

TEXAS DEPARTMENT OF TRANSPORTATION
TECHNICAL PROVISIONS
FOR
SH 99 GRAND PARKWAY SEGMENTS H, I-1 AND I-2

ATTACHMENT 6-1

UTILITY FORMS

ADDENDUM #1
JUNE 25, 2015

County: _____
ROW CSJ No.: _____
Const. CSJ No.: _____
Highway: _____
Fed. Proj. No.: _____
Limits: _____ to _____

EXHIBIT A

PLANS, SPECIFICATIONS, COST ESTIMATES AND ALLOCATION

County: _____
ROW CSJ No.: _____
Const. CSJ No.: _____
Highway: _____
Fed. Proj. No.: _____
Limits: _____ to _____

EXHIBIT B

**UTILITY ADJUSTMENT AGREEMENT AMENDMENT
(SPD ROW-U-UAAA-DM)**

County: _____
ROW CSJ No.: _____
Const. CSJ No.: _____
Highway: _____
Fed. Proj. No.: _____
Limits: _____ to _____

EXHIBIT A

PLANS, SPECIFICATIONS, COST ESTIMATES AND ALLOCATION

County: _____
ROW CSJ No.: _____
Const. CSJ No.: _____
Highway: _____
Fed. Proj. No.: _____
Limits: _____ to _____

EXHIBIT B

**UTILITY ADJUSTMENT AGREEMENT AMENDMENT
(SPD ROW-U-UAAA-OM)**



District: []
 County: []
 CSJ No.: []
 Highway: []
 Limits: []
 Fed. Proj. No.: []

AFFIDAVIT
 (Utility Owner)

Agreement No. []

STATE OF TEXAS §

COUNTY OF §

WHEREAS, the State of Texas, acting by and through the Texas Department of Transportation, herein called TxDOT, has deemed it necessary to make certain highway improvements on Highway [] in [] County, Texas, from [] to [];

WHEREAS, it is anticipated that the hereinabove mentioned improvements will affect the facilities of [] hereinafter called the **Owner**, at the following described locations: [];

WHEREAS, TxDOT has requested that the **Owner** furnish to the information relative to interests that Owner hold in lands at each of the hereinabove referenced locations;

NOW THEREFORE, before me, the undersigned authority, this day personally appeared [], who, after being by me duly sworn, did depose and say:

That he/she is [] of [] and, as such, has knowledge of the facts contained herein; and

That, to the best of his/her knowledge, said **Owner** is the owner of the following described interests in the hereinabove-indicated lands, copies of the instruments under which said **Owner** claims said interests being attached hereto and made a part hereof.

 Signature

 Title

 Company



ACKNOWLEDGMENT

State of Texas
County of _____

Sworn to and subscribed before me this _____ day of _____, A.D. 20_____.

[Insert Seal]

Notary Public, State of Texas

My Commission expires:



District: [] County: []
ROW CSJ No.: [] Highway: []
Fed. Proj. No.: [] Limits: []

AFFIDAVIT
(Disinterested Party)

Agreement No. []

STATE OF TEXAS §

COUNTY OF §

BEFORE ME, THE UNDERSIGNED AUTHORITY, on this day personally appeared [], who after being by me duly sworn upon his/her oath deposes and says as follows:

I, [], am over the age of 18 years and am fully competent to testify to the matters set forth in this Affidavit. I have personal knowledge of all facts and swear that such facts are true and correct.

- 1. My current residence is [Address #1] [Address #2], [City], Texas;
2. I am familiar with the land that is the subject of this Affidavit because [] (reason for knowledge - i.e., county commissioner, agricultural agent);
3. I have personal knowledge that [] ("Utility") has occupied [] (description of land) for a period of [] years; and
4. The Utility has occupied the land by the placing of [] (i.e., electric poles and lines, water lines, etc.) and said facilities have been present continuously during the period of the Utility's occupation.

Signature

ACKNOWLEDGMENT

State of Texas
County of []

Sworn to and subscribed before me this [] day of [], A.D. 20 [].

[Insert Seal]

Notary Public, State of Texas

My Commission expires:
[]



District: []

County: []

ROW CSJ No.: []

Highway: []

Fed. Proj. No.: []

Limits: []

AFFIDAVIT
(Property Owner)

Agreement No. []

STATE OF TEXAS §

COUNTY OF §

BEFORE ME, THE UNDERSIGNED AUTHORITY, on this day personally appeared [], who after being by me duly sworn upon his/her oath deposes and says as follows:

I, _____, am over the age of 18 years and am fully competent to testify to the matters set forth in this Affidavit. I have personal knowledge of all facts and swear that such facts are true and correct.

1. My current residence is [Address #1] [Address #2], [City], Texas;
2. I have lived at the above residence for _____ years, and am familiar with the land that is the subject of this Affidavit;
3. I have personal knowledge that _____ (“Utility”) has occupied _____ (*description of land*) for a period of _____ years; and
4. The Utility has occupied the land by the placing of _____ (*i.e., electric poles and lines, water lines, etc.*) and said facilities have been present continuously during the period of the Utility’s occupation.

Signature

ACKNOWLEDGMENT

State of Texas
County of _____

Sworn to and subscribed before me this _____ day of _____, A.D. 20_____.

[Insert Seal]

Notary Public, State of Texas

My Commission expires:



County: _____
ROW CSJ No.: _____
Const. CSJ No.: _____
Highway: _____
Fed. Proj. No.: _____
Limits: _____ to _____

EXHIBIT C

STATEMENT COVERING CONTRACT WORK



STATEMENT COVERING UTILITY CONSTRUCTION CONTRACT WORK

(AS APPEARING IN ESTIMATE)

U-No. _____

District: _____

County: _____

ROW CSJ No.: _____

Federal Project No.: _____

Highway No.: _____

I, _____, a duly authorized and qualified representative of _____, hereinafter referred to as **Owner**, am fully cognizant of the facts and make the following statements in respect to work which will or may be done on a contract basis as appears in the estimate to which this statement is attached.

It is more economical and/or expedient for **Owner** to contract this adjustment, or **Owner** is not adequately staffed or equipped to perform the necessary work on this project with its own forces to the extent as indicated on the estimate.

Procedure to be Used in Contracting Work

- A. Solicitation for bids is to be accomplished through open advertising and contract is to be awarded to the lowest qualified bidder who submits a proposal in conformity with the requirements and specifications for the work to be performed.
- B. Solicitation for bids is to be accomplished by circulating to a list of pre-qualified contractors or known qualified contractors and such contract is to be awarded to the lowest qualified bidder who submits a proposal in conformity with the requirements and specifications for the work to be performed. Such presently known contractors are listed below:
 - 1. _____
 - 2. _____
 - 3. _____
 - 4. _____
 - 5. _____
- C. The work is to be performed under an existing continuing contract under which certain work is regularly performed for **Owner** and under which the lowest available costs are developed. (If only part of the contract work is to be done under an existing contract, give detailed information by attachment hereto.)
- D. The utility proposes to contract outside the foregoing requirements and therefore evidence in



support of its proposal is attached to the estimate in order to obtain the concurrence of the State, and the Federal Highway Administration Division Engineer where applicable, prior to taking action thereon (approval of the agreement shall be considered as approval of such proposal).

- E. The utility plans and specifications, with the consent of the State, will be included in the construction contract awarded by the State.

[Signature of Officer/Representative]

Date

[Title of Officer/Representative]



Utility Installation Request

PERMIT NUMBER		
GLOBAL POSITIONING SYSTEM COORDINATES (GPS) NORTH AMERICAN DATUM 1983, (1993 ADJUSTMENT) IN DECIMAL DEGREES(DD)		
	LATITUDE (DD)	LONGITUDE (DD)
BEGIN		
END		

To the Texas Transportation Commission
c/o District Engineer, Texas Department of Transportation
_____, Texas

Date: _____

Formal notice is hereby given that _____
proposes to place a _____
line within the right of way of _____, RM _____, Displ. _____, to RM _____, Displ. _____, in _____
County Texas, MNT Sec. No. _____ as follows: (give location, length, general design, etc. Use
additional sheet as needed)

We will construct and maintain the line on the highway right of way as shown on the attached drawing and in accordance with the rules, regulations and policies of the Texas Department of Transportation (TxDOT), and all governing laws, including, but not limited to, the "Texas Engineering Practice Act," "Federal Clean Water Act," the "National Endangered Species Act," "Americans with Disabilities Act," and the "Federal Historic Preservation Act." Upon request by TxDOT at any time, we will submit to TxDOT proof of compliance with all governing laws, rules and regulations before commencement of construction. Plans shall include the design, proposed location, vertical elevations, and horizontal alignments of the facility based on the department's survey datum, the relationship to existing highway facilities and the right of way line, traffic safety and access procedures, and location of existing utilities that may be affected by the proposed utility facility. The location and description of the proposed line and appurtenances is more fully shown by a complete set of drawings attached to this Utility Installation Request (Request). We will give plans to TxDOT for each future proposed modification or expansion to our facility and TxDOT will have 30 days to review and approve the plans prior to commencement of the work. A new Request may be required as a condition of approval. Our organization will use Best Management Practices to minimize erosion and sedimentation resulting from the proposed installation, and we will revegetate the project area as indicated under "Revegetation Special Provisions." We will also ensure that traffic control measures complying with applicable portions of the Texas Manual of Uniform Traffic Control Devices will be installed and maintained for the duration of this installation.

When installing, modifying or maintaining our utility on controlled access facilities, we shall conform to the Texas Transportation Code, Title 6 Roadways, Chapter 203, Subchapter C, Control of Access, §203.031 (<http://www.statutes.legis.state.tx.us/>). We shall limit access for servicing this installation to access via (a) frontage roads where provided, (b) nearby or adjacent public roads or streets, (c) trails along or near the highway right of way lines, connecting only to an intersecting road; from any one or all of which entry may be made to the outer portion of the highway right of way for normal service and maintenance operations. Our rights of access to the through traffic roadways and ramps shall be subject to the same rules and regulations that apply to the general public.

It is expressly understood that TxDOT does not purport hereby to grant any right, claim, title or easement in or upon highway right of way. TxDOT may require us to relocate this line, subject to the provisions of governing laws, by giving us at least 30 days written notice. We understand a new Request will be required for the relocation. We will notify TxDOT prior to commencement of any operation which requires pruning of trees so that TxDOT may provide specifications to govern performance of work, including trimming, topping, tree balance, type of cuts, painting cuts and



clean up. We understand that these specifications are intended to preserve TxDOT's considerable investment in highway beautification plantings and by reducing damage due to trimming and to protect known endangered species.

Our installation shall not damage any part of the roadway structure or associated appurtenances. We will make adequate provisions to cause minimum inconveniences to the traveling public and adjacent property owners. We will not open-cut driveways or intersecting roadways without specific written permission from the owner.

Following approval, we will begin construction on or after _____
Month / Day / Year

We understand TxDOT may place additional provisions and requirements as listed below, based upon, but not limited to, the type of utility being installed, local site conditions, soil types and traffic.

Additional Provisions and Requirements (for TxDOT input only)
• General Special Provisions:
<input checked="" type="checkbox"/> Are attached.
<input type="checkbox"/> Are not attached.
• As-built Plans/Certifications of Construction:
<input type="checkbox"/> Are required and shall be certified as accurate by an authorized representative of the company.
<input type="checkbox"/> Are required and shall be signed and sealed by a State of Texas Licensed Professional Engineer.
<input type="checkbox"/> Are not required
<input type="checkbox"/> Certification that utility was installed as approved
• Re-vegetation Special Provisions: In order to minimize erosion and sedimentation resulting from the proposed installation, the project area will be re-vegetated:
<input type="checkbox"/> In accordance with TxDOT's Standard Specification Item 164 which specifies the appropriate grass seed mix to be used; or
<input type="checkbox"/> As indicated on the attachment.
TxDOT Representative to be notified 48 hours prior to beginning construction:

If approved, we understand we will assume all risks associated with this installation within the TxDOT right of way. These risks include injuries to our workers, damage to contiguous utility lines that may be in the area and injuries or damage resulting from our failure to properly install and maintain the line.

If the character, use or function of our installation is materially changed from that approved under this Request, we will notify TxDOT within 30 days after the change. In the event of a voluntary or involuntary loss of public utility status, or other legal authority for longitudinal placement of the utility facility in the highway, or there is an abandonment of the facility without the approval of TxDOT, we will, at our expense, remove the unauthorized portion of the facility from the right of way.

If installation of the line is not begun prior to the 91st calendar day from date of issuance, we acknowledge that, unless otherwise extended, TxDOT's approval of this Request will automatically **expire**, and we will be required to resubmit our Request. All Request submissions, whether due to expiration of approval under this paragraph or new Requests for modifications and relocations shall be in accordance with the governing laws, rules, regulations and policies existing at the time of submission. In the event we fail to comply with any or all of the requirements as set forth in this Request, the State may take such action as it deems appropriate to compel our compliance.

By signing as/for the requestor below, I certify that I am authorized to represent the requestor, that I agree to the provisions and requirements included in this Utility Installation Request, and our commencement of construction will further attest to our review and acceptance of said additional provisions and requirements.



REQUESTOR	APPROVED BY TXDOT
Date:	Date:
By:	By: Donald C. Toner, Jr., SR/WA
Signature:	Signature:
Title:	Title: Director, SPD Right of Way
Address:	Address: TxDOT – SPD ROW Office
	125 E 11th Street
	Austin, TX 78701-2483
City State Zip Code	City State Zip Code
()	(512) 531 - 5904
Area Code Telephone Number	Area Code Telephone Number

GENERAL SPECIAL PROVISION

1. Requestor agrees to perform all project coordination, scheduling, notifications, permit requirements and submittals through TxDOT's designated design-build contractor or Developer listed below:

[Insert contractors contact information]



CDA UTILITY ADJUSTMENT CHECKLIST

(To be included with Utility Assembly Submittal)

U-No.: _____

District: _____

Utility Owner: _____

County(ies): _____

CSJ No(s): R-_____ C-_____

Project Limits: _____ to _____

Federal ROW Project No.: _____

Reimbursement (*check one (1) box*): Actual Cost Lump Sum Non-Reimbursable

Alternate Procedure Approval Date: _____

Description of Work (*Approximate from/to stationing and line type*):

Estimated Start Date:	_____, 20____
Estimated Completion or Duration:	_____, 20____
Estimated Total Adjustment Costs:	\$ <u>0.00</u>
Estimated Betterment (<i>in dollars and calculated %</i>):	\$ <u>0.00</u> <u>0%</u>
Estimated Accrued Depreciation:	\$ <u>0.00</u>
Estimated Salvage:	\$ <u>0.00</u>
Credits and Vouchers:	\$ <u>0.00</u>
Eligibility Ratio (<i>calculated and supported %</i>):	\$ <u>0.00</u> <u>0%</u>
Noteworthy Issues/Items:	_____



ASSEMBLY PACKAGE

1. Have the required number of Utility Adjustment Assemblies of which the TxDOT Copy is color coded, been submitted?

Yes No N/A

2. Have the following forms been submitted?

PUAA/UAAA:	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
UJUA:	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
Statement - Contract Work:	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
U-1 Affidavit:	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
Quitclaim Deed:	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
UM/UDC Sign Off:	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>

3. Are all forms submitted complete and correct for the situation/circumstance of the Utility Adjustment?

Yes No N/A

TRANSMITTAL MEMO

4. If the Adjustment has unique characteristics, does the transmittal include explanations and clarifications?

Yes No N/A

5. Has a recommendation for approval been stated?

Yes No N/A

6. If the Utility Adjustment is in more than one (1) RCSJ (Local Jurisdictional Boundary), have the percentages in each jurisdiction been detailed?

