

## EXHIBIT 15

2004 Specifications

### DBE SPECIAL PROVISIONS

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#### **Disadvantaged Business Enterprise in Federal-Aid Construction for Comprehensive Development Agreements**

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

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

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

- a.** The Contractor will solicit DBEs through reasonable and available means, as defined in 49 CFR Part 26, Appendix A and the Department's DBE Program, or show a good faith effort to meet the DBE goal for this contract.
- b.** The Contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.
- c.** The requirements of this Special Provision shall be physically included in any subcontract.

d. By signing the contract proposal, the Bidder is certifying that the DBE goal as stated in the proposal will be met by obtaining commitments from eligible DBEs or that the Bidder will provide acceptable evidence of good faith effort to meet the commitment, and that, if selected for the CDA, the Bidder will submit a DBE Performance Plan meeting the requirements set forth in Section 1.A.2.m, below.

## 2. Definitions.

a. "Department" means the Texas Department of Transportation.

b. "DOT" means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

c. "Federal-Aid Contract" is any contract between the Texas Department of Transportation and a Contractor which is paid for in whole or in part with DOT financial assistance.

d. "DBE Joint Venture" means an association of a DBE firm and 1 or more other firm(s) to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

e. "Disadvantaged Business Enterprise" or "DBE" means a firm certified through the Texas Unified Certification Program in accordance with 49 CFR Part 26.

f. "Good Faith Effort" means efforts to achieve a DBE goal or other requirement of this Special Provision which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

g. "Manufacturer" is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications."

h. "Regular Dealer" is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages in, as its principal business and under its own name, the purchase and sale or lease of the products in question.

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) Detailed description of:

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

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

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

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

a. After conditional award of the contract, the Contractor shall, in consultation with the Department's Business Opportunity Programs (BOP) Office, develop and submit a DBE Performance Plan meeting the requirements set forth in Section 1.A.2.m, above, and shall also submit a completed Form No.SMS.4901, "DBE Commitment Agreement" for each DBE he/she intends to use to satisfy the DBE goal, to the extent known at the date of submission of the DBE Performance Plan. The DBE Performance Plan must be submitted to the Department's Business Opportunity Programs (BOP) Office in Austin, Texas not later than 5:00 p.m. on the 30<sup>th</sup> business day, excluding national holidays, after the conditional award of the contract. The DBE Performance Plan is subject to review, comment and approval by TxDOT prior to and as a condition of execution of the CDA.

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

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

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

(2) Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically



feasible units to facilitate DBE participation, even when the Contractor might otherwise prefer to perform the work items with its own forces.

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

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

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

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

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

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

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

(10) If the Program Manager of the BOP Office determines that the Contractor has failed to meet the good faith effort requirements, the

Contractor will be given an opportunity for reconsideration by the Director of the BOP Office.

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

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

f. The Contractor shall not terminate for convenience a DBE subcontractor named in the commitment submitted under Section 1.A.3.a. of this Special Provision. Prior to terminating or removing a DBE subcontractor named in the commitment, the Contractor must have a written consent of the Department.

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

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

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

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

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

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

c. Only DBE firms certified at the time commitments are submitted are eligible to be used in the information furnished by the Contractor as required under Section 1.A.3.a. and 3.g. above. For purposes of the DBE goal on this project, DBEs will only be allowed to perform work in the categories of work for which they are certified.

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

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

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

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

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

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

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

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

Consistent with industry practices and the DOT/Department's DBE program, a DBE subcontractor may enter into second-tier subcontracts, amounting up to 70% of their contract. Work subcontracted to a non-DBE does not count towards DBE goals. If a DBE does not perform or exercise responsibility for at least

30% of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that the DBE is not performing a CUF.

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

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

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

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

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

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

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

**(1)** If the materials or supplies are obtained from a DBE manufacturer, count 100% of the cost of the materials or supplies toward DBE goals. (Definition of a DBE manufacturer found at Section 1.A.5.c.(1) of this provision.)

