.3 For cost and pricing data submitted in connection with pricing Change Orders, claims or disputes, the Mobility Authority, TxDOT, FHWA, and their representatives shall have the right to audit all books, records, documents and other data of D/B Contractor related to the performance of Design/Build Work for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted; provided, however, that the foregoing shall not apply to pricing based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the public or prices set by Law or regulation, in each case, as determined by the Mobility Authority. Such right of examination shall extend to all documents deemed necessary by the Mobility Authority, TxDOT, FHWA, and their representatives to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

26.4.4 D/B Contractor acknowledges that the Mobility Authority wishes to obtain information regarding the cost of performance of Utility Adjustment Work. D/B Contractor agrees to provide the Mobility Authority with such reports and information as the Mobility Authority may request from time to time relating to such costs. D/B Contractor shall maintain separate records regarding utility costs incurred in performance of the Design/Build Work, and shall allow the Mobility Authority access to, and the right to copy, such separate records as may be reasonably requested by the Mobility Authority from time to time, including access to back-up data that would not normally be expected to be delivered in connection with a lump sum contract. The Mobility Authority agrees that the information described in this Section 26.4.4 shall be used solely for purposes of cost tracking and shall not be relevant for purposes of determining the amount of any payment owing to D/B Contractor, provided that the foregoing shall not affect the Mobility Authority's ability to make any cost adjustment pursuant to any other provision of the Contract Documents.

26.5 Retention of Records.

D/B Contractor shall maintain all records and documents relating to the Design/Build Work, including copies of all original documents delivered to the Mobility Authority, and the Project in Austin, Texas until five years after the date of the expiration of all Warranties hereunder or the termination of this D/B Contract, whichever is applicable. D/B Contractor shall notify the Mobility Authority where such records and documents are kept. Notwithstanding the foregoing, all records which relate to Demands being processed or actions brought under the dispute resolution provisions hereof shall be retained and made available until such actions and Demands have been finally resolved. Records to be retained include all books, electronic information and files and other evidence bearing on D/B Contractor's costs under the Contract Documents. D/B Contractor shall make these records and documents available for audit and inspection to the Mobility Authority, at D/B Contractor's offices in Austin, Texas, at all reasonable times, without charge, and shall allow such Persons to make copies of such documents, at no expense to D/B Contractor. If approved by the Mobility Authority, photographs, microphotographs or other authentic reproductions may be maintained instead of original records and documents.

26.6 Public Records Act.

26.6.1 D/B Contractor acknowledges and agrees that all records, documents, drawings, plans, specifications and other materials in the Mobility Authority's possession, including materials submitted by D/B Contractor, are subject to the provisions of the Public Information Act. D/B Contractor shall be solely responsible for all determinations made by it under such Law, and for clearly and prominently marking each and every page or sheet of materials with "Trade Secret" or "Confidential", as it determines to be appropriate. D/B Contractor is advised to contact legal counsel concerning such Law and its application to D/B Contractor.

26.6.2 If any of the materials submitted by D/B Contractor to the Mobility Authority are clearly and prominently labeled "Trade Secret" or "Confidential" by D/B Contractor, the Mobility Authority will endeavor to advise D/B Contractor of any request for the disclosure of such materials prior to making any such disclosure. Subject to Section 29.2, under no circumstances, however, will the Mobility Authority be responsible or liable to D/B Contractor or any other Person for the disclosure of any such labeled materials, whether the disclosure is required by Law, or court order, or occurs through inadvertence, mistake or negligence on the part of the Mobility Authority.

26.6.3 In the event of litigation concerning the disclosure of any material submitted by D/B Contractor to the Mobility Authority, the Mobility Authority's sole involvement will be as a stakeholder retaining the material until otherwise ordered by a court, and D/B Contractor shall be fully responsible for otherwise prosecuting or defending any action concerning the materials at

its sole cost and risk; provided, however, that the Mobility Authority reserves the right, in its sole discretion, to intervene or participate in the litigation in such manner as it deems necessary or desirable. All costs and fees, including attorneys' fees and costs, incurred by the Mobility Authority in connection with any litigation, proceeding or request for disclosure shall be reimbursed and paid by D/B Contractor.