Yes No N/A



UTILITY ADJUSTMENT AGREEMENT

7. Have language modifications to the utility agreement been approved by TxDOT?
Yes No N/A
8. Has the Utility consultant-engineering contract been reviewed and approved by the Developer's Utility Manager (UM)?
Yes No N/A

UTILITY ADJUSTMENT PLANS AND SPECIFICATIONS

9. Plans folded so as to fit into 8.5" x 11" file?
Yes No N/A
10. Have the Utility Adjustments been designed for the Proposed Configuration?
Yes No N/A
11. Project or vicinity plan provided?
Yes No N/A
12. Have the plans for the Utility Adjustment been sealed by a Registered Professional Engineer (PE)?
Yes No N/A
13. Has the Utility Owner signed the cover sheet of the plans verifying review and approval, if Developer is responsible for Engineering on either Owner Managed or Developer Managed Agreement?
Yes No N/A
14. Backfill requirements met (item 400 referenced)?
Yes No N/A
15. If excavation is required, do the plans included a note on OSHA trench excavation protection?
Yes No N/A
16. Is a note provided in the plans that the adjustment will conform with the TMUTCD?



17. Yes No N/A
If the adjustment involves a plastic water, sanitary sewer, or gas line, has a metal detection wire been included in the estimate or with detailed in the plans?

Yes No N/A

18. Has Barlow's Formula information been submitted for un-encased high pressure pipelines? (The Barlow's calculation must be provided by the utility owner. The following information is required to complete Barlow's formula. $S = \text{Yield Strength}$, $t = \text{Wall thickness}$, $D = \text{Outside Diameter}$, $F = \text{Design Factor}$. Maximum Operating Pressure must also be given and compared to the pressure calculated with Barlow's. The Barlow calculation must be shown with the submission.)

Yes No N/A

19. If the pipeline is un-encased, is there adequate coating, wrapping and cathodic protection?

Yes No N/A

20. Information on plans sufficient and adequate to:

Determine necessity and justification of proposed work?

Yes No N/A

Demonstrate Utility Accommodation Rules compliance?

Yes No N/A

Indicate highway stationing, existing and proposed ROW, offsets from proposed ROW, existing and proposed grades, and edge of pavement lines?

Yes No N/A

Provide any other necessary or essential information such as pressure, flow, offset, type, condition, wall thickness, specifications etc.?

Yes No N/A

21. Is this Utility Adjustment within ROW project limits or directly related to work required within project limits?

Yes No N/A

22. Are any of the proposed utility facilities installed longitudinally within a control of access?

Yes No N/A



COST ESTIMATE

23. Has the Developer's Utility Design Coordinator located on the plans the major items of material listed on the estimate by scaling or stationing?

Yes No N/A

24. If the agreed sum method has been marked, has a detailed, itemized estimate and matching plans been provided?

Yes No N/A

25. Is the estimate properly and adequately itemized and detailed?

Yes No N/A

26. Are overheads and loadings checked for reasonableness?

Yes No N/A

27. Replacement utility ROW charges justified and supported?

Yes No N/A

28. Eligibility ratio calculated and recommended?

Yes No N/A

29. Betterment credit applicable?

Yes No N/A

If yes, is credit calculated and applied properly?

Yes No N/A

30. Accrued Depreciation credit applicable?

Yes No N/A

If yes, is credit calculated and applied properly?



31. Yes No N/A
Salvage credit applicable?

Yes No N/A

If yes, is credit applied properly?

Yes No N/A

32. Estimate extensions checked?

Yes No N/A

AFFIDAVIT OF PROPERTY INTEREST

33. Proof of compensable property interest established by utility where applicable?

Yes No N/A

If yes, according to the “**Real Property Interest**” paragraph of the PUA:

Does the estimate detail reimbursement for “New Property” interest?

Yes No N/A

Does the estimate detail compensation for relinquishing “Existing Property” interest?

Yes No N/A

Did the utility owner provide a letter stating that they will quitclaim their property interest at no costs or an agreed sum if new utility property interests are not being acquired?

Yes No N/A

34. Have the parcel ID numbers to be Quitclaimed been identified?

Yes No N/A

35. Has the owner provided a signed letter of intent to Quitclaim, and has a copy of the correct Quitclaim Deed(s) been submitted?

Yes No N/A



R.O.W. MAPS

36. Approved and current ROW Maps on file with project office?

Yes No N/A

37. Have the existing and proposed utility facilities been plotted on the ROW map and attached to this assembly?

Yes No N/A

COMMENTS: _____

Prepared by: _____
 Utility Design Coordinator Date

Recommended for Approval by: _____
 Quality Control Date

Approved by: _____
 Utility Manager Date



County: _____
 ROW CSJ No.: _____
 Const. CSJ No.: _____
 Highway: _____
 Fed. Proj. No.: _____
 Limits: _____ to _____

**PROJECT UTILITY ADJUSTMENT AGREEMENT
 (DB Contractor-Managed)**

Agreement No.: _____ -U- _____

THIS AGREEMENT, by and between [DB Contractor], hereinafter identified as the “**DB Contractor**” and [Utility Owner], hereinafter identified as the “**Owner**”, is as follows:

WITNESSETH

WHEREAS, the STATE OF TEXAS, acting by and through the Texas Department of Transportation, hereinafter identified as “TxDOT”, is authorized to design, construct, operate, maintain, and improve projects as part of the state highway system throughout the State of Texas, all in conformance with the applicable provisions of Chapters 201, 203, 222, 223, 224 and 228 of the Texas Transportation Code, as amended; and

WHEREAS, the TxDOT proposes to construct a project identified as [Project Name] (the “Project”) and classified as either Interstate, Toll or Traditional (meaning eligibility based on existing compensable interest in the land occupied by the facility to be relocated within the proposed highway right of way limits) as indicated below (*check one (1) box*). Reimbursement will be authorized by the type of project selected below in conformance with §203.092 of the Transportation Code,

- Interstate
- Toll
- Traditional

; and

WHEREAS, pursuant to that certain Comprehensive Development Agreement (the “CDA”) by and between TxDOT and the DB Contractor with respect to the Project, the DB Contractor has undertaken the obligation to design, construct, finance, operate and maintain the Project and adhere to all requirements in the CDA; and

WHEREAS, the DB Contractor’s duties pursuant to the CDA include causing the relocation, removal or other necessary adjustment of existing Utilities impacted by the Project (collectively, “Adjustment”), subject to the provisions herein; and

WHEREAS, the Project may receive Federal funding, financing and/or credit assistance; and



WHEREAS, the DB Contractor has notified the Owner that certain of its facilities and appurtenances (the “Owner Utilities”) are in locational conflict with the Project (and/or with the Ultimate Configuration of the Project), and the Owner has requested that the DB Contractor undertake the Adjustment of the Owner Utilities as necessary to accommodate the Project (and the Ultimate Configuration) and the Owner agrees that the “Project” will be constructed in accordance with §203.092 of the Texas Transportation Code, as amended, and 23 CFR 645 Subpart A (Utility Relocations, Adjustments and Reimbursement); and

WHEREAS, the Owner Utilities and the proposed Adjustment of the Owner Utilities are described as follows *[insert below a description of the affected facilities (by type, size and location) as well as a brief description of the nature of the Adjustment work to be performed (e.g., “adjust 12” waterline from approximately Highway Station 100+00 to approximately Highway Station 200+00)]*:

____; and

WHEREAS, the Owner recognizes that time is of the essence in completing the work contemplated herein; and

WHEREAS, the DB Contractor and the Owner desire to implement the Adjustment of the Owner Utilities by entering into this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of these premises and of the mutual covenants and agreements of the parties hereto and other good and valuable consideration, the receipt and sufficiency of which being hereby acknowledged, the DB Contractor and the Owner agree as follows:

1. **Preparation of Plans.** *[Check one (1) box that applies:]*

The DB Contractor has hired engineering firm(s) acceptable to the Owner to perform all engineering services needed for the preparation of plans, required specifications, and cost estimates, attached hereto as Exhibit A (collectively, the “Plans”), for the proposed Adjustment of the Owner Utilities. The DB Contractor represents and warrants that the Plans conform to the most recent Utility Accommodation Rules issued by the Texas Department of Transportation (“TxDOT”), as set forth in 43 Texas Administrative Code Part 1, Chapter 21, Subchapter C, *et seq.* (the “UAR”). By its execution of this Agreement or by the signing of the Plans, the Owner hereby approves and confirms that the Plans are in compliance with the “standards” described in Paragraph 3(a)(4).

The Owner has provided plans, required specifications and cost estimates, attached hereto as Exhibit A (collectively, the “Plans”), for the proposed Adjustment of the Owner Utilities. The Owner represents and warrants that the Plans conform to the most recent Utility Accommodation Rules issued by the Texas Department of Transportation (“TxDOT”), as set forth in 43 Texas Administrative Code Part 1, Chapter 21, Subchapter C, *et seq.* (the “UAR”). By its execution of this Agreement, the DB Contractor and the Owner hereby approve the Plans. The Owner also has provided to the DB Contractor a Utility plan view map illustrating the location of existing and proposed Utility facilities on the DB Contractor’s right of way map of the Project. With regard to its preparation of the Plans, the Owner represents as follows *[check one (1) box that applies]*:



- The Owner's employees were utilized to prepare the Plans, and the charges therefore do not exceed the Owner's typical costs for such work.
- The Owner utilized consulting engineers to prepare the Plans, and the fees for such work are not based upon a percentage of construction costs. Further, such fees encompass only the work necessary to prepare the Plans for Adjustment of the Owner Utilities described herein, and do not include fees for work done on any other project. The fees of the consulting engineers are reasonable and are comparable to the fees typically charged by consulting engineers in the locale of the Project for comparable work for the Owner.

2. **Review by TxDOT.** The parties hereto acknowledge and agree as follows:

- (a) Upon execution of this Agreement by the DB Contractor and the Owner, the DB Contractor will submit this Agreement, together with the attached Plans, to TxDOT for its review and approval as part of a package referred to as a "Utility Assembly". The parties agree to cooperate in good faith to modify this Agreement and/or the Plans, as necessary and mutually acceptable to all parties, to respond to any comments made by TxDOT thereon. Without limiting the generality of the foregoing:
 - (1) The Owner agrees to respond (with comment and/or acceptance) to any modified Plans and/or Agreement prepared by the DB Contractor in response to TxDOT comments within **14 Business Days** after receipt of such modifications; and
 - (2) If the Owner originally prepared the Plans, the Owner agrees to modify the Plans in response to TxDOT comments and to submit such modified Plans to the DB Contractor for its comment and/or approval (and re-submittal to TxDOT for its comment and/or approval) within **14 Business Days** after receipt of TxDOT's comments.

The Owner's failure to timely respond to any modified Plans submitted by the DB Contractor pursuant to this paragraph shall be deemed the Owner's approval of same. If the Owner fails to timely prepare modified Plans which are its responsibility hereunder, then the DB Contractor shall have the right to modify the Plans for the Owner's approval as if the DB Contractor had originally prepared the Plans. The process set forth in this paragraph will be repeated until the Owner, the DB Contractor and TxDOT have all approved this Agreement and the Plans.

- (b) The parties hereto acknowledge and agree that TxDOT's review, comments and approval of a Utility Assembly or any component thereof shall constitute TxDOT's approval of the location and manner in which a Utility Assembly will be installed, adjusted, or relocated within the State Highway right of way (the "ROW"), subject to the DB Contractor and the Owner's satisfactory performance of the Adjustment work in accordance with the approved Plans. TxDOT has no duty to review Owner Utilities or components for their quality or adequacy to provide the intended Utility service.



3. **Design and Construction Standards.**

- (a) All design and construction performed for the Adjustment work which is the subject of this Agreement shall comply with and conform to the following:
- (1) All applicable local and State Laws, regulations, decrees, ordinances and policies, including the UAR, the *Utility Manual* issued by TxDOT (to the extent its requirements are mandatory for the Utility Adjustment necessitated by the Project, as communicated to the Owner by the DB Contractor or TxDOT), the requirements of the CDA, and the policies of TxDOT;
 - (2) All Federal Laws, regulations, decrees, ordinances and policies applicable to projects receiving Federal funding, financing and/or credit assistance, including without limitation, 23 CFR 645 Subpart A and B; and the Buy America provisions of 23 U.S.C. §313 and 23 CFR 635.410. The Utility Owner shall supply, upon request by the DB Contractor or TxDOT, proof of compliance with the aforementioned Laws, rules and regulations prior to the commencement of construction;
 - (3) The terms of all governmental permits or other approvals, as well as any private approvals of third parties necessary for such work;
 - (4) The standard specifications, standards of practice, and construction methods (collectively, "standards") which the Owner customarily applies to Utility facilities comparable to the Owner Utilities that are constructed by the Owner or for the Owner by its contractors at the Owner's expense, which standards are current at the time this Agreement is signed by the Owner, and which the Owner has submitted to the DB Contractor in writing; and
 - (5) Owner agrees that all service matters must be placed outside of the State ROW.
- (b) Such design and construction also shall be consistent and compatible with:
- (1) The DB Contractor's current design and construction of the Project;
 - (2) The Ultimate Configuration for the Project; and
 - (3) Any other Utilities being installed in the same vicinity.

The Owner acknowledges receipt of Project plans and Ultimate Configuration documents from the DB Contractor as necessary to comply with the foregoing. In case of any inconsistency among any of the standards referenced in this Agreement, the most stringent standard shall apply.

- (c) The plans, specifications, and cost estimates contained in Exhibit A shall identify and detail all Utility facilities that the Owner intends to abandon in place rather than remove, including material type, quantity, size, age and condition. No facilities containing hazardous or contaminated materials may be abandoned, but shall be specifically



identified and removed in accordance with the requirements of subparagraph (a). It is understood and agreed that the DB Contractor shall not pay for the assessment and remediation or other corrective action relating to soil and ground water contamination caused by the Utility facility prior to the removal.

4. **Responsibility for Costs of Adjustment Work.** With the exception of any Betterment (hereinafter defined), the parties shall allocate the cost of any Adjustment between themselves as identified in Exhibit A and in accordance with §203.092 of the Texas Transportation Code. An allocation percentage may be determined by application of an eligibility ratio, if appropriate, as detailed in Exhibit A.

5. **Construction by the DB Contractor.**

- (a) The Owner hereby requests that the DB Contractor perform the construction necessary to adjust the Owner Utilities and the DB Contractor hereby agrees to perform such construction. All construction work hereunder shall be performed in a good and workmanlike manner, and in accordance with the Plans (except as modified pursuant to Paragraph 16).
- (b) The DB Contractor shall retain such contractor or contractors as are necessary to adjust the Owner Utilities.
- (c) The DB Contractor shall obtain all permits necessary for the construction to be performed by the DB Contractor hereunder, and the Owner shall cooperate in that process as needed.