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

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

For purposes of this Section 1.A.5.c.(2), a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business:

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

**(B)** A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating, or maintaining a place of business as provided in the first paragraph under Section 1.A.5.c.(2), if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

**(C)** Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of Section 1.A.5.c.(2).

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

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

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

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

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

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

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

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

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

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

d. Prior to receiving final payment, the Contractor shall submit Form SMS.4904, "DBE or HUB Final Report". If the DBE goal requirement is not met, documentation supporting Good Faith Efforts, as outlined in Section 1.A.3.c. of this Special Provision, must be submitted with the "DBE or HUB Final Report."

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

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

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

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

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

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

e. When a DBE subcontractor, named in the commitment under Section 1.A.3.a. of this Special Provision, is terminated or fails to complete its work on the contract for any reason, the prime contractor is required to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal.

f. A Contractor's failure to comply with the requirements of this Special Provision shall constitute a material breach of this contract. In such a case, the

Department reserves the right to terminate the contract; to deduct the amount of DBE goal not accomplished by DBEs from the money due or to become due the Contractor, or to secure a refund, not as a penalty but as liquidated damages to the Department or such other remedy or remedies as the Department deems appropriate.

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

1. The Contractor will offer DBEs as defined in 49 CFR Part 26, Subpart A, the opportunity to compete fairly for contracts and subcontractors financed in whole or in part with Federal funds. Race-Neutral DBE and non-DBE HUB participation on projects with no DBE goal shall be reported on Form No. SMS.4903, "DBE or HUB Progress Report" and submitted to the Area Engineer each month and at project completion. Payments to DBEs reported on Form SMS.4903 are subject to the requirements of Section 1.A.5, "Determination of DBE Participation."
2. The Contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.



## EXHIBIT 16

### DEVELOPER'S DBE PERFORMANCE PLAN

#### **DBE PLAN**

The following, together with appendices, is submitted as an individual Disadvantaged Business Enterprise (DBE) Plan to address the applicable requirements in TxDOT's Disadvantaged Business Enterprise (DBE) Program adopted pursuant to 49 CFR Part 26, the Texas Administrative Code and the Comprehensive Development Agreement for a Concession for the IH 635 Managed Lanes Project (CDA):

#### **1. GOALS**

##### **A. Percentage Goals**

The following realistic percentage goals are presented below to reflect the Developer's good faith effort to employ Disadvantaged Business Enterprises whenever possible in accordance with the regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26.

- i. 12.12 percent of the total design work and other professional services subcontracting/procurement dollars shall be offered to subcontractors and/or suppliers owned and controlled by socially and economically disadvantaged individuals.
- ii. 12.12 percent of the total planned construction subcontracting/procurement dollars shall be offered to subcontractors and/or suppliers owned and controlled by socially and economically disadvantaged individuals.

#### **2. PRINCIPAL TYPES OF SUPPLIES AND SERVICES TO BE SUBCONTRACTED**

The principal products and/or services the Developer anticipates subcontracting and identification of DBEs for performance of design work, other professional services and construction will be determined as work progresses and submitted to TxDOT on the DBE commitment agreement form SMS 4901.

#### **3. METHOD FOR DEVELOPING GOALS**

The work activities to be self-performed by the Developer's workforce will be identified by human resource managers and project management personnel based on best value assessment of each work activity and labor resource. The Developer's labor and materials sourcing strategy embodies preferences in offering subcontractor-designated work to qualified DBE's, as feasible.

The goals listed herein reflect internal policy objectives and procedures that require a careful review and evaluation process of the services and/or products to be subcontracted. The subcontracting data accumulated by the Developer through our

sourcing/evaluation process for this project will be based on an aggressive outreach program targeted at maximizing the utilization of qualified DBE's whenever practicable by using a broad base of resources to identify and source potential DBE's.