27. COOPERATION AND COORDINATION WITH OTHER CONTRACTORS AND GOVERNMENTAL ENTITIES.

27.1 Cooperation with Other Contractors.

The Mobility Authority reserves the right to contract with others for and perform other or additional work on or near the Site. D/B Contractor shall cooperate with such other contractors to the extent reasonably necessary for the performance by such other contractors of their work, and shall cause all members of the D/B Contractor Group to so cooperate. If other separate contracts are awarded by the Mobility Authority or TxDOT which affect the Design/Build Work, including work related to abutting roadways, connectors and toll collection system design, supply, installation, operation, maintenance and repair, D/B Contractor shall conduct its Design/Build Work without interfering with or hindering the progress or completion of the work being performed by other contractors. The Mobility Authority shall include similar cooperative language in any other contracts for additional work on or near the Site.

27.2 Interference by Other Contractors.

Except as provided in Section 27.4, if D/B Contractor asserts that any of the Mobility Authority's or TxDOT's other contractors have hindered or interfered with the progress or completion of the Design/Build Work, then D/B Contractor's sole remedy shall be to seek recourse against such other contractors.

27.3 Coordination with Governmental Entities and Contractors.

D/B Contractor shall coordinate with Governmental Entities, with owners of property adjoining the Project, the toll related work participants, including the System Integrator and contractors involved with Adjacent Work as more particularly described in Technical Provision 21.

27.4 Coordination with Toll Related Project Participants; Systems Integrator; Delays.

27.4.1 D/B Contractor shall be responsible for coordinating with the Mobility Authority's contracted Systems Integrator to develop and construct the toll system components of the Project in accordance with Technical Provision 21. D/B Contractor and the Systems

Integrator shall maintain ongoing communication regarding requirements applicable and progress with respect to the intelligent system infrastructure included in the Project as it relates to the tolling system with the Mobility Authority, representatives of the Texas Department of Public Safety, and TxDOT. The D/B Contractor shall not be directly responsible for payment and performance by the Systems Integrator; provided, however, it shall be the responsibility of the D/B Contractor to integrate the equipment and services provided by the Systems Integrator into D/B Contractor's Project Schedule and to notify the Mobility Authority immediately if D/B Contractor determines that any action or inaction on the part of the Systems Integrator will prevent the D/B Contractor from meeting either the Completion Deadline or the Acceptance Deadline.

27.4.2 Subject to the requirements which are generally applicable to Change Orders in Section 14, D/B Contractor shall not be entitled to an extension of the Interim Completion Deadline, Completion Deadline or Acceptance Deadline for delays to the Critical Path resulting from D/B Contractor's inability to complete activities caused by the Systems Integrator's failure or inability to provide responses to proposed plans, design documents and other submittals and matters for which response is required or any other action or inaction of the Systems Integrator unless D/B Contractor contemporaneously with D/B Contractor's discovery of a possible delay caused by the Systems Integrator communicates in writing to the Mobility Authority a written description of the circumstances that it claims will result in such delay.

28. GOVERNING LAW; COMPLIANCE WITH LAW AND REFERENCE STANDARDS.

28.1 Texas Law.

This D/B Contract shall be governed and construed in accordance with the laws of the State without regard to conflict of law principles.

28.2 Compliance With Laws and Federal Requirements.

D/B Contractor shall comply with, and ensure that all Subcontractors comply with, all requirements of all applicable Laws, including Environmental Laws, and the Federal Requirements.

28.3 Compliance With Referenced Standards.

D/B Contractor shall ensure that the Project meets the TxDOT Standards and Specifications, except to the extent that the Contract Documents specifically allow Deviations therefrom. D/B Contractor shall also ensure that the Project meets all other applicable referenced standards, except to the extent that the Contract Documents specifically allow Deviations therefrom. Unless specifically designated to the contrary, in cases where this D/B

Contract refers to TxDOT Standards and TxDOT Specifications or any manual, policy, guidance document or other similar document, it shall mean the latest edition or revision thereof and amendments or supplements thereto in effect on the Proposal Date.

29. MISCELLANEOUS.

29.1 Reserved Rights.

Notwithstanding anything to the contrary contained in this D/B Contract or the other Contract Documents, the Mobility Authority shall retain and enjoy the Reserved Rights.