6. **Reimbursement of Owner's Indirect Costs.**

- (a) DB Contractor agrees to reimburse the Owner its share, if applicable, of the Owner's indirect costs (e.g., engineering, inspection, testing, ROW) as identified in Exhibit A. When requested by the Owner, monthly progress payments will be made. The monthly payment will not exceed 90% of the estimated indirect work done to date. Once the indirect work is complete, final payment of the eligible indirect costs will be made. Intermediate payments shall not be construed as final payment for any items included in the intermediate payment.
- (b) The Owner's indirect costs associated with Adjustment of the Owner Utilities shall be developed pursuant to the method checked and described below [*check only one (1) box*]:

- (1) Actual related indirect costs accumulated in accordance with:
 - (i) A work order accounting procedure prescribed by the applicable Federal or State regulatory body, or
 - (ii) Established accounting procedure developed by the Owner and which the Owner uses in its regular operations

(either (i) or (ii) referred to as "Actual Cost"), OR



(2) The agreed sum of \$_____ (“**Agreed Sum**”) as supported by the analysis of the Owner’s estimated costs attached hereto as part of Exhibit A.

(c) All indirect costs charged to the DB Contractor by the Owner shall be reasonable and shall be computed using rates and schedules not exceeding those applicable to similar work performed by or for the Owner at the Owner’s expense. The DB Contractor’s performance of the Adjustment work hereunder and payment of the DB Contractor’s share of the Owner’s costs pursuant to this Agreement, if applicable, shall be full compensation to the Owner for all costs incurred by the Owner in adjusting the Owner Utilities (including without limitation, costs of relinquishing and/or acquiring right of way).

7. **Advancement of Funds by Owner for Construction Costs.**

(a) Advancement of Owner’s share, if any, of estimated costs, Exhibit A shall identify all estimated engineering and construction-related costs, including labor, material, equipment and other miscellaneous construction items. Exhibit A shall also identify the Owner’s and DB Contractor’s respective shares of the estimated costs. The Owner shall advance to the DB Contractor its allocated share, if any, of the estimated costs for construction and engineering work to be performed by the DB Contractor, in accordance with the following terms:

- The Adjustment of the Owner’s Utilities does not require advancement of funds.
- The Adjustment of the Owner’s Utilities does require advancement of funds and the terms agreed to between the DB Contractor and the Owner are listed below.

[Insert terms of advance funding to be agreed between DB Contractor and Owner]

(b) Adjustment Based on Actual Costs or Agreed Sum

[Check the one (1) appropriate provision, if advancement of funds is required]:

- The Owner is responsible for its share of the DB Contractor’s actual cost for the Adjustment, including the identified Betterment. Accordingly, upon completion of all Adjustment work to be performed by both parties pursuant to this Agreement, (i) the Owner shall pay to the DB Contractor the amount, if any, by which the actual cost of the Betterment (as determined in Paragraph 9(b)) *plus* the actual cost of Owner’s share of the Adjustment (based on the allocation set forth in Exhibit A) exceeds the estimated cost advanced by the Owner, or (ii) the DB Contractor shall refund to the Owner the amount, if any, by which such advance exceeds such actual cost, as applicable.
- The Agreed Sum is the agreed and final amount due for the Adjustment, including any Betterment, under this Agreement. Accordingly, no adjustment (either up or down) of such amount shall be made based on actual costs.



8. **Invoices.** On invoices prepared by either the Owner or the DB Contractor, all costs developed using the “**Actual Cost**” method described in Paragraph 6(b)(1) shall be itemized in a format allowing for comparisons to the approved estimates, including listing each of the services performed, the amount of time spent and the date on which the service was performed. The original and three (3) copies of each invoice, together with (i) such supporting information to substantiate all invoices as reasonably requested, and (ii) such waivers and releases of liens as the other party may reasonably require, shall be submitted to the other party at the address for notices stated in Paragraph 21, unless otherwise directed pursuant to Paragraph 22.

The Owner and the DB Contractor shall make commercially reasonable efforts to submit final invoices no later than 120 days after completion of work. The Owner and the DB Contractor hereby acknowledge and agree that any costs submitted to the other party within 12 months following completion of all Adjustment work to be performed by the parties pursuant to this Agreement shall be deemed to have been abandoned and waived.

9. **Betterment and Salvage.**

- (a) For purposes of this Agreement, the term “Betterment” means any upgrading of an Owner Utility being adjusted that is not attributable to the construction of the Project and is made solely for the benefit of and at the election of the Owner, including but not limited to an increase in the capacity, capability, efficiency or function of the adjusted Utility over that provided by the existing Utility or an expansion of the existing Utility; *provided, however,* that the following are not considered Betterments:

- (1) Any upgrading which is required for accommodation of the Project;
- (2) Replacement devices or materials that are of equivalent standards although not identical;
- (3) Replacement of devices or materials no longer regularly manufactured with the next highest grade or size;
- (4) Any upgrading required by applicable Laws, regulations or ordinances;
- (5) Replacement devices or materials which are used for reasons of economy (e.g., non-stocked items that may be uneconomical to purchase); or
- (6) Any upgrading required by the Owner’s written “standards” meeting the requirements of Paragraph 3(a)(4) and deemed to be of direct benefit to the Project.

[Include the following for fiber optic Owner Utilities only:] Extension of an adjustment to the nearest splice boxes shall not be considered a Betterment if required by the Owner in order to maintain its written telephony standards.

- (b) It is understood and agreed that the DB Contractor shall not pay for any Betterments and that the Owner shall be solely responsible therefor. No Betterment may be performed hereunder which is incompatible with the Project or the Ultimate Configuration or which



cannot be performed within the other constraints of applicable Law, any applicable governmental approvals, including without limitation the scheduling requirements thereunder.

Accordingly, the parties agree as follows [check the one (1) box that applies, and complete if appropriate]:

- The Adjustment of the Owner Utilities pursuant to the Plans does not include any Betterment.
- The Adjustment of the Owner Utilities pursuant to the Plans includes a Betterment to the Owner Utilities by reason of [Insert explanation, e.g. "replacing 12" pipe with 24" pipe]: _____.

The DB Contractor has provided to the Owner comparative estimates for (i) all work to be performed by the DB Contractor pursuant to this Agreement, including work attributable to the Betterment, and (ii) the cost to perform such work without the Betterment, which estimates are hereby approved by the Owner. The estimated cost of the DB Contractor's work hereunder which is attributable to Betterment is \$_____, calculated by *subtracting* (ii) from (i). The percentage of the total cost of the DB Contractor's work hereunder which is attributable to Betterment is _____%, calculated by *subtracting* (ii) from (i), which remainder is *divided* by (i).

- (c) If Paragraph 9(b) identifies Betterment, the Owner shall advance to the DB Contractor, at least **14 Business Days** prior to the date scheduled for commencement of construction for Adjustment of the Owner Utilities, the estimated cost attributable to Betterment as set forth in Paragraph 9(b). Should the Owner fail to advance payment to the DB Contractor **14 Business Days** prior to commencement of the Adjustment construction, the DB Contractor shall have the option of commencing and completing (without delay) the Adjustment work without installation of the applicable Betterment. [If Paragraph 9(b) identifies Betterment, check the one (1) appropriate provision]:

- The estimated cost stated in Paragraph 9(b) is the agreed and final amount due for Betterment hereunder, and accordingly no adjustment (either up or down) of such amount shall be made based on actual costs.
- The Owner is responsible for the DB Contractor's actual cost for the identified Betterment. Accordingly, upon completion of all Adjustment work to be performed by both parties pursuant to this Agreement, (i) the Owner shall pay to the DB Contractor the amount, if any, by which the actual cost of the Betterment (determined as provided below in this paragraph) exceeds the estimated cost advanced by the Owner, or (ii) the DB Contractor shall refund to the Owner the amount, if any, by which such advance exceeds such actual cost, as applicable. Any additional payment by the Owner shall be due within **60 calendar days** after the Owner's receipt of the DB Contractor's invoice therefor, together with supporting documentation; any refund shall be due within **60 calendar days** after completion of the Adjustment work hereunder. The actual cost of Betterment incurred by the DB Contractor shall be calculated by *multiplying* (i) the



Betterment percentage stated in Paragraph 9(b), by (ii) the actual cost of all work performed by the DB Contractor pursuant to this Agreement (including work attributable to the Betterment), as invoiced by the DB Contractor to the Owner.

- (d) If Paragraph 9(b) identifies Betterment, the amount allocable to Betterment in the Owner's indirect costs shall be determined by applying the percentage of the Betterment calculated in Paragraph 9(b) to the Owner's indirect costs. The Owner's invoice to the DB Contractor for the DB Contractor's share of the Owner's indirect costs, shall credit the DB Contractor with any Betterment amount determined pursuant to this Paragraph 9(d).
 - (e) For any Adjustment from which the Owner recovers any materials and/or parts and retains or sells the same, after application of any applicable Betterment credit, the Owner's invoice to the DB Contractor for its costs shall credit the DB Contractor with the salvage value for such materials and/or parts.
 - (f) The determinations and calculations of Betterment described in this Paragraph 9 shall exclude right of way acquisition costs. Betterment in connection with right of way acquisition is addressed in Paragraph 15.
10. **Management of the Adjustment Work.** The DB Contractor will provide project management during the Adjustment of the Owner Utilities.
11. **Utility Investigations.** At the DB Contractor's request, the Owner shall assist the DB Contractor in locating any Utilities (including appurtenances) which are owned and/or operated by the Owner and may be impacted by the Project. Without limiting the generality of the foregoing, in order to help assure that neither the adjusted Owner Utilities nor existing, unadjusted Utilities owned or operated by the Utility Owner are damaged during construction of the Project, the Owner shall mark in the field the location of all such Utilities horizontally on the ground in advance of Project construction in the immediate area of such Utilities.
12. **Inspection and Acceptance by the Owner.**
- (a) Throughout the Adjustment construction hereunder, the Owner shall provide adequate inspectors for such construction. The work shall be inspected by the Owner's inspector(s) at least once each working day, and more often if such inspections are deemed necessary by Owner. Further, upon request by the DB Contractor or its Subcontractors, the Owner shall furnish an inspector at any reasonable time in which construction is underway pursuant to this Agreement, including occasions when construction is underway in excess of the usual 40 hour work week and at such other times as reasonably required. The Owner agrees to promptly notify the DB Contractor of any concerns resulting from any such inspection.
 - (b) The Owner shall perform a final inspection of the adjusted Owner Utilities, including conducting any tests as are necessary or appropriate, within **five (5) Business Days** after completion of construction hereunder. The Owner shall accept such construction if it is consistent with the performance standards described in Paragraph 3, by giving written notice of such acceptance to the DB Contractor within said **five (5) day** period. If the Owner does not accept the construction, then the Owner shall, not later than the



expiration of said **five (5) day** period, notify the DB Contractor in writing of its grounds for non-acceptance and suggestions for correcting the problem, and if the suggested corrections are justified, the DB Contractor will comply. The Owner shall re-inspect any revised construction (and retest if appropriate) and give notice of acceptance, no later than **five (5) Business Days** after completion of corrective work. The Owner's failure to inspect and to give any required notice of acceptance or non-acceptance within the specified time period shall be deemed accepted.

- (c) From and after the Owner's acceptance (or deemed acceptance) of an adjusted Owner Utility, the Owner agrees to accept ownership of, and full operation and maintenance responsibility for, such Owner Utility.
13. **Design Changes.** The DB Contractor will be responsible for additional Adjustment design and construction costs necessitated by design changes to the Project, upon the terms specified herein.
14. **Field Modifications.** The DB Contractor shall provide the Owner with documentation of any field modifications, including Utility Adjustment Field Modifications as well as minor changes described in Paragraph 16(b), occurring in the Adjustment of the Owner Utilities.
15. **Real Property Interests.**
- (a) The Owner has provided, or upon execution of this Agreement shall promptly provide to the DB Contractor, documentation acceptable to TxDOT indicating any right, title or interest in real property claimed by the Owner with respect to the Owner Utilities in their existing location(s). Such claims are subject to TxDOT's approval as part of its review of the DB Contractor Utility Assembly as described in Paragraph 2. Claims approved by TxDOT as to rights or interests are referred to herein as "**Existing Utility Property Interests**".
 - (b) If acquisition of any new easement or other interest in real property ("**Replacement Utility Property Interest**") is necessary for the Adjustment of any Owner Utilities, then the Owner shall be responsible for undertaking such acquisition. The Owner shall implement each acquisition hereunder expeditiously so that related Adjustment construction can proceed in accordance with the DB Contractor's Project schedules. The DB Contractor shall be responsible for its share (as specified in Paragraph 4) of the actual and reasonable acquisition costs of any such Replacement Utility Property Interest (including without limitation the Owner's reasonable overhead charges and reasonable legal costs as well as compensation paid to the landowner), excluding any costs attributable to Betterment as described in Paragraph 15(c), and subject to the provisions of Paragraph 15(e); *provided, however*, that all acquisition costs shall be subject to the DB Contractor's prior written approval. Eligible acquisition costs shall be segregated from other costs on the Owner's estimates and invoices. Any such Replacement Utility Property Interest shall have a written valuation and shall be acquired in accordance with applicable Law.
 - (c) The DB Contractor shall pay its share only for a replacement in kind of an Existing Utility Property Interest (e.g., in width and type), unless a Replacement Utility Property Interest exceeding such standard:



- (1) Is required in order to accommodate the Project or by compliance with applicable Law; or
- (2) Is called for by the DB Contractor in the interest of overall Project economy.

Any Replacement Utility Property Interest which is not the DB Contractor's responsibility pursuant to the preceding sentence shall be considered Betterment to the extent that it upgrades the Existing Utility Property Interest which it replaces, or in its entirety if the related Owner Utility was not installed pursuant to an Existing Utility Property Interest. Betterment costs shall be solely the Owner's responsibility.

- (d) For each Existing Utility Property Interest located within the Project right of way, upon completion of the related Adjustment work and its acceptance by the Owner, the Owner agrees to execute a quitclaim deed or other appropriate documentation relinquishing such Existing Utility Property Interest to TxDOT, unless the affected Owner Utility is remaining in its original location or is being reinstalled in a new location within the area subject to such Existing Utility Property Interest. If the Owner's facilities are remaining within the existing property interest, a Utility Joint Use Acknowledgement will be required. All quitclaim deeds or other relinquishment documents shall be subject to TxDOT's approval as part of its review of the Utility Assembly as described in Paragraph 2. For each such Existing Utility Property Interest relinquished by the Owner, the DB Contractor shall do one (1) of the following to compensate the Owner for such Existing Utility Property Interest, as appropriate:
 - (1) If the Owner acquires a Replacement Utility Property Interest for the affected Owner Utility, the DB Contractor shall reimburse the Owner for the DB Contractor's share of the Owner's actual and reasonable acquisition costs in accordance with Paragraph 15(b), subject to Paragraph 15(c); or
 - (2) If the Owner does not acquire a Replacement Utility Property Interest for the affected Owner Utility, the DB Contractor shall compensate the Owner for the DB Contractor's share of the market value of such relinquished Existing Utility Property Interest, as mutually agreed between the Owner and the DB Contractor and supported by a written valuation.

The compensation, if any, provided to the Owner pursuant to either subparagraph (i) or (ii) above shall constitute complete compensation to the Owner for the relinquished Existing Utility Property Interest and any Replacement Utility Property Interest, and not further compensation shall be due to the Owner from the DB Contractor or TxDOT on account of such Existing Utility Property Interest or Replacement Utility Property Interest.

- (e) All Utility Joint Use Acknowledgments (UJUA) or Utility Installation Requests, Form 1082 shall be subject to TxDOT approval as part of its review of the Utility Assembly as described in Paragraph 2. A Utility Joint Use Acknowledgment is required where an Existing Utility Property Interest exists and the existing or proposed Utility will remain or be adjusted within the boundaries of the Existing Utility Property Interest. All other accommodations not located on Existing Utility Property Interests will require a Utility Installation Request, Form 1082.