29.2 Ownership of Documents.

All data, sketches, charts, calculations, plans, specifications, electronic files, correspondence and other documents created or collected by D/B Contractor under the terms of the Contract Documents, with the exception of D/B Contractor's internal privileged communications and documents with only incidental references to the Design/Build Work, are the exclusive property of the Mobility Authority and D/B Contractor shall furnish the same to the Mobility Authority upon request. All documents prepared by D/B Contractor and all documents furnished to D/B Contractor by the Mobility Authority shall be delivered to the Mobility Authority upon Substantial Completion or termination of this D/B Contract. The Mobility Authority acknowledges that such documents delivered to it by Design/Builder were developed specifically for the Project and Design/Builder does not represent that they are suitable for use on another project. Release of any and all information shall be in conformance with the Public Information Act exclusively by and through the Mobility Authority or its designee. Upon receipt of any such public record request, D/B Contractor shall immediately notify the Mobility Authority, which shall have responsibility for the handling of such request. Prior to the release of any such information, the Mobility Authority shall provide D/B Contractor the opportunity to seek protection for any confidential information through the Texas Attorney General.

29.3 Amendments to Contract Documents.

29.3.1 The Contract Documents may be amended only by a written instrument duly executed by the Parties or their respective successors or assigns. No oral agreement or implied covenant shall be held to vary the terms hereof, any statute, Law or custom to the contrary notwithstanding.

29.3.2 If any provisions of the Contract Documents are rendered obsolete or ineffective in serving their purpose by Change in Law, passage of time, financing requirements or other future events or circumstances, the Parties agree to negotiate in good faith appropriate amendments to or replacements of such provisions in order to restore and carry out the original purposes thereof to the extent practicable; provided, however, that neither Party is obligated to

agree to any amendment or replacement which would reduce its rights or enlarge its responsibilities under the Contract Documents in any material respect.

29.4 Waiver.

29.4.1 No waiver by any Party of any right or remedy under the Contract Documents shall be deemed to be a waiver of any other or subsequent right or remedy under the Contract Documents. The consent by one Party to any act by the other Party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

29.4.2 No act, delay or omission done, suffered or permitted by one Party or its agents shall be deemed to waive, exhaust or impair any right, remedy or power of such Party under any Contract Document, or to relieve the other Party from the full performance of its obligations under the Contract Documents. No custom or practice between the Parties in the administration of the terms of the Contract Documents shall be construed to waive or lessen the right of a Party to insist upon performance by the other Party in strict compliance with the terms of the Contract Documents.

29.4.3 No waiver of any term, covenant or condition of the Contract Documents shall be valid unless it is in writing and signed by the Party for whom such waiver is sought.

29.4.4 Unless stated expressly to the contrary in any such provision, to the extent that waivers, releases or limitations on liability or remedies are expressed in the Agreement, then all such waivers, releases or limitations shall apply as written, notwithstanding the fault, negligence, or strict liability of the party to be released or whose liability is limited, and shall extend to the officers, employees, and related entities of such party.

29.5 Relationship of Parties.

The relationship of D/B Contractor to the Mobility Authority shall be one of an independent contractor, not an agent, partner, representative, joint venturer or employee. Officials, employees, partners, Subcontractors and agents of D/B Contractor shall in no event be considered employees, contractors, agents, partners or representatives of the Mobility Authority. Notwithstanding the foregoing, Persons performing professional services under this D/B Contract shall perform their services in keeping with the standard of care applicable to their profession and shall comply with all applicable requirements of the Contract Documents in performance of such services.

29.6 Assignment.

Subject to the limitations of this Section 29.6, the Contract Documents shall be binding upon and shall inure to the benefit of the Parties hereto and their respective legal representatives, successors and permitted assigns, and wherever a reference in any Contract Document to any of the Parties thereto, such reference also shall be deemed to include, wherever applicable, a reference to the legal representatives, successors and permitted assigns of such Party, as if in every case so expressed.

29.6.1 D/B Contractor may not, without the prior written consent of the Mobility Authority (in its sole discretion), voluntarily or involuntarily assign, convey, transfer, pledge, mortgage or otherwise encumber its rights or interests under the Contract Documents. No partner, joint venturer, member or shareholder of D/B Contractor may assign, convey, transfer, pledge, mortgage or otherwise encumber its ownership interest in D/B Contractor without the prior written consent of the Mobility Authority, in its sole discretion.