16. **Amendments and Modifications.** This Agreement may be amended or modified only by a written instrument executed by the parties hereto, in accordance with Paragraph 16(a) or Paragraph 16(b) below:
- (a) Except as otherwise provided in Paragraph 16(b), any amendment or modification to this Agreement or the Plans attached hereto shall be implemented by a Utility Adjustment Agreement Amendment (“UAAA”) in the form of Exhibit B hereto (SPD ROW-U-UAAA-DM). The UAAA form can be used for a new scope of work with concurrence of the DB Contractor and TxDOT as long as the design and construction responsibilities have not changed. Each UAAA is subject to the review and approval of TxDOT, prior to its becoming effective for any purpose and prior to any work being initiated thereunder. The Owner agrees to keep and track costs for each UAAA separately from other work being performed.
 - (b) For purposes of this Paragraph 16(b), “**Utility Adjustment Field Modification**” shall mean any horizontal or vertical design change from the Plans included in a Utility Assembly previously approved by TxDOT, due either to design of the Project or to conditions not accurately reflected in the approved Utility Assembly (e.g., shifting the alignment of an 8 inch water line to miss a modified or new roadway drainage structure). A Utility Adjustment Field Modification agreed upon by the DB Contractor and the Owner does not require a UAAA, provided that the modified Plans have been submitted to TxDOT for its review and comment. A minor change (e.g., an additional water valve, an added Utility marker at a ROW line, a change in vertical bend, etc.) will not be considered a Utility Adjustment Field Modification and will not require a UAAA, but shall be shown in the documentation required pursuant to Paragraph 14.
 - (c) This Agreement does not alter and shall not be construed in any way to alter the obligations, responsibilities, benefits, rights, remedies, and claims between the DB Contractor and TxDOT to design and construct the Project, including the Adjustment.
17. **Entire Agreement.** This Agreement embodies the entire agreement between the parties and there are no oral or written agreements between the parties or any representations made which are not expressly set forth herein.
18. **Assignment; Binding Effect; TxDOT as Third-Party Beneficiary.** Neither the Owner nor the DB Contractor may assign any of its rights or delegate any of its duties under this Agreement without the prior written consent of the other party and of TxDOT, which consent may not be unreasonably withheld or delayed; *provided, however*, that the DB Contractor may assign any of its rights and/or delegate any of its duties to TxDOT or to any other entity engaged by TxDOT to fulfill the DB Contractor’s obligations, at any time without the prior consent of the Owner.

This Agreement shall bind the Owner, the DB Contractor and their successors and permitted assigns, and nothing in this Agreement nor in any approval subsequently provided by any party hereto shall be construed as giving any benefits, rights, remedies, or claims to any other person, firm, corporation or other entity, including, without limitation, any contractor or other party retained for the Adjustment work or the public in general; *provided, however*, that the Owner and the DB Contractor agree that although TxDOT is not a party to this Agreement, TxDOT is intended to be a third-party beneficiary to this Agreement.



19. **Breach by the Parties.**

- (a) If the Owner claims that the DB Contractor has breached any of its obligations under this Agreement, the Owner will notify the DB Contractor and TxDOT in writing of such breach, and the DB Contractor shall have **30 days** following receipt of such notice in which to cure such breach, before the Owner may invoke any remedies which may be available to it as a result of such breach; *provided, however*, that both during and after such period TxDOT shall have the right, but not the obligation, to cure any breach by the DB Contractor. Without limiting the generality of the foregoing:
- (1) TxDOT shall have no liability to the Owner for any act or omission committed by the DB Contractor in connection with this Agreement, including without limitation any claimed defect in any design or construction work supplied by the DB Contractor or by its Subcontractors; and
 - (2) In no event shall TxDOT be responsible for any repairs or maintenance to the Owner Utilities adjusted pursuant to this Agreement.
- (b) If the DB Contractor claims that the Owner has breached any of its obligations under this Agreement, the DB Contractor will notify the Owner and TxDOT in writing of such breach, and the Owner shall have **30 days** following receipt of such notice in which to cure such breach, before the DB Contractor may invoke any remedies which may be available to it as a result of such breach.

20. **Traffic Control.** The DB Contractor shall provide traffic control or shall reimburse the Owner for the DB Contractor's share (if any, as specified in Paragraph 4) of the costs for traffic control made necessary by the Adjustment work performed by either the DB Contractor or the Owner pursuant to this Agreement, in compliance with the requirements of the Texas *Manual on Uniform Traffic Control Devices*. Betterment percentages calculated in Paragraph 9 shall also apply to traffic control costs.



such Approval, and every effort shall be made to identify with as much detail as possible what changes are required for Approval; and

- (c) Except for approvals by TxDOT, and except as may be specifically provided otherwise in this Agreement, shall be deemed granted if no response is provided to the party requesting an Approval within the time period prescribed by this Agreement (or if no time period is prescribed, then **14 calendar days**), commencing upon actual receipt by the party from which an Approval is requested or required, of a request for Approval from the requesting party. All requests for Approval shall be sent out by the requesting party to the other party in accordance with Paragraph 21.

23. **Time.**

- (a) Time is of the essence in the performance of this Agreement.
- (b) All references to “days” herein shall be construed to refer to calendar days, unless otherwise stated.
- (c) No party shall be liable to another party for any delay in performance under this Agreement from any cause beyond its control and without its fault or negligence (“**Force Majeure**”), such as acts of God, acts of civil or military authority, fire, earthquake, strike, unusually severe weather, floods or power blackouts.

24. **Continuing Performance.** In the event of a dispute, the Owner and the DB Contractor agree to continue their respective performance hereunder to the extent feasible in light of the dispute, including paying billings, and such continuation of efforts and payment of billings shall not be construed as a waiver of any legal right.

25. **Equitable Relief.** The DB Contractor and the Owner acknowledge and agree that delays in Adjustment of the Owner Utilities will impact the public convenience, safety and welfare, and that (without limiting the parties’ remedies hereunder) monetary damages would be inadequate to compensate for delays in the construction of the Project. Consequently, the parties hereto (and TxDOT as well, as a third-party beneficiary) shall be entitled to specific performance or other equitable relief in the event of any breach of this Agreement which threatens to delay construction of the Project; *provided, however*, that the fact that specific performance or other equitable relief may be granted shall not prejudice any claims for payment or otherwise related to performance of the Adjustment work hereunder.

26. **Authority.** The Owner and the DB Contractor each represent and warrant to the other party that the warranting party possesses the legal authority to enter into this Agreement and that it has taken all actions necessary to exercise that authority and to lawfully authorize its undersigned signatory to execute this Agreement and to bind such party to its terms. Each person executing this Agreement on behalf of a party warrants that he or she is duly authorized to enter into this Agreement on behalf of such party and to bind it to the terms hereof.



27. **Cooperation.** The parties acknowledge that the timely completion of the Project will be influenced by the ability of the Owner (and its contractors) and the DB Contractor to coordinate their activities, communicate with each other, and respond promptly to reasonable requests. Subject to the terms and conditions of this Agreement, the Owner and the DB Contractor agree to take all steps reasonably required to coordinate their respective duties hereunder in a manner consistent with the DB Contractor's current and future construction schedules for the Project.
28. **Termination.** If the Project is canceled or modified so as to eliminate the necessity of the Adjustment work described herein, then the DB Contractor shall notify the Owner in writing and the DB Contractor reserves the right to thereupon terminate this Agreement. Upon such termination, the parties shall negotiate in good faith an amendment that shall provide mutually acceptable terms and conditions for handling the respective rights and liabilities of the parties relating to such termination.
29. **Nondiscrimination.** Each party hereto agrees, with respect to the work performed by such party pursuant to this Agreement that such party shall not discriminate on the grounds of race, color, sex, national origin or disability in the selection and/or retention of contractors and consultants, including procurement of materials and leases of equipment.
30. **Applicable Law, Jurisdiction and Venue.** This Agreement shall be governed by the Laws of the State of Texas, without regard to the Conflict of Laws principles thereof. Venue for any action brought to enforce this Agreement or relating to the relationship between any of the parties shall be the District Court of _____ County, Texas [or the United States District Court for the Western District of Texas (Austin)].
31. **Relationship of the Parties.** This Agreement does not in any way, and shall not be construed to, create a principal/agent or joint venture relationship between the parties hereto and under no circumstances shall the Owner or the DB Contractor be considered as or represent itself to be an agent of the other.
32. **Waiver of Consequential Damages.** No party hereto shall be liable to any other party to this Agreement, whether in contract, tort, equity, or otherwise (including negligence, warranty, indemnity, strict liability, or otherwise) for any punitive, exemplary, special, indirect, incidental, or consequential damages, including, without limitation, loss of profits or revenues, loss of use, claims of customers, or loss of business opportunity.
33. **Captions.** The captions and headings of the various paragraphs of this Agreement are for convenience and identification only, and shall not be deemed to limit or define the content of their respective paragraphs.
34. **Counterparts.** This Agreement may be executed in any number of counterparts. Each such counterpart hereof shall be deemed to be an original instrument but all such counterparts together shall constitute one (1) and the same instrument.
35. **Effective Date.** This Agreement shall become effective upon the later of (a) the date of signing by the last party (either the Owner or DB Contractor) signing this Agreement, and (b) the date of TxDOT's approval as indicated by the signature of TxDOT's representative below.



APPROVED BY:

**TEXAS DEPARTMENT OF
TRANSPORTATION**

By: Donald C. Toner, Jr., SR/WA
[Printed Name]

By: _____
Authorized Signature

Director of SPD Right of Way
Strategic Projects Division

Date: _____

OWNER

By: _____
[Print Owner Name]

By: _____
Duly Authorized Representative

[Title]
[Company]

Date: _____

DB CONTRACTOR

By: _____
[Print Name]

By: _____
Duly Authorized Representative

[Title]
[Company]

Date: _____



County: _____
 ROW CSJ No.: _____
 Const. CSJ No.: _____
 Highway: _____
 Fed. Proj. No.: _____
 Limits: _____ to _____

**PROJECT UTILITY ADJUSTMENT AGREEMENT
 (Owner-Managed)**

Agreement No.: _____-U-_____

THIS AGREEMENT, by and between [DB Contractor], hereinafter identified as the "**DB Contractor**" and [Utility Owner], hereinafter identified as the "**Owner**", is as follows:

WITNESSETH

WHEREAS, the STATE OF TEXAS, acting by and through the Texas Department of Transportation, hereinafter identified as "TxDOT", is authorized to design, construct, operate, maintain, and improve projects as part of the state highway system throughout the State of Texas, all in conformance with the applicable provisions of Chapters 201, 203, 222, 223, 224 and 228 of the Texas Transportation Code, as amended; and

WHEREAS, TxDOT proposes to construct a project identified as the [Project Name] (the "Project") and classified as either Interstate, Toll or Traditional (meaning eligibility based on existing compensable interest in the land occupied by the facility to be relocated within the proposed highway right of way limits) as indicated below (*check one (1) box*). Reimbursement will be authorized by the type of project selected below in conformance with Transportation Code 203.092,

- Interstate
- Toll
- Traditional

;and

WHEREAS, pursuant to that certain Comprehensive Development Agreement (the "CDA") by and between TxDOT and the DB Contractor with respect to the Project, the DB Contractor has undertaken the obligation to design, construct, finance, operate and maintain the Project and adhere to all requirements in the CDA; and

WHEREAS, the DB Contractor's duties pursuant to the CDA include causing the relocation, removal, or other necessary adjustment of existing Utilities impacted by the Project (collectively, "Adjustment"), subject to the provisions herein; and

WHEREAS, the Project may receive Federal funding, financing and/or credit assistance; and



WHEREAS, the DB Contractor has notified the Owner that certain of its facilities and appurtenances (the "Owner Utilities") are in locational conflict with the Project (and/or the Ultimate Configuration of the Project), and the Owner has decided to undertake the Adjustment of the Owner Utilities and agrees that the "Project" will be constructed in accordance with §203.092 of the Texas Transportation Code, as amended, and 23 CFR 645 Subpart A (Utility Relocations, Adjustments and Reimbursement); and

WHEREAS, the Owner Utilities and the proposed Adjustment of the Owner Utilities are described as follows *[insert below a description of the affected facilities (by type, size and location) as well as a brief description of the nature of the Adjustment work to be performed (e.g., "adjust 12" waterline from approximately Highway Station 100+00 to approximately Highway Station 200+00")]*:

_____; and

WHEREAS, the Owner recognizes that time is of the essence in completing the work contemplated herein; and

WHEREAS, the DB Contractor and the Owner desire to implement the Adjustment of the Owner Utilities by entering into this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of these premises and of the mutual covenants and agreements of the parties hereto and other good and valuable consideration, the receipt and sufficiency of which being hereby acknowledged, the DB Contractor and the Owner agree as follows:

1. **Preparation of Plans.** *[Check one (1) box that applies:]*

The DB Contractor has hired engineering firm(s) acceptable to the Owner to perform all engineering services needed for the preparation of plans, required specifications, and cost estimates, attached hereto as Exhibit A (collectively, the "Plans"), for the proposed Adjustment of the Owner Utilities. The DB Contractor represents and warrants that the Plans conform to the most recent Utility Accommodation Rules issued by the Texas Department of Transportation ("TxDOT"), set forth in 43 Texas Administrative Code, Part 1, Chapter 21, Subchapter C, *et seq.* (the "UAR"). By its execution of this Agreement or by the signing of the Plans, the Owner hereby approves and confirms that the Plans are in compliance with the "standards" described in Paragraph 3(a)(4).

The Owner has provided plans, required specifications and cost estimates, attached hereto as Exhibit A (collectively, the "Plans"), for the proposed Adjustment of the Owner Utilities. The Owner represents and warrants that the Plans conform to the Utility Accommodation Rules issued by the Texas Department of Transportation ("TxDOT"), as set forth in 43 Texas Administrative Code Part 1, Chapter 21, Subchapter C, *et seq.* (the "UAR"). By its execution of this Agreement, the DB Contractor and the Owner hereby approve the Plans. The Owner also has provided to the DB Contractor a Utility plan view map illustrating the location of existing and proposed Utility facilities on the DB Contractor's right of way map of the Project. With regard to its preparation of the Plans, the Owner represents as follows *[check one (1) box that applies]*:



- The Owner's employees were utilized to prepare the Plans, and the charges therefore do not exceed the Owner's typical costs for such work.
- The Owner utilized consulting engineers to prepare the Plans, and the fees for such work are not based upon a percentage of construction costs. Further, such fees encompass only the work necessary to prepare the Plans for Adjustment of the Owner Utilities described herein, and do not include fees for work done on any other project. The fees of the consulting engineers are reasonable and are comparable to the fees typically charged by consulting engineers in the locale of the Project for comparable work for the Owner.

2. **Review by TxDOT.** The parties hereto acknowledge and agree as follows:

- (a) Upon execution of this Agreement by the DB Contractor and the Owner, the DB Contractor will submit this Agreement, together with the attached Plans, to TxDOT for its review and approval as part of a package referred to as a "Utility Assembly". The parties agree to cooperate in good faith to modify this Agreement and/or the Plans, as necessary and mutually acceptable to all parties, to respond to any comments made by TxDOT thereon. Without limiting the generality of the foregoing:
 - (1) The Owner agrees to respond (with comment and/or acceptance) to any modified Plans and/or Agreement prepared by the DB Contractor in response to TxDOT comments within **14 business days** after receipt of such modifications; and
 - (2) If the Owner originally prepared the Plans, the Owner agrees to modify the Plans in response to TxDOT comments and to submit such modified Plans to the DB Contractor for its comment and/or approval (and resubmit to TxDOT for its comment and/or approval) within **14 business days** after receipt of TxDOT's comments.

The Owner's failure to timely respond to any modified Plans submitted by the DB Contractor pursuant to this paragraph shall be deemed the Owner's approval of same. If the Owner fails to timely prepare modified Plans which are its responsibility hereunder, then the DB Contractor shall have the right to modify the Plans for the Owner's approval as if the DB Contractor had originally prepared the Plans. The DB Contractor shall be responsible for providing Plans to and obtaining comments on and approval of the Plans from the DB Contractor. The process set forth in this paragraph will be repeated until the Owner, the DB Contractor and TxDOT have all approved this Agreement and the Plans.

- (b) The parties hereto acknowledge and agree that TxDOT's review, comments, and/or approval of a Utility Assembly or any component thereof shall constitute TxDOT's approval of the location and manner in which a Utility Assembly will be installed, adjusted, or relocated within the State Highway right of way (the "ROW"), subject to the DB Contractor and Owner's satisfactory performance of the Adjustment work in accordance with the approved Plans. TxDOT has no duty to review Owner facilities or components for their quality or adequacy to provide the intended Utility service.



3. **Design and Construction Standards.**

- (a) All design and construction performed for the Adjustment work which is the subject of this Agreement shall comply with and conform to the following:
- (1) All applicable local and State Laws, regulations, decrees, ordinances and policies, including the UAR, the Utility Manual issued by TxDOT (to the extent its requirements are mandatory for the Utility Adjustment necessitated by the Project, communicated to the Owner by the DB Contractor or TxDOT), the requirements of the CDA, and the policies of TxDOT;
 - (2) All Federal Laws, regulations, decrees, ordinances and policies applicable to projects receiving Federal funding, financing and/or credit assistance, including without limitation 23 CFR 645 Subparts A and B and the Buy America provisions of 23 U.S.C § 313 and 23 CFR 635.410. The Utility Owner shall supply, upon request by the DB Contractor or TxDOT, proof of compliance with the aforementioned Laws, rules and regulations prior to the commencement of construction;
 - (3) The terms of all governmental permits or other approvals, as well as any private approvals of third parties necessary for such work;
 - (4) The standard specifications, standards of practice, and construction methods (collectively, "standards") which the Owner customarily applies to facilities comparable to the Owner Utilities that are constructed by the Owner or for the Owner by its contractors at the Owner's expense, which standards are current at the time this Agreement is signed by the Owner, and which the Owner has submitted to the DB Contractor in writing; and
 - (5) Owner agrees that all service meters must be placed outside of the State ROW.
- (b) Such design and construction also shall be consistent and compatible with:
- (1) The DB Contractor's current design and construction of the Project;
 - (2) The Ultimate Configuration for the Project; and
 - (3) Any other utilities being installed in the same vicinity.

The Owner acknowledges receipt from the DB Contractor of Project plans and Ultimate Configuration documents as necessary to comply with the foregoing. In case of any inconsistency among any of the standards referenced in this Agreement, the most stringent standard shall apply.

- (c) The plans, specifications, and cost estimates contained in Exhibit A shall identify and detail all Utility facilities that the Owner intends to abandon in place rather than remove, including material type, quantity, size, age, and condition. No facilities containing hazardous or contaminated materials may be abandoned, but shall be specifically identified and removed in accordance with the requirements of subparagraph (a). It is understood and agreed that the DB Contractor shall not pay for the assessment and



remediation or other corrective action relating to soil and ground water contamination caused by the utility facility prior to the removal.

4. **Construction by the Owner; Scheduling.**

- (a) The Owner hereby agrees to perform the construction necessary to adjust the Owner Utilities. All construction work hereunder shall be performed in a good and workmanlike manner, and in accordance with the Plans (except as modified pursuant to Paragraph 17). The Owner agrees that during the Adjustment of the Owner Utilities, the Owner and its contractors will coordinate their work with the DB Contractor so as not to interfere with the performance of work on the Project by the DB Contractor or by any other party. "Interfere" means any action or inaction that interrupts, interferes, delays or damages Project work.
- (b) The Owner may utilize its own employees or may retain such contractor or contractors as are necessary to adjust the Owner Utilities, through the procedures set forth in Form "Statement Covering Contract Work" attached hereto as Exhibit C. If the Owner utilizes its own employees for the Construction work portion of the Adjustment of Owner Utilities, this form is not required.
- (c) The Owner shall obtain all permits necessary for the construction to be performed by the Owner hereunder, and the DB Contractor shall cooperate in that process as needed. The Owner shall submit a traffic control plan to the DB Contractor as required for Adjustment work to be performed on existing road rights of way.
- (d) The Owner shall commence its construction for Adjustment of each Owner Utility hereunder promptly after (i) receiving written notice to proceed therewith from the DB Contractor, and (ii) any Project right of way necessary for such Adjustment has been acquired either by DB Contractor (for adjusted facilities to be located within the Project right of way) or by the Owner (for adjusted facilities to be located outside of the Project right of way), or a right-of-entry permitting Owner's construction has been obtained from the landowner by the DB Contractor or by the Owner with the DB Contractor's prior approval. The Owner shall notify the DB Contractor at least 72 hours prior to commencing construction for the Adjustment of each Owner Utility hereunder.
- (e) The Owner shall expeditiously stake the survey of the proposed locations of the Owner Utilities being adjusted, on the basis of the final approved Plans. The DB Contractor shall verify that the Owner's Utilities, whether moving to a new location or remaining in place, clear the planned construction of the Project as staked in the field as well as the Ultimate Configuration.
- (f) The Owner shall complete all of the Utility reconstruction and relocation work, including final testing and acceptance thereof [*check one (1) box that applies*]:
 - On or before **[Month] [Day], 20[15]**.
 - A duration not to exceed _____ calendar days upon notice to proceed by the DB Contractor.



- (g) The amount of reimbursement due to the Owner pursuant to this Agreement for the affected Adjustment(s) shall be reduced by 10% for each 30-day period (and by a pro rata amount of said 10% for any portion of a 30-day period) by which the final completion and acceptance date for the affected Adjustment(s) exceeds the applicable deadline. The provisions of this Paragraph 4(g) shall not limit any other remedy available to the DB Contractor at Law or in equity as a result of the Owner's failure to meet any deadline hereunder.

The above reduction applies except to the extent due to:

- (1) Force Majeure as described in Paragraph 24(c);
- (2) Any act or omission of the DB Contractor, if the Owner fails to meet any deadline established pursuant to Paragraph 4(f); or
- (3) If the DB Contractor and/or TxDOT determine, in their sole discretion, that a delay in the relocation work is the result of circumstances beyond the control of the Owner or Owner's contractor and the DB Contractor will not reduce the reimbursement.

5. **Costs of the Work.**

- (a) The Owner's costs for Adjustment of each Owner Utility shall be derived from:
- (1) The accumulated total of costs incurred by the Owner for design and construction of such Adjustment, *plus*
 - (2) The Owner's other related costs to the extent permitted pursuant to Paragraph 5(b) (including without limitation the eligible engineering costs incurred by the Owner for design prior to execution of this Agreement), *plus*
 - (3) The Owner's right of way acquisition costs, if any, which are reimbursable pursuant to Paragraph 16.
- (b) The Owner's costs associated with Adjustment of the Owner Utilities shall be developed pursuant to the method checked and described below [*check only one (1) box*]:
- (1) Actual costs accumulated in accordance with a work order accounting procedure prescribed by the applicable Federal or State regulatory body ("**Actual Cost**");
 - (2) Actual costs accumulated in accordance with an established accounting procedure developed by the Owner and which the Owner uses in its regular operations ("**Actual Cost**"); or
 - (3) The agreed sum of \$_____ ("**Agreed Sum**"), as supported by the analysis of estimated costs attached hereto as part of Exhibit A.



6. **Responsibility for Costs of Adjustment Work.** The Agreed Sum or Actual Cost, as applicable, of all work to be performed pursuant to this Agreement shall be allocated between the DB Contractor and the Owner as identified in Exhibit A and in accordance with § 203.092 of the Texas Transportation Code. An allocation percentage may be determined by application of an eligibility ratio, if appropriate, as detailed in Exhibit A; *provided, however*, that any portion of an Agreed Sum or Actual Cost attributable to Betterment shall be allocated 100% to the Owner in accordance with Paragraph 10. All costs charged to the DB Contractor by the Owner shall be reasonable and shall be computed using rates and schedules not exceeding those applicable to similar work performed by or for the Owner at the Owner's expense. Payment of the costs allocated to the DB Contractor pursuant to this Agreement (if any) shall be full compensation to the Owner for all costs incurred by the Owner in Adjusting the Owner Utilities (including without limitation costs of relinquishing and/or acquiring right of way).

7. **Billing, Payment, Records and Audits: Actual Cost Method.** The following provisions apply if the Owner's costs are developed under procedure (1) or (2) described in Paragraph 5(b):
 - (a) After (i) completion of all Adjustment work to be performed pursuant to this Agreement, (ii) the DB Contractor's final inspection of the Adjustment work by Owner hereunder (and resolution of any deficiencies found), and (iii) receipt of an invoice complying with the applicable requirements of Paragraph 9, the DB Contractor shall pay to the Owner an amount equal to 90% of the DB Contractor's share of the Owner's costs as shown in such final invoice (less amounts previously paid, and applicable credits). After completion of the DB Contractor's audit referenced in Paragraph 7(c) and the parties' mutual determination of any necessary adjustment to the final invoice resulting therefrom, the DB Contractor shall make any final payment due so that total payments will equal the total amount of the DB Contractor's share reflected on such final invoice (as adjusted, if applicable).
 - (b) When requested by the Owner and properly invoiced in accordance with Paragraph 9, the DB Contractor shall make intermediate payments to the Owner based upon the progress of the work completed at not more than monthly intervals, and such payments shall not exceed 90% of the DB Contractor's share of the Owner's eligible costs as shown in each such invoice (less applicable credits). Intermediate payments shall not be construed as final payment for any items included in the intermediate payment.
 - (c) The Owner shall maintain complete and accurate cost records for all work performed pursuant to this Agreement. The Owner shall maintain such records for four (4) years after receipt of final payment hereunder. The DB Contractor and their respective representatives shall be allowed to audit such records during the Owner's regular business hours. Unsupported charges will not be considered eligible for reimbursement. The parties shall mutually agree upon (and shall promptly implement by payment or refund, as applicable) any financial adjustment found necessary by the DB Contractor's audit. TxDOT, the Federal Highway Administration (FHWA), and their respective representatives also shall be allowed to audit such records upon reasonable notice to the Owner, during the Owner's regular business hours.



8. **Billing and Payment: Agreed Sum Method.** If the Owner's costs are developed under procedure (3) described in Paragraph 5(b), then the DB Contractor shall pay its share of the Agreed Sum to the Owner after completion of:
- (a) All Adjustment work to be performed pursuant to this Agreement;
 - (b) The DB Contractor's final inspection of the Adjustment work by Owner hereunder (and resolution of any deficiencies found); and
 - (c) The receipt of an invoice complying with the applicable requirements of Paragraph 9.
9. **Invoices.** If the Owner's costs are developed under procedure (1) or (2) described in Paragraph 5(b), then Owner shall list each of the services performed, the amount of time spent and the date on which the service was performed. The original and three (3) copies of each invoice shall be submitted to the DB Contractor at the address for notices stated in Paragraph 22, unless otherwise directed by the DB Contractor pursuant to Paragraph 23, together with:
- (a) Such supporting information to substantiate all invoices as reasonably requested by the DB Contractor; and
 - (b) Such waivers or releases of liens as the DB Contractor may reasonably require.

The Owner shall make commercially reasonable efforts to submit final invoices not later than 120 days after completion of work. Final invoices shall include any necessary quitclaim deeds pursuant to Paragraph 16, and all applicable record drawings accurately representing the Adjustment as installed. The Owner hereby acknowledges and agrees that any right it may have for reimbursement of any of its costs not submitted to the DB Contractor within 12 months following completion of all Adjustment work to be performed by both parties pursuant to this Agreement shall be deemed to have been abandoned and waived. Invoices shall clearly delineate total costs and those costs that are reimbursable pursuant to the terms of this Agreement.

10. **Betterment.**
- (a) For purposes of this Agreement, the term "Betterment" means any upgrading of an Owner Utility being adjusted that is not attributable to the construction of the Project and is made solely for the benefit of and at the election of the Owner, including but not limited to an increase in the capacity, capability, efficiency or function of the adjusted Utility over that provided by the existing Utility facility or an expansion of the existing Utility facility; provided, however, that the following are not considered Betterments:
 - (1) Any upgrading which is required for accommodation of the Project;
 - (2) Replacement devices or materials that are of equivalent standards although not identical;
 - (3) Replacement of devices or materials no longer regularly manufactured with the next highest grade or size;
 - (4) Any upgrading required by applicable Laws, regulations or ordinances;



- (5) Replacement devices or materials which are used for reasons of economy (e.g., non-stocked items may be uneconomical to purchase); or
- (6) Any upgrading required by the Owner's written "standards" meeting the requirements of Paragraph 3(a)(4) and deemed to be of direct benefit to the Project.

[Include the following for fiber optic Owner Utilities only:] Extension of an Adjustment to the nearest splice boxes shall not be considered a Betterment if required by the Owner in order to maintain its written telephony standards.

- (b) It is understood and agreed that the DB Contractor will not pay for any Betterments and that the Owner shall not be entitled to payment therefor. No Betterment may be performed in connection with the Adjustment of the Owner Utilities which is incompatible with the Project or the Ultimate Configuration or which cannot be performed within the other constraints of applicable Law and any applicable governmental approvals, including without limitation the scheduling requirements thereunder. Accordingly, the parties agree as follows *[check the one (1) box that applies and complete if appropriate]*:

- The Adjustment of the Owner Utilities pursuant to the Plans does not include any Betterment.
- The Adjustment of the Owner Utilities pursuant to the Plans includes Betterment to the Owner Utilities by reason of *[insert explanation, e.g. "replacing 12" pipe with 24" pipe]*: _____. The Owner has provided to the DB Contractor comparative estimates for (i) all costs for work to be performed by the Owner pursuant to this Agreement, including work attributable to the Betterment, and (ii) the cost to perform such work without the Betterment, which estimates are hereby approved by the DB Contractor. The estimated amount of the Owner's costs for work hereunder which is attributable to Betterment is \$_____, calculated by *subtracting* (ii) from (i). The percentage of the total cost of the Owner's work hereunder which is attributable to Betterment is _____%, calculated by *subtracting* (ii) from (i), which remainder shall be *divided* by (i).

- (c) If Paragraph 10(b) identifies Betterment, then the following shall apply:

- (1) If the Owner's costs are developed under procedure (3) described in Paragraph 5(b), then the Agreed Sum stated in that Paragraph includes any credits due to the DB Contractor on account of the identified Betterment, and no further adjustment shall be made on account of same.
- (2) If the Owner's costs are developed under procedure (1) or (2) described in Paragraph 5(b), the parties agree as follows *[If Paragraph 10(b) identifies Betterment and the Owner's costs are developed under procedure (1) or (2), check the one (1) appropriate provision]*:

- The estimated cost stated in Paragraph 10(b) is the agreed and final amount due for Betterment hereunder. Accordingly, each intermediate invoice submitted pursuant to Paragraph 7(b) shall include a credit for an



appropriate percentage of the agreed Betterment amount, proportionate to the percentage of completion reflected in such invoice. The final invoice submitted pursuant to Paragraph 7(a) shall reflect the full amount of the agreed Betterment credit. For each invoice described in this paragraph, the credit for Betterment shall be applied before calculating the DB Contractor's share (pursuant to Paragraph 6) of the cost of the Adjustment work. No other adjustment (either up or down) shall be made based on actual Betterment costs.