29.6.2 The Mobility Authority may transfer and assign its interests in the Project, this D/B Contract and any other Contract Document

(a) to any other public agency or public entity as permitted by Law, provided that the successor or assignee has assumed all of the Mobility Authority's obligations, duties and liabilities under the Contract Document then in effect, and has provided D/B Contractor with reasonable assurance of its legal and financial authority to honor and perform the same.

(b) to the Bond Trustee as security for the performance of the Mobility Authority's obligations to the Bond Trustee. In the event of such an assignment, the term "Mobility Authority" as used in this D/B Contract shall be deemed to mean the Bond Trustee as assignee of the Mobility Authority, and as such assignee the Bond Trustee shall have all rights accorded to the Mobility Authority. Any Bond Trustee may, in connection with any default under any financing document, assign any rights assigned to it hereunder to any Person.

(c) to any other Person with the prior written approval of D/B Contractor and the Bond Trustee.

29.7 Designation of Representatives; Cooperation with Representatives and with Financing Entities.

The Parties hereto shall each designate an individual or individuals who shall be authorized to make decisions and bind the Parties on all matters relating to the Contract Documents except insofar as such authority may be limited by the particular provision or the delegation of such authority in accordance with this Section 29.7. Exhibit N hereto provides the

initial designations of the authorized representatives. Such designations may be changed by a subsequent writing delivered to the other Party in accordance with Section 29.12.

29.8 No Gift or Dedication.

29.8.1 Nothing contained in this D/B Contract shall be deemed to be a gift or dedication of any portion of the Project, Final ROW or Design/Build Work to the general public, or be deemed to create any rights to be held by the general public in the Project, Final ROW or Design/Build Work except as expressly set forth herein.

29.8.2 D/B Contractor shall not, other than as provided by Law, directly or indirectly, give, offer or promise anything of value to any present or former Mobility Authority, FHWA or TxDOT employee or consultant that might reasonably tend to influence them in the discharge of their official duties or is offered with the intent to influence official conduct, for or because of any official act performed or to be performed by such employee. The phrase "anything of value", as used herein means any item of value, including invitations or tickets to sporting events, social gatherings, outings or parties, or the provision of meals or lodging, or the use of vehicles of any kind, and any other item or thing of monetary value.

29.9 Use of Police and Other Powers.

Nothing in this D/B Contract limits the authority of the Mobility Authority to exercise its regulatory, statutory and police powers granted by Law, including its powers of condemnation with respect to all or any part of the Project, the Final ROW and any of D/B Contractor's rights hereunder.

29.10 Survival.

All covenants, agreements, representations and warranties made in or pursuant to the Contract Documents shall be deemed continuing and made at and as of the date of each such document and at and as of all other applicable times during the course of the Project. All covenants, agreements, representations and warranties made in or pursuant to the Contract Documents shall survive the expiration or earlier termination thereof and shall not be waived by the execution and delivery of the Contract Documents, by completion of construction, by any investigation by the Mobility Authority or by any other event except a specific written waiver by the Party against whom waiver is asserted.

29.11 No Third Party Beneficiaries.

Nothing contained in the Contract Documents is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the Parties toward any Person or entity not a Party hereto, except to the extent that specific

provisions (such as the warranty and indemnity provisions) identify third parties and state that they are entitled to benefits hereunder.

29.12 Notices and Communications.

29.12.1 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 communication followed by a hard copy and with receipt confirmed by telephone, to those individuals designated by D/B Contractor and the Mobility Authority from time to time in writing:

D/B Contractor:

Colorado River Constructors
1701 Directors Boulevard
Suite 1010
Austin, Texas 78744
Attn: Scott Yardas
Phone: (512) 707-0797
Fax: (512) 707-0798
E-mail: Scott.Yardas@Fluor.com

Mobility Authority:

Central Texas Regional Mobility Authority
3300 N. IH-35
Suite 300
Austin, Texas 78705
Attn: Director of Engineering
Phone: (512) 996-9778
Fax: (512) 996-9784
E-mail: wburford@mobilityauthority.com

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

Curtis R. Ashmos
Locke Lord LLP
600 Congress Ave.
Suite 2200

CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY
BERGSTROM EXPRESSWAY (183 SOUTH) PROJECT

D/B CONTRACT
EXECUTION COPY

Austin, Texas 78701
Phone: (512) 305-4716
Fax: (512) 391-4716

Texas Department of Transportation
Austin District Office
7901 N. IH-35
Austin, Texas 78753
Attn: Austin District Engineer
Phone: (512) 832-7000
Fax: (512) 478-8248

All communications to the Mobility Authority shall be clearly marked with the contract number to identify this D/B Contract and the Project name and location.