- The Owner is responsible for the actual cost of the identified Betterment, determined by *multiplying* (a) the Betterment percentage stated in Paragraph 10(b), by (b) the actual cost of all work performed by the Owner pursuant to this Agreement (including work attributable to the Betterment), as invoiced by the Owner to the DB Contractor. Accordingly, each invoice submitted pursuant to either Paragraph 7(a) or Paragraph 7(b) shall credit the DB Contractor with an amount calculated by *multiplying* (x) the Betterment percentage stated in Paragraph 10(b), by (y) the amount billed on such invoice.

- (d) The determinations and calculations of Betterment described in this Paragraph 10 shall exclude right of way acquisition costs. Betterment in connection with right of way acquisition is addressed in Paragraph 16.

11. **Salvage.** For any Adjustment from which the Owner recovers any materials and/or parts and retains or sells the same, after application of any applicable Betterment credit, the DB Contractor is entitled to a credit for the salvage value of such materials and/or parts. If the Owner's costs are developed under procedure (1) or (2) described in Paragraph 5(b), then the final invoice submitted pursuant to Paragraph 7(a) shall credit the DB Contractor with the full salvage value. If the Owner's costs are developed under procedure (3) described in Paragraph 5(b), then the Agreed Sum includes any credit due to the DB Contractor on account of salvage.

12. **Utility Investigations.** At the DB Contractor's request, the Owner shall assist the DB Contractor in locating any Utilities (including appurtenances) which are owned and/or operated by Owner and may be impacted by the Project. Without limiting the generality of the foregoing, in order to help assure that neither the adjusted Owner Utilities nor existing, unadjusted Utilities owned or operated by the Owner are damaged during construction of the Project, the Owner shall mark in the field the location of all such Utilities horizontally on the ground in advance of Project construction in the immediate area of such Utilities.

13. **Inspection and Ownership of Owner Utilities.**

- (a) The DB Contractor shall have the right, at its own expense, to inspect the Adjustment work performed by the Owner or its contractors, during and upon completion of construction. All inspections of work shall be completed and any comment provided within **five (5) business days** after request for inspection is received.
- (b) The Owner shall accept full responsibility for all future repairs and maintenance of said Owner Utilities. In no event shall the DB Contractor or TxDOT become responsible for making any repairs or maintenance, or for discharging the cost of same. The provisions of this Paragraph 13(b) shall not limit any rights which the Owner may have against the DB



Contractor if either party respectively damages any Owner Utility as a result of its respective Project activities.

14. **Design Changes.** The DB Contractor will be responsible for additional Adjustment design and responsible for additional construction costs necessitated by design changes to the Project made after approval of the Plans, upon the terms specified herein.
15. **Field Modifications.** The Owner shall provide the DB Contractor with documentation of any field modifications, including Utility Adjustment Field Modifications as well as minor changes as described in Paragraph 17(b), occurring in the Adjustment of the Owner Utilities.
16. **Real Property Interests.**
 - (a) The Owner has provided, or upon execution of this Agreement shall promptly provide to the DB Contractor, documentation acceptable to TxDOT indicating any right, title or interest in real property claimed by the Owner with respect to the Owner Utilities in their existing location(s). Such claims are subject to TxDOT's approval as part of its review of the DB Contractor's Utility Assembly as described in Paragraph 2. Claims approved by TxDOT as to rights or interests are referred to herein as "**Existing Utility Property Interests**".
 - (b) If acquisition of any new easement or other interest in real property ("**Replacement Utility Property Interest**") is necessary for the Adjustment of any Owner Utilities, then the Owner shall be responsible for undertaking such acquisition. The Owner shall implement each acquisition hereunder expeditiously so that related Adjustment construction can proceed in accordance with the DB Contractor's Project schedules. The DB Contractor shall be responsible for its share (if any, as specified in Paragraph 6) of the actual and reasonable acquisition costs of any such Replacement Utility Property Interest (including without limitation the Owner's reasonable overhead charges and reasonable legal costs as well as compensation paid to the landowner), excluding any costs attributable to Betterment as described in Paragraph 16(c), and subject to the provisions of Paragraph 16(e); *provided, however*, that all acquisition costs shall be subject to the DB Contractor's prior written approval. Eligible acquisition costs shall be segregated from other costs on the Owner's estimates and invoices. Any such Replacement Utility Property Interest shall have a written valuation and shall be acquired in accordance with applicable Law.
 - (c) The DB Contractor shall pay its share only for a replacement in kind of an Existing Utility Property Interest (e.g., in width and type), unless a Replacement Utility Property Interest exceeding such standard:
 - (1) Is required in order to accommodate the Project or by compliance with applicable Law; or
 - (2) Is called for by the DB Contractor in the interest of overall Project economy.

Any Replacement Utility Property Interest which is not the DB Contractor's cost responsibility pursuant to the preceding sentence shall be considered a Betterment to the extent that it upgrades the Existing Utility Property Interest which it replaces, or in its



entirety if the related Owner Utility was not installed pursuant to an Existing Utility Property Interest. Betterment costs shall be solely the Owner's responsibility.

- (d) For each Existing Utility Property Interest located within the Project right of way, upon completion of the related Adjustment work and its acceptance by the Owner, the Owner agrees to execute a quitclaim deed or other appropriate documentation relinquishing such Existing Utility Property Interest to TxDOT, unless the affected Owner Utility is remaining in its original location or is being reinstalled in a new location within the area subject to such Existing Utility Property Interest. All quitclaim deeds or other relinquishment documents shall be subject to TxDOT's approval as part of its review of the Utility Assembly as described in Paragraph 2. For each Existing Utility Property Interest relinquished by the Owner, the DB Contractor shall do one (1) of the following to compensate the Owner for such Existing Utility Property Interest, as appropriate:
- (1) If the Owner acquires a Replacement Utility Property Interest for the affected Owner Utility, the DB Contractor shall reimburse the Owner for the DB Contractor's share of the Owner's actual and reasonable acquisition costs in accordance with Paragraph 16(b) and subject to Paragraph 16(c); or
 - (2) If the Owner does not acquire a Replacement Utility Property Interest for the affected Owner Utility, the DB Contractor shall compensate the Owner for the DB Contractor's share of the market value of such relinquished Existing Utility Property Interest, as mutually agreed between the Owner and the DB Contractor and supported by a written valuation.

The compensation, if any, provided to the Owner pursuant to either subparagraph (i) or subparagraph (ii) above shall constitute complete compensation to the Owner for the relinquished Existing Utility Property Interest and any Replacement Utility Property Interest, and no further compensation shall be due to the Owner from the DB Contractor or TxDOT on account of such Existing Utility Property Interest or Replacement Utility Property Interest.

- (e) All Utility Joint Use Acknowledgments (UJUA) or Utility Installation Requests (UIR), Form 1082 shall be subject to TxDOT approval as part of its review of the Utility Assembly as described in Paragraph 2. A Utility Joint Use Acknowledgment is required where an Existing Utility Property Interest exists and the existing or proposed Utility will remain or be adjusted within the boundaries of the Existing Utility Property Interest. All other accommodations not located on Existing Utility Property Interests will require a Utility Installation Request, Form 1082.

17. **Amendments and Modifications.** This Agreement may be amended or modified only by a written instrument executed by the parties hereto, in accordance with Paragraph 17(a) or Paragraph 17(b) below:

- (a) Except as otherwise provided in Paragraph 17(b), any amendment or modification to this Agreement or the Plans attached hereto shall be implemented by a Utility Adjustment Agreement Amendment ("UAAA") in the form of Exhibit B hereto (SPD ROW-U-UAAA-OM). The UAAA form can be used for a new scope of work with concurrence of the DB Contractor and TxDOT as long as the Design and Construction responsibilities have not changed. Each UAAA is subject to the review and approval of TxDOT, prior to



its becoming effective for any purpose and prior to any work being initiated thereunder. The Owner agrees to keep and track costs for each UAAA separately from other work being performed.

- (b) For purposes of this Paragraph 17(b), "**Utility Adjustment Field Modification**" shall mean any horizontal or vertical design change from the Plans included in a Utility Assembly previously approved by TxDOT, due either to design of the Project or to conditions not accurately reflected in the approved Utility Assembly (e.g., shifting the alignment of an 8 inch water line to miss a modified or new roadway drainage structure). A Utility Adjustment Field Modification agreed upon by the DB Contractor and the Owner does not require a UAAA, provided that the modified Plans have been submitted to TxDOT for its review and comment. A minor change (e.g., an additional water valve, an added Utility marker at a ROW line, a change in vertical bend, etc.) will not be considered a Utility Adjustment Field Modification and will not require a UAAA, but shall be shown in the documentation required pursuant to Paragraph 15.

18. **Entire Agreement.** This Agreement embodies the entire agreement between the parties and there are no oral or written agreements between the parties or any representations made which are not expressly set forth herein.
19. **Assignment; Binding Effect; TxDOT as Third Party Beneficiary.** The Owner and the DB Contractor may not assign any of its rights or delegate any of its duties under this Agreement without the prior written consent of the other parties and of TxDOT, which consent may not be unreasonably withheld or delayed; *provided, however*, that the DB Contractor may assign any of its rights and/or delegate any of its duties to TxDOT or to any other entity with which TxDOT contracts to fulfill the DB Contractor's obligations at any time without the prior consent of the Owner.

This Agreement shall bind the Owner, the DB Contractor and their successors and permitted assigns, and nothing in this Agreement nor in any approval subsequently provided by any party hereto shall be construed as giving any benefits, rights, remedies, or claims to any other person, firm, corporation or other entity, including, without limitation, any contractor or other party retained for the Adjustment work or the public in general; *provided, however*, that the Owner and the DB Contractor agree that although TxDOT is not a party to this Agreement, TxDOT is intended to be a third-party beneficiary to this Agreement.

20. **Breach by the Parties.**

- (a) If the Owner claims that the DB Contractor has breached any of its obligations under this Agreement, the Owner will notify the DB Contractor and TxDOT in writing of such breach, and the DB Contractor shall have **30 days** following receipt of such notice in which to cure such breach, before the Owner may invoke any remedies which may be available to it as a result of such breach; *provided, however*, that both during and after such period TxDOT shall have the right, but not the obligation, to cure any breach by the DB Contractor. Without limiting the generality of the foregoing:

- (1) TxDOT shall have no liability to the Owner for any act or omission committed by the DB Contractor in connection with this Agreement; and



delivered upon receipt and served by certified or registered mail or by reliable messenger or overnight courier shall be deemed delivered on the date of receipt as shown on the addressee's registry or certification of receipt or on the date receipt is refused as shown on the records or manifest of the U.S. Postal Service or such courier. Any party may designate any other address for this purpose by written notice to all other parties; TxDOT may designate another address by written notice to all parties.

23. **Approvals.** Any acceptance, approval, or any other like action (collectively "**Approval**") required or permitted to be given by either the DB Contractor or the Owner pursuant to this Agreement:

- (a) Must be in writing to be effective (except if deemed granted pursuant hereto);
- (b) Shall not be unreasonably withheld or delayed; and if Approval is withheld, such withholding shall be in writing and shall state with specificity the reason for withholding such Approval, and every effort shall be made to identify with as much detail as possible what changes are required for Approval; and
- (c) Except for approvals by TxDOT, and except as may be specifically provided otherwise in this Agreement, shall be deemed granted if no response is provided to the party requesting an Approval within the time period prescribed by this Agreement (or if no time period is prescribed, then **14 calendar days**), commencing upon actual receipt by the party from which an Approval is requested or required, of a request for Approval from the requesting party. All requests for Approval shall be sent out by the requesting party to the other party in accordance with Paragraph 22.

24. **Time; Force Majeure.**

- (a) Time is of the essence in the performance of this Agreement.
- (b) All references to "days" herein shall be construed to refer to calendar days, unless otherwise stated.
- (c) No party shall be liable to another party for any delay in performance under this Agreement from any cause beyond its control and without its fault or negligence ("**Force Majeure**"), such as acts of God, acts of civil or military authority, fire, earthquake, strike, unusually severe weather, floods or power blackouts. If any such event of Force Majeure occurs, the Owner agrees, if requested by the DB Contractor, to accelerate its efforts hereunder if reasonably feasible in order to regain lost time, so long as the DB Contractor agrees to reimburse the Owner for the reasonable and actual costs of such efforts.

25. **Continuing Performance.** In the event of a dispute, the Owner and the DB Contractor agree to continue their respective performance hereunder to the extent feasible in light of the dispute, including paying billings, and such continuation of efforts and payment of billings shall not be construed as a waiver of any legal right.

26. **Equitable Relief.** The DB Contractor and the Owner acknowledge and agree that delays in Adjustment of the Owner Utilities will impact the public convenience, safety and welfare, and that (without limiting the parties' remedies hereunder) monetary damages would be inadequate to compensate for delays in the construction of the Project. Consequently, the parties hereto (and



TxDOT as well, as a third party beneficiary) shall be entitled to specific performance or other equitable relief in the event of any breach of this Agreement which threatens to delay construction of the Project; *provided, however*, that the fact that specific performance or other equitable relief may be granted shall not prejudice any claims for payment or otherwise related to performance of the Adjustment work hereunder.

27. **Authority.** The Owner and the DB Contractor each represent and warrant to the other party that the warranting party possesses the legal authority to enter into this Agreement and that it has taken all actions necessary to exercise that authority and to lawfully authorize its undersigned signatory to execute this Agreement and to bind such party to its terms. Each person executing this Agreement on behalf of a party warrants that he or she is duly authorized to enter into this Agreement on behalf of such party and to bind it to the terms hereof.
28. **Cooperation.** The parties acknowledge that the timely completion of the Project will be influenced by the ability of the Owner (and its contractors) and the DB Contractor to coordinate their activities, communicate with each other, and respond promptly to reasonable requests. Subject to the terms and conditions of this Agreement, the Owner and the DB Contractor agree to take all steps reasonably required to coordinate their respective duties hereunder in a manner consistent with the DB Contractor's current and future construction schedules for the Project. The Owner further agrees to require its contractors to coordinate their respective work hereunder with the DB Contractor.
29. **Termination.** If the Project is canceled or modified so as to eliminate the necessity of the Adjustment work described herein, then the DB Contractor shall notify the Owner in writing and the DB Contractor reserves the right to thereupon terminate this Agreement. Upon such termination, the parties shall negotiate in good faith an amendment that shall provide mutually acceptable terms and conditions for handling the respective rights and liabilities of the parties relating to such termination.
30. **Nondiscrimination.** Each party hereto agrees, with respect to the work performed by such party pursuant to this Agreement that such party shall not discriminate on the grounds of race, color, sex, national origin or disability in the selection and/or retention of contractors and consultants, including procurement of materials and leases of equipment.
31. **Applicable Law, Jurisdiction and Venue.** This Agreement shall be governed by the Laws of the State of Texas, without regard to the conflict of laws principles thereof. Venue for any action brought to enforce this Agreement or relating to the relationship between any of the parties shall be the District Court of _____ County, Texas [or the United States District Court for the Western District of Texas (Austin)].
32. **Relationship of the Parties.** This Agreement does not in any way, and shall not be construed to, create a principal/agent or joint venture relationship between the parties hereto and under no circumstances shall the Owner or the DB Contractor be considered as or represent itself to be an agent of the other.
33. **Waiver of Consequential Damages.** No party hereto shall be liable to any other party to this Agreement, whether in contract, tort, equity, or otherwise (including negligence, warranty, indemnity, strict liability, or otherwise), for any punitive, exemplary, special, indirect, incidental, or consequential damages, including, without limitation, loss of profits or revenues, loss of use, claims of customers, or loss of business opportunity.



34. **Captions.** The captions and headings of the various paragraphs of this Agreement are for convenience and identification only, and shall not be deemed to limit or define the content of their respective paragraphs.
35. **Counterparts.** This Agreement may be executed in any number of counterparts. Each such counterpart hereof shall be deemed to be an original instrument but all such counterparts together shall constitute one (1) and the same instrument.
36. **Effective Date.** This Agreement shall become effective upon the later of (a) the date of signing by the last party (either the Owner or the DB Contractor) signing this Agreement, and (b) the date of TxDOT's approval as indicated by the signature of TxDOT's representative below.



APPROVED BY:

**TEXAS DEPARTMENT OF
TRANSPORTATION**

By: Donald C. Toner, Jr., SR/WA
[Printed Name]

By: _____
Authorized Signature

Director of SPD Right of Way
Strategic Projects Division

Date: _____

OWNER

By: _____
[Print Owner Name]

By: _____
Duly Authorized Representative

[Title]
[Company]

Date: _____

DB CONTRACTOR

By: _____
[Print Name]

By: _____
Duly Authorized Representative

[Title]
[Company]

Date: _____



County: _____
ROW CSJ No.: _____
Const. CSJ No.: _____
Highway: _____
Fed. Proj. No.: _____
Limits: _____ to _____

**UTILITY ADJUSTMENT AGREEMENT AMENDMENT
(DB Contractor-Managed)**

(Amendment No. _____ to Agreement No.: _____ -U-_____)

THIS AMENDMENT TO PROJECT UTILITY ADJUSTMENT AGREEMENT (this “Amendment”), by and between, [DB Contractor] hereinafter identified as the “**DB Contractor**” and [Utility Owner], hereinafter identified as the “**Owner**”, is as follows:

WITNESSETH

WHEREAS, the STATE of TEXAS, acting by and through the Texas Department of Transportation, hereinafter identified as “**TxDOT**”, proposes to construct the project identified above (the “Project”, as more particularly described in the “Original Agreement”, defined below); and

WHEREAS, pursuant to that certain Comprehensive Development Agreement (the “**CDA**”) by and between TxDOT and the DB Contractor with respect to the Project, the DB Contractor has undertaken the obligation to design, construct, and potentially maintain the Project, including causing the removal, relocation, or other necessary adjustment of existing Utilities impacted by the Project (collectively, “Adjustment”); and

WHEREAS, the Owner and DB Contractor are parties to that certain executed Project Utility Adjustment Agreement (PUAA) designated by the “Agreement No.” indicated above, as amended by previous amendments, if any (the “Original Agreement”), which provides for the Adjustment of certain Utilities owned and/or operated by the Owner (the “Owner Utilities”); and

WHEREAS, the parties are required to utilize this Amendment form in order to modify the Original Agreement to add the Adjustment of Owner Utilities facilities) not covered by the Original Agreement; and

WHEREAS, the parties desire to amend the Original Agreement to add additional Owner Utility facility(ies), on the terms and conditions hereinafter set forth.



NOW, THEREFORE, in consideration of the agreements contained herein, the parties hereto agree as follows:

1. **Amendment.** The Original Agreement is hereby amended as follows:

1.1 **Plans.**

- (a) The description of the Owner Utilities and the proposed Adjustment of the Owner Utilities in the Original Agreement is hereby amended to add the following Utility facility(ies) (“**Additional Owner Utilities**”) and proposed Adjustment(s) to the Owner Utilities described in the Original Agreement *[insert below a description of the affected facilities (by type, size and location) as well as a brief description of the nature of the Adjustment work to be performed (e.g., “adjust 12” waterline from approximately Highway Station 100+00 to approximately Highway Station 200+00)]*: _____.
- (b) The Plans, as defined in Paragraph 1 of the Original Agreement, are hereby amended to add thereto the Plans, specifications and cost estimates attached hereto as Exhibit A; and
- (c) The Plans attached hereto as Exhibit A, along with this Amendment, shall be submitted upon execution to TxDOT in accordance with Paragraph 2 of the Original Agreement, and Paragraph 2 shall apply to this Amendment and the Plans attached hereto in the same manner as if this Amendment were the Original Agreement. If the Owner claims an Existing Utility Property Interest for any of the Additional Owner Utilities, documentation with respect to such claim shall be submitted to TxDOT as part of this Amendment and the attached Plans, in accordance with Paragraph 15(a) of the Original Agreement.

1.2 **Reimbursement of Owner’s Indirect Costs.** For purposes of Paragraph 6 of the Original Agreement, the following terms apply to the Additional Owner Utilities and proposed Adjustment:

- (a) DB Contractor agrees to reimburse the Owner its share of the Owner’s indirect costs (e.g., engineering, inspection, testing, ROW) as identified in Exhibit A. When requested by the Owner, monthly progress payments will be made. The monthly payment will not exceed 90% of the estimated indirect work done to date. Once the indirect work is complete, final payment of the eligible indirect costs will be made. Intermediate payments shall not be construed as final payment for any items included in the intermediate payment.
- (b) The Owner’s indirect costs associated with Adjustment of the Owner Utilities shall be developed pursuant to the method checked and described below *[check only one (1) box]*:

- (1) Actual related indirect costs accumulated in accordance with:
 - (i) A work order accounting procedure prescribed by the applicable Federal or State regulatory body; or



- (ii) Established accounting procedure developed by the Owner and which the Owner uses in its regular operations;

(either (i) or (ii) referred to as “Actual Cost”), or

- (2) The agreed sum of \$_____ (“Agreed Sum”) as supported by the analysis of the Owner's estimated costs attached hereto as part of Exhibit A.

1.3 **Advancement of Funds by Owner for Construction Costs.**

- (a) Advancement of Owner’s share, if any, of estimated costs. Exhibit A shall identify all estimated engineering and construction-related costs, including labor, material, equipment and other miscellaneous construction items. Exhibit A shall also identify the Owner’s and DB Contractor’s respective shares of the estimated costs.

The Owner shall advance to the DB Contractor its allocated share, if any, of the estimated costs for construction and engineering work to be performed by DB Contractor, in accordance with the following terms:

- The Adjustment of the Owner’s Utilities does not require advancement of funds.
- The Adjustment of the Owner’s Utilities does require advancement of funds and the terms agreed to between the DB Contractor and Owner are listed below.

[Insert terms of advance funding to be agreed between DB Contractor and Owner.]

- (b) Adjustment Based on Actual Costs or Agreed Sum.

[Check the one (1) appropriate provision, if advancement of funds is required]:

- The Owner is responsible for its share of the DB Contractor Actual Cost for the Adjustment, including the identified Betterment. Accordingly, upon completion of all Adjustment work to be performed by both parties pursuant to this Amendment:
 - (i) The Owner shall pay to the DB Contractor the amount, if any, by which the Actual Cost of the Betterment (as determined in Paragraph 9(b)) *plus* the Actual Cost of Owner’s share of the Adjustment (based on the allocation set forth in Exhibit A) exceeds the estimated cost advanced by the Owner; or



(ii) The DB Contractor shall refund to the Owner the amount, if any, by which such advance exceeds such Actual Cost, as applicable.

The Agreed Sum is the agreed and final amount due for the Adjustment, including any Betterment, under this Amendment. Accordingly, no adjustment (either up or down) of such amount shall be made based on Actual Costs.

1.4 **Responsibility for Costs of Adjustment Work.** For purposes of Paragraph 4 of the Original Agreement, responsibility for the Agreed Sum or Actual Cost, as applicable, of all Adjustment work to be performed pursuant to this Amendment shall be allocated between the DB Contractor and the Owner as identified in Exhibit A hereto and in accordance with §203.092 of the Texas Transportation Code. An allocation percentage may be determined by application of an eligibility ratio, if appropriate, as detailed in Exhibit A; *provided however*, that any portion of an Agreed Sum or Actual Cost attributable to Betterment shall be allocated 100% to the Owner in accordance with Paragraph 9 of the Original Agreement.

1.5 **Betterment.**

(a) Paragraph 9(b) (Betterment and Salvage) of the Original Agreement is hereby amended to add the following [*Check the one (1) box that applies, and complete if appropriate*]:

The Adjustment of the Additional Owner Utilities, pursuant to the Plans as amended herein, does not include any Betterment.

The Adjustment of the Additional Owner Utilities, pursuant to the Plans as amended herein, includes Betterment to the Additional Owner Utilities by reason of [*insert explanation, e.g. "replacing 12" pipe with 24" pipe*]: _____.

The DB Contractor has provided to the Owner comparative estimates for (i) all work to be performed by the DB Contractor pursuant to this Amendment, including work attributable to the Betterment, and (ii) the cost to perform such work without the Betterment, which estimates are hereby approved by the Owner. The estimated cost of the DB Contractor work under this Amendment which is attributable to Betterment is \$_____, calculated by *subtracting* (ii) from (i). The percentage of the total cost of the DB Contractor work under this Amendment which is attributable to Betterment is _____%, calculated by *subtracting* (ii) from (i), which remainder is *divided* by (i).

(b) If the above Paragraph 1.5(a) identifies Betterment, the Owner shall advance to the DB Contractor, at least **14 days** prior to the date scheduled for commencement of construction for Adjustment of the Additional Owner Utilities, the estimated cost attributable to Betterment as set forth in Paragraph 1.5(a) of this Amendment. If the Owner fails to advance payment to the DB Contractor on



or before the foregoing deadline, the DB Contractor shall have the option of commencing and completing (without delay) the Adjustment work without installation of the applicable Betterment. *[Check the one (1) appropriate provision]:*

- The estimated cost stated in Paragraph 1.5(a) of this Amendment is the agreed and final amount due for Betterment under this Amendment, and accordingly no adjustment (either up or down) of such amount shall be made based on actual costs.

 - The Owner is responsible for the DB Contractor Actual Cost for the identified Betterment. Accordingly, upon completion of all Adjustment work to be performed by both parties pursuant to this Amendment, (i) the Owner shall pay to the DB Contractor the amount, if any, by which the Actual Cost of the Betterment (determined as provided below in this paragraph) exceeds the estimated cost advanced by the Owner, or (ii) the DB Contractor shall refund to the Owner the amount, if any, by which such advance exceeds such Actual Cost, as applicable. Any additional payment by the Owner shall be due within **60 days** after the Owner's receipt of the DB Contractors invoice therefor, together with supporting documentation; any refund shall be due within **60 days** after completion of the Adjustment work under this Amendment. The Actual Cost of Betterment incurred by the DB Contractor shall be calculated by *multiplying* (i) the Betterment percentage stated in Paragraph 1.5(a) of this Amendment, by (ii) the Actual Cost of all work performed by the DB Contractor pursuant to this Amendment (including work attributable to the Betterment), as invoiced by the DB Contractor to the Owner.
- (c) The determinations and calculations of Betterment described in this Amendment shall exclude right of way acquisition costs. Betterment in connection with right of way acquisition is addressed in Paragraph 15 of the Original Agreement.

1.6 **Miscellaneous.**

- (a) The Owner and the DB Contractor agree to refer to this Amendment, designated by the "Amendment No." and "Agreement Number" indicated on page 1 above, on all future correspondence regarding the Adjustment work that is the subject of this Amendment and to track separately all costs relating to this Amendment and the Adjustment work described herein.

 - (b) *[Include any other proposed amendments allowed by applicable Law.]*
- _____

2. **General.**

- (a) All capitalized terms used in this Amendment shall have the meanings assigned to them in the Original Agreement, except as otherwise stated herein.



- (b) This Amendment may be executed in any number of counterparts. Each such counterpart hereof shall be deemed to be an original instrument but all such counterparts together shall constitute one (1) and the same instrument.
- (c) Except as amended hereby, the Original Agreement shall remain in full force and effect. In no event shall the responsibility, as between the Owner and the DB Contractor, for the preparation of the Plans and the Adjustment of the Owner Utilities be deemed to be amended hereby.
- (d) This Amendment shall become effective upon the later of (a) the date of signing by the last party (either the Owner or the DB Contractor) signing this Amendment, and (b) the completion of TxDOT's review and approval as indicated by the signature of TxDOT's representative below.

APPROVED BY:

**TEXAS DEPARTMENT OF
TRANSPORTATION**

By: Donald C. Toner, Jr., SR/WA
[Printed Name]

By: _____
Authorized Signature

Director of SPD Right of Way
Strategic Projects Division

Date: _____

OWNER

By: _____
[Print Name]

By: _____
Duly Authorized Representative Signature

[Title]
[Company]

Date: _____

DB CONTRACTOR

By: _____
[Print Name]

By: _____
Duly Authorized Representative

[Title]
[Company]

Date: _____



County: _____
 ROW CSJ No.: _____
 Const. CSJ No.: _____
 Highway: _____
 Fed. Proj. No.: _____
 Limits: _____ to _____

**UTILITY ADJUSTMENT AGREEMENT AMENDMENT
 (Owner-Managed)**

(Amendment No. _____ to Agreement No.: _____ - U - _____)

THIS AMENDMENT TO PROJECT UTILITY ADJUSTMENT AGREEMENT (this “Amendment”), by and between, [DB Contractor] hereinafter identified as the “**DB Contractor**” and [Utility Owner], hereinafter identified as the “**Owner**”, is as follows:

WITNESSETH

WHEREAS, the STATE of TEXAS, acting by and through the Texas Department of Transportation, hereinafter identified as “**TxDOT**”, proposes to construct the project identified above (the “Project”, as more particularly described in the “Original Agreement”, defined below); and

WHEREAS, pursuant to that certain Comprehensive Development Agreement (the “**CDA**”) by and between TxDOT and the DB Contractor with respect to the Project, the DB Contractor has undertaken the obligation to design, construct, and potentially maintain the Project, including causing the removal, relocation, or other necessary adjustment of existing Utilities impacted by the Project (collectively, “Adjustment”); and

WHEREAS, the Owner and DB Contractor are parties to that certain executed Project Utility Adjustment Agreement (PUAA) designated by the “Agreement No.” indicated above, as amended by previous amendments, if any (the “Original Agreement”), which provides for the Adjustment of certain Utilities owned and/or operated by the Owner (the “Owner Utilities”); and

WHEREAS, the parties are required to utilize this Amendment form in order to modify the Original Agreement to add the Adjustment of Owner Utilities facilities not covered by the Original Agreement; and

WHEREAS, the parties desire to amend the Original Agreement to add additional Owner Utility facility(ies), on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the agreements contained herein, the parties hereto agree as follows:

1. **Amendment.** The Original Agreement is hereby amended as follows:

Plans.

- (a) The description of the Owner Utilities and the proposed Adjustment of the Owner Utilities in the Original Agreement is hereby amended to add the following Utility



facility(ies) (“**Additional Owner Utilities**”) and proposed Adjustment(s) *[insert below a description of the affected facilities (by type, size and location) as well as a brief description of the nature of the Adjustment work to be performed (e.g., “adjust 12” waterline from approximately Highway Station 100+00 to approximately Highway Station 200+00”)]*: _____.