29.12.2 Notices shall be deemed received when actually received in the office of the addressee, or by the addressee if personally delivered, or when delivery is refused, as shown on the receipt of the U. S. Postal Service, private carrier or other Person making the delivery. Notwithstanding the foregoing, notices sent by telefacsimile after 4:00 p.m. Central Standard or Daylight Time, as applicable, and all other notices received after 5:00 p.m. shall be deemed received on the first Business Day following delivery. As an example, in order for a fax to be deemed received on the same Day, at least the first page of the fax must have been received before 4:00 p.m. D/B Contractor's representatives shall be available at all reasonable times for consultation with the Mobility Authority.

29.12.3 D/B Contractor shall forward a copy of all written correspondence pertaining to the Project between D/B Contractor any railroad, Utility Owner, owner of any property adjacent to the Project or which may potentially be acquired in connection with the Project and any representative of any Governmental Entity to the Mobility Authority within five 5 Days after receipt thereof.

29.13 **Further Assurances.**

Each Party shall promptly execute and deliver to other all such instruments and other documents and assurances as are reasonably requested by the other Party to further evidence the obligations of the Parties hereunder.

29.14 **Severability.**

If any term or provision of the Contract Documents, the deletion of which would not adversely affect the receipt of any material benefit by either Party hereunder, shall be held by a

CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY
BERGSTROM EXPRESSWAY (183 SOUTH) PROJECT

D/B CONTRACT
EXECUTION COPY

court of competent jurisdiction to be invalid or unenforceable, the remainder of the Contract Documents shall not be affected thereby and each other term and provision of the Contract Documents shall be valid and enforceable to the fullest extent permitted by Law. If any clause or provision of the Contract Documents that is found to be illegal, invalid or unenforceable, the Parties agree that they shall in good faith (a) promptly meet and negotiate a substitute therefor which shall, to the greatest extent legally permissible, effect the original intent of the Parties; and (b) if necessary or desirable, apply to the court which declared such invalidity for a judicial construction of the invalidated portion to guide the negotiations.

29.15 Headings.

The captions of the sections of the Contract Documents identified therein are inserted solely for convenience. Under no circumstances are they or any of them to be treated or construed as part of each such instrument, except to the extent that the provision cannot be understood without the caption.

29.16 Interpretation of Contract Documents.

29.16.1 In the Contract Documents, where appropriate and unless otherwise specified: the singular includes the plural and vice versa; references to statutes or regulations include all statutory or regulatory provisions consolidating, amending or replacing the statute or regulation referred to; the words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation"; references to sections, appendices or schedules are to the document in which they are contained; words such as "herein," "hereof" and "hereunder" shall refer to the entire document in which they are contained and not to any particular provision or section; words not otherwise defined which have well-known technical or construction industry meanings, are used in accordance with such recognized meanings; references to Persons include their respective permitted successors and assigns and, in the case of Governmental Entities, Persons succeeding to their respective functions and capacities; and words of either gender used herein shall include each other gender where appropriate. Unless otherwise specified, lists contained in the Contract Documents defining the Project or the Design/Build Work shall not be deemed all-inclusive. Furthermore, notwithstanding the rule of law to the effect that specific provisions contained in a contract shall govern over general provisions, specific provisions in the Contract Documents which describe tasks included in the Design/Build Work shall not constitute a limit on the Scope of Work, unless specifically so stated.

29.16.2 D/B Contractor acknowledges and agrees that it had the opportunity and obligation, prior to submission of its Proposal, and during the negotiation process prior to award of this D/B Contract, to review the terms and conditions of the Contract Documents and to bring to the attention of the Mobility Authority any conflicts or ambiguities contained therein. D/B Contractor further acknowledges and agrees that it has independently reviewed the Contract

Documents with legal counsel, and that it and each of its members 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 Party which prepared them, and instead other rules of interpretation and construction shall be utilized.

29.16.3 The final answers to the questions posed during the Proposal process shall in no event be deemed part of the Contract Documents and shall not be relevant in interpreting the Contract Documents except as they may clarify provisions otherwise considered ambiguous.

29.16.4 Headings set forth in the Contract Documents are set forth for convenience and shall not be used to interpret the terms thereof.

29.17 Approvals under Contract Documents.

In all cases where approvals or consents are required to be provided under the Contract Documents by the Mobility Authority, D/B Contractor or other parties thereto, such approvals or consents shall not be withheld unreasonably except in cases where a different standard (such as sole discretion) is specified. In cases where sole discretion is specified, the decision shall not be subject to dispute resolution hereunder.

29.18 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.

29.19 Non-Business Days.

If the date to perform any act or give any notice specified in the Contract Documents falls on a non-Business Day, such act or notice may be timely performed on the next succeeding Business Day. Notwithstanding the foregoing, requirements contained in the Contract Documents relating to actions to be taken in the event of an emergency, and other requirements for which it is clear that performance is intended to occur on a non-Business Day, shall be required to be performed as specified, even though the date in question may fall on a non-Business Day.

29.20 Entire Agreement.

The Contract Documents constitute the entire and exclusive agreement between the Parties relating to the specific matters covered herein and therein. All prior or contemporaneous

oral or written agreements, understandings, representations and/or practices relative to the foregoing are hereby superseded, revoked and rendered ineffective for any purpose.

29.21 Monetary Obligations Subject to Appropriation.

All monetary obligations under the Contract Documents are subject to the availability of funds provided to the Mobility Authority by TxDOT, some or all of which may be subject to appropriation by the Texas Legislature or by the United States Congress. In the event that either the Texas Legislature or the United States Congress fails to appropriate funds required to satisfy the monetary obligations under the Contract Documents, the Mobility Authority shall terminate this D/B Contract pursuant to Section 16, and such termination will not be a default by the Mobility Authority. The Mobility Authority shall only be obligated to make payments under the Contract Documents for services rendered through the effective date of any such termination together with D/B Contractor's termination costs, if any, as contemplated by such Section. The Contract Documents do not create a debt under the Texas Constitution.

IN WITNESS WHEREOF, the Parties have executed this D/B Contract as of the date and year first set forth above.

D/B CONTRACTOR: **COLORADO RIVER CONSTRUCTORS,**
an unincorporated joint venture between Fluor Enterprises, Inc.
and Balfour Beatty Infrastructure, Inc.

By: Fluor Enterprises Inc., a California corporation

By: _____
Name: Terry Towle
Title: President, Infrastructure

By: Balfour Beatty Infrastructure, Inc., a Delaware corporation

By: _____
Name: John Rempe
Title: Vice President

**MOBILITY AUTHORITY: CENTRAL TEXAS REGIONAL MOBILITY
AUTHORITY**

By: _____
Name: Mike Heiligenstein
Title: Executive Director

**GENERAL MEETING OF THE BOARD OF DIRECTORS
OF THE
CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY**

RESOLUTION NO. 15-___

**APPROVING AND AUTHORIZING EXECUTION OF A DESIGN-BUILD
CONTRACT WITH COLORADO RIVER CONSTRUCTORS
FOR THE 183 SOUTH (BERGSTROM EXPRESSWAY) PROJECT.**

WHEREAS, by Resolution No. 15-032 approved May 27, 2015, the Board of Directors authorized the Executive Director to negotiate and finalize a design-build contract with Colorado River Constructors (an entity to be formed by Fluor and Balfour Beatty Infrastructure) for construction of the 183 South (Bergstrom Expressway) Project and to present that final proposed agreement to the Board for its approval; and

WHEREAS, the Mobility Authority staff and its consultants have negotiated a final proposed design-build contract with Colorado River Constructors, and the Executive Director recommends Board approval of the proposed design-build contract provided in the form or substantially in the same form provided to the Board as agenda backup information.

NOW THEREFORE, BE IT RESOLVED, that the Board of Directors hereby approves the proposed design-build contract with Colorado River Constructors in the form or substantially in the same form provided to the Board as agenda backup information; and

BE IT FURTHER RESOLVED, that Board of Directors authorizes the Executive Director to complete and execute on behalf of the Mobility Authority the design-build contract with Colorado River Constructors in the form or substantially in the same form provided to the Board as agenda backup information.

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 29th day of July, 2015.

Submitted and reviewed by:

Approved:

Andrew Martin, General Counsel

Ray A. Wilkerson
Chairman, Board of Directors