- (b) The Plans, as defined in Paragraph 1 of the Original Agreement, are hereby amended to add thereto the Plans, specifications and cost estimates attached hereto as Exhibit A.
- (c) The Plans attached hereto as Exhibit A, along with this Amendment, shall be submitted upon execution to TxDOT in accordance with Paragraph 2 of the Original Agreement, and Paragraph 2 shall apply to this Amendment and the Plans attached hereto in the same manner as if this Amendment were the Original Agreement. If the Owner claims an Existing Utility Property Interest for any of the Additional Owner Utilities, documentation with respect to such claim shall be submitted to TxDOT as part of this Amendment and the attached Plans, in accordance with Paragraph 16(a) of the Original Agreement.
- (d) Paragraph 4(f) of the Original Agreement is hereby amended to add the following deadline for the Adjustment of the Additional Owner Utilities *[check one (1) box that applies]*:
- Owner shall complete all of the Utility reconstruction and relocation work, including final testing and acceptance thereof, on or before **[Month] [Day], 2015**.
- Owner shall complete all of the Utility reconstruction and relocation work, including final testing and acceptance thereof, within _____ **calendar days** after delivery to Owner of a notice to proceed by DB Contractor;
- (e) For purposes of Paragraph 5(b) of the Original Agreement, the Owner’s costs associated with Adjustment of the Additional Owner Utilities shall be developed pursuant to the method checked and described below *[check only one (1) box]*:
- (1) Actual costs accumulated in accordance with a work order accounting procedure prescribed by the applicable Federal or State regulatory body (“**Actual Cost**”);
- (2) Actual costs accumulated in accordance with an established accounting procedure developed by the Owner and which the Owner uses in its regular operations (“**Actual Cost**”); or
- (3) The agreed sum of \$_____ (“**Agreed Sum**”), as supported by the analysis of estimated costs attached hereto as part of Exhibit A.
- (f) For purposes of Paragraph 6 of the Original Agreement, responsibility for the Agreed Sum or Actual Cost, as applicable, of all Adjustment work to be performed pursuant to this Amendment shall be allocated between the DB Contractor and the Owner as identified in Exhibit A and in accordance with §203.092 of the Texas Transportation



Code. An allocation percentage may be determined by application of an eligibility ratio, if appropriate, as detailed in Exhibit A; *provided, however*, that any portion of an Agreed Sum or Actual Cost attributable to Betterment shall be allocated 100% to the Owner in accordance with Paragraph 10 of the Original Agreement.

(g) Paragraph 10(b) of the Original Agreement is hereby amended to add the following [*Check the one (1) box that applies*]:

- The Adjustment of the Additional Owner Utilities, pursuant to the Plans as amended herein, does not include any Betterment.
- The Adjustment of the Additional Owner Utilities, pursuant to the Plans as amended herein, includes Betterment to the Additional Owner Utilities by reason of [*insert explanation, e.g. "replacing 12" pipe with 24" pipe*]: _____.

The Owner has provided to the DB Contractor comparative estimates for (i) all costs for work to be performed by the Owner pursuant to this Amendment, including work attributable to the Betterment, and (ii) the cost to perform such work without Betterment, which estimates are hereby approved by the DB Contractor. The estimated amount of the Owner's costs for work under this Agreement which is attributable to Betterment is \$_____, calculated by *subtracting* (ii) from (i). The percentage of the total cost of the Owner's work hereunder which is attributable to Betterment is _____%, calculated by *subtracting* (ii) from (i) which remainder shall be *divided* by (i).

(h) The following shall apply to any Betterment described in Paragraph 1(g) of this Amendment:

- (i) If the Owner's costs are developed under procedure (3) described in Paragraph 1(e) of this Amendment, then the Agreed Sum stated in that Paragraph includes any credits due to the DB Contractor on account of the identified Betterment, and no further adjustment shall be made on account of same.
- (ii) If the Owner's costs are developed under procedure (1) or (2) described in Paragraph 1(e) of this Amendment, the parties agree as follows [*check the one (1) appropriate provision*]:

- The estimated cost stated in Paragraph 1(g) of this Amendment is the agreed and final amount due for Betterment under this Amendment. Accordingly, each intermediate invoice submitted for Adjustment(s) of the Additional Owner Utilities pursuant to Paragraph 7(b) of the Original Agreement shall credit the DB Contractor with an appropriate amount of the agreed Betterment amount, proportionate to the percentage of completion reflected in such invoice. The final invoice submitted for Adjustment(s) of the Additional Owner Utilities pursuant to Paragraph 7(a) of the Original Agreement shall reflect the full amount of the agreed Betterment credit. For each invoice described in this paragraph, the credit for Betterment shall be applied before calculating the DB Contractor's share (pursuant to Paragraph 1(e) of this Amendment) of the cost of the



Adjustment work. No other adjustment (either up or down) shall be made based on actual Betterment costs.

The Owner is responsible for the Actual Cost of the identified Betterment, determined by *multiplying* (a) the Betterment percentage stated in Paragraph 1(g) of this Amendment, by (b) the actual cost of all work performed by the Owner pursuant to this Amendment (including work attributable to the Betterment), as invoiced by the Owner to the DB Contractor. Accordingly, each invoice submitted for Adjustment of the Additional Owner Utilities pursuant to either Paragraph 7(a) or Paragraph 7(b) of the Original Agreement shall credit the DB Contractor with an amount calculated by *multiplying* (x) the Betterment percentage stated in Paragraph 1(g) of this Amendment, by (y) the amount billed on such invoice.

- (i) The determinations and calculations of Betterment described in this Amendment shall exclude right of way acquisition costs. Betterment in connection with ROW acquisition is addressed in Paragraph 16 of the Original Agreement.
- (j) Owner and the DB Contractor agree to refer to this Amendment, designated by the "Amendment No." and "Agreement number" indicated on page 1 above, on all future correspondence regarding the Adjustment work that is the subject of this Amendment and to track separately all costs relating to this Amendment and the Adjustment work described herein.
- (k) *[Include any other proposed amendments in compliance with the applicable Law.]*

2. **General.**

- (a) All capitalized terms used in this Amendment shall have the meanings assigned to them in the Original Agreement, except as otherwise stated herein.
- (b) This Amendment may be executed in any number of counterparts. Each such counterpart hereof shall be deemed to be an original instrument but all such counterparts together shall constitute one (1) and the same instrument.
- (c) Except as amended hereby, the Original Agreement shall remain in full force and effect. In no event shall the responsibility, as between the Owner and the DB Contractor, for the preparation of the Plans and the Adjustment of the Owner Utilities be deemed to be amended hereby.
- (d) This Amendment shall become effective upon the later of (a) the date of signing by the last party (either the Owner or the DB Contractor) signing this Amendment, and (b) the completion of TxDOT's review and approval as indicated by the signature of TxDOT's representative below.



APPROVED BY:

**TEXAS DEPARTMENT OF
 TRANSPORTATION**

By: Donald C. Toner, Jr., SR/WA
 [Printed Name]

By: _____
 Authorized Signature

Director of SPD Right of Way
Strategic Projects Division

Date: _____

OWNER

By: _____
 [Print Owner Name]

By: _____
 Duly Authorized Representative

[Title]
 [Company]

Date: _____

DB CONTRACTOR

By: _____
 [Print Name]

By: _____
 Duly Authorized Representative

[Title]
 [Company]

Date: _____



UTILITY JOINT USE ACKNOWLEDGMENT REIMBURSABLE UTILITY ADJUSTMENT

Agreement No.: _____

ROW CSJ: _____	County: _____
District: _____	Highway: _____
Fed. Proj. No.: _____	Limits: _____
Projected Letting Date: _____	From _____ to _____

WHEREAS, the State of Texas, (“**State**”), acting by and through the Texas Department of Transportation (“**TxDOT**”), proposes to make certain highway improvements on that section of the above-indicated highway; and

WHEREAS, the _____, (“**Utility**”), proposes to adjust or relocate certain of its facilities, if applicable, and retain title to any property rights it may have on, along or across, and within or over such limits of the highway right of way as indicated by the location map attached hereto.

NOW, THEREFORE, in consideration of the covenants and acknowledgments herein contained, the parties mutually agree as follows:

It is agreed that joint usage for both highway and utility purposes will be made of the area within the highway right of way limits as such area is defined and to the extent indicated on the aforementioned plans or sketches. Nothing in this Acknowledgment shall serve to modify or extinguish any compensable property interest vested in the **Utility** within the above described area. If the facilities shown in the aforementioned plans need to be altered or modified or new facilities constructed to either accommodate the proposed highway improvements or as part of **Utility’s** future proposed changes to its own facilities, **Utility** agrees to notify **TxDOT** at least 30 days prior thereto, and to furnish necessary plans showing location and type of construction, unless an emergency situation occurs and immediate action is required. If an emergency situation occurs and immediate action is required, **Utility** agrees to notify **TxDOT** promptly. If such alteration, modification or new construction is in using said highway, **TxDOT** shall have the right, after receipt of such notice, to prescribe such regulations as necessary for the protection of the highway facility and the traveling public using said highway. Such regulations shall not extend, however, to requiring the placement of intended overhead lines underground or the routing of any lines outside of the area of joint usage above described.

If **Utility’s** facilities are located along a controlled access highway, **Utility** agrees that ingress and egress for servicing its facilities will be limited to frontage roads where provided, nearby or adjacent public roads and streets, or trails along or near the highway right of way lines which only connect to an intersecting road. Entry may be made to the outer portion of the highway right of way from any one or all access points. Where supports, manholes or other appurtenances of the **Utility’s** facilities are located in medians or interchange areas, access from the through-traffic roadways or ramps will be allowed by permit issued by the **State** to the **Utility** setting forth the conditions for policing and other controls to protect highway users. In an emergency situation, if the means of access or service operations as herein provided will not permit emergency repairs as required for the safety and welfare of the public, the **Utility** shall have a temporary right of access to and from the through-traffic roadways and ramps as necessary to accomplish the required repairs, provided **TxDOT** is notified immediately highway traffic. Except as expressly provided herein, the **Utility’s** rights of access to the through-traffic roadways and/or ramps shall be subject to the same rules and regulations that apply to the general public.

If **Utility’s** facilities are located along a non-controlled access highway, the **Utility’s** rights of ingress and egress to the through-traffic roadways and/or ramps are subject to the same rules and regulations that apply to the general public.



Participation in actual costs incurred by the Utility for any future adjustment, removal or relocation of utility facilities required by highway construction shall be in accordance with applicable laws of the State of Texas.

Utility will, by written notice, advise **TxDOT** of the beginning and completion dates of the adjustment, removal or relocation, and thereafter, agrees to perform such work diligently, and to conclude said adjustment, removal or relocation by the stated completion date. The completion date shall be extended for delays caused by events outside **Utility's** control, including an event of Force Majeure, which shall include a strike, war or act of war (whether an actual declaration of war is made or not), insurrection, riot, act of public enemy, accident, fire, flood or other act of God, sabotage, or any other event in which **Utility** has exercised all due care in the prevention thereof so that the causes or other events are beyond the control and without the fault or negligence of **Utility**.

It is expressly understood that **Utility** conducts the new installation, adjustment, removal and/or relocation at its own risk and that **TxDOT** makes no warranties or representations regarding the existence or location of utilities currently within its right of way.

The **Utility** and the **State**, by execution of this Acknowledgment, do not waive or relinquish any right that they may have under the law.

The signatories to this Acknowledgment warrant that each has the authority to enter into this Acknowledgment on behalf of the party represented.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures.

UTILITY

EXECUTION RECOMMENDED:

Utility: _____
Name of Utility

District Engineer, District

By: _____
Authorized Signature

<p>THE STATE OF TEXAS</p> <p>Executed and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.</p> <p>By: _____ Director, SPD Right of Way</p> <p>Date: _____</p>
--

Print or Type Name

Title: _____

Date: _____



DB Contractor's Utility Design Coordinator

Utility No Conflict Sign-Off Form

Utility Design Coordinator: _____
 Date plans received: _____
 Utility Company: _____
 Assembly "U" number: _____
 Type of Utilities: _____
 Date on Utility's plans: _____ No. of sheets in Utility's plans: _____

I, _____, the Utility Design Coordinator (UDC) on behalf of the DB Contractor (_____) certify that a review of the above referenced Utility Plans concerning the proposed highway improvements on the _____ has been completed and have not identified any conflicts between the Utility's proposed relocation and any design features.

Design features include but are not limited to pavement structures, drainage facilities, bridges, retaining walls, traffic signals, illumination, signs, foundations, duct/conduit, ground boxes, erosion control facilities, water quality facilities and other DB Contractor-Managed Utilities.

Any design changes to the _____ after the signing of this form will be coordinated through the DB Contractor's Utility Manager and the affected Utility Owner.

Check box if any areas of concern and insert comments below:

Utility Design Coordinator: _____
 (UDC) (Signature) _____ Date _____

 (Print Name)

Utility Coordination Firm: _____
 (Print Name)

This form must be completed/signed and included in each Utility Assembly submitted to the Texas Department of Transportation.



DB Contractor's Utility Manager

Utility No Conflict Sign-Off Form

Utility Manager: _____
 Date plans received: _____
 Utility Company: _____
 Assembly "U" number: _____
 Type of Utilities: _____
 Date on Utility's plans: _____ No. of sheets in Utility's plans: _____

I, _____, the Utility Manager (UM) working on behalf of the DB Contractor (_____) certify that a review of the above referenced Utility Plans concerning the proposed highway improvements on the _____ has been completed and have not identified any conflicts between the Utility's proposed relocation and any existing and/or proposed Utilities.

The proposed Utility Plans conform to Title 43 of the Texas Administrative Code, Section 21.31 – 21.56 of the Utility Accommodation Rules.

Check box if any areas of concern and insert comments below:

Utility Manager: _____
 (UM) (Signature) Date

 (Print Name)

Utility Design Coordinator: _____
 (UDC) (Signature) Date

 (Print Name)

Utility Coordination Firm: _____
 (Print Name)



Form 1818
 Rev. 08/12)
 (a.k.a. Form D-9-USA-1)

Material Statement

Sheet _____ of _____

Supplier: _____
 Address: _____

 Contract No.: _____

County: _____
 Project: _____
 Control: _____
 Contractor: _____

Purchase Order No.	Quantity (Amt./Units)	Material Description	Mill Name	Heat No.	Material Use	Required Spec.	Documentation	
							MTR	Cert.

This is to certify that the materials listed above and on the attached supplement (if attached) are in conformance with the governing specification(s). This is to also certify that all manufacturing processes for steel and iron materials or for the application of coatings (epoxy, galvanizing, painting or any other coating that protects or enhances the value of the steel or iron metal) to these materials occurred in the United States of America. Manufacturing processes are defined as all processes required to change the raw ore or scrap metal into the finished in-place steel or iron product. The attached mill test reports (MTRs) and Certifications (Cert.) are offered as proof of Domestic Origin.

Subscribed and sworn to before me this _____ day of

_____, _____

Notary Public _____

My Commission expires: _____, _____

I declare under penalty of perjury under the laws of the United States of America and the State of Texas that the foregoing is true and correct and that I am authorized to sign for the Firm listed below.

 (Authorized Corporate Official Signature)

 Date

 (Type Name and Title)

 (Firm Name)