#### 4. SOURCES FOR SOLICITATION

The following sources have been identified by the Developer as available resources to locate and solicit appropriate disadvantaged business enterprises and will be utilized as needed:

- i. Owner provided subcontractor listings
- ii. Texas Unified Certification Program (TUCP) directory
- iii. Procurement Marketing and Access Network (PRO-Net) of the Small Business Administration (SBA);
- iv. The Developer's Internal Vendor Database – created from letters of introduction, pre-qualification documents, and personal interviews with small, small disadvantaged, women-owned, HUB Zone, and service disabled veteran enterprise representatives;
- v. ***The Blue Book of Building and Construction***, regional directories of building and construction vendors;
- vi. ***MBE Contractor Directory*** – compiled and maintained by the Associated General Contractors of America;
- vii. Office of Small and Disadvantaged Business Utilization Specialist;
- viii. National Directories
  - *National Directory of Women-Owned Businesses*
  - *National Directory of Minority-Owned Business Firms*
  - *Smoke Signals*
  - *The Business Women's Network Directory*
  - *National Center of American Indian-Owned Businesses*
- ix. Databases
  - *Minority Business Development Agency (MBDA)*
  - *GSA's Office of Enterprise Development Vendor Profile Database*
  - *Databases Established by Various Government Agencies*
- x. Publications
  - *Small Business Resource Guide*
  - *Federal Acquisition Report*
  - *Washington Business Journal's Book of Lists*
  - *Minorities in Business Daily*
  - *Local Newspaper and Trade Publications*

- xi. Trade and Professional Associations
  - *National Foundation for Women Business Owners (NFWBO)*
  - *National Minority Supplier Development Council, Inc.*
  - *National Association of Minority Contractors*
  - *National Center for American Indian Enterprise Development*
  - *National Business League*
  - *Latin American Management Association*
  - *The National Black Business Council, Inc.*
  - *Hispanic Business Professional Women Association*

All subcontractors considered for Invitations to Bid by the Developer, including DBEs are asked to complete a Prequalification Form. This form is reviewed internally by The Developer to evaluate the following areas of concern such as:

- ◆ Quality of services and/or products;
- ◆ Pricing structure;
- ◆ Delivery schedule;
- ◆ Financial stability;
- ◆ Safety record;
- ◆ Insurance/Bonding information;
- ◆ Experience;
- ◆ Personnel;
- ◆ Equipment.

Additional information, if required, may be obtained from Dun and Bradstreet reports, personal interviews and contact with business references.

## **5. INVITATION TO BID**

Following the identification and prequalification of a potential subcontractor/supplier, an **Invitation to Bid** is formulated and electronically issued to the subcontractor. A log is maintained by the Procurement Department to track the subcontractors contacted and their response. Sample subcontract and/or purchase orders agreements are included with the Invitation as a resource document for the subcontractor's information and pricing consideration. All plans and specifications are made available for review. Applicable addenda to the contract are also transmitted to the subcontractor as necessary.

## **6. SELECTION PROCESS AND AWARD**

The responsive subcontractor quotes are evaluated based on price, qualifications of bid, inclusions/exclusions, Prequalification information, etc. After careful consideration with input from Subcontracting, Estimating, and Management, the Project Team makes a selection of the successful subcontractors for each work scope subcontracted. If a DBE is not selected the reasons for this decision is documented on the vendor log for the particular work order. Appropriate agreements are drafted and forwarded to the subcontractor for execution.

## 7. PLAN ADMINISTRATION

The following individual will administer the subcontracting program:

**NAME:** Alfonso Orol  
DBE Liaison Officer

**ADDRESS:** LBJ Infrastructure Group  
7700 Chevy Chase Dr. Bldg ONE, Suite 500C  
Austin, TX 78752

**PHONE:** 512 637-8545

**FAX:** 512 637-1431

The specific duties, as they relate to this subcontracting plan, include general overall responsibility for the subcontracting program, and the development, preparation and execution of individual subcontracting plans, and the monitoring of performance relative to the contractual subcontracting requirements contained in this plan including, but not limited to:

- The duties described in Paragraph 4 above.
- Preparing and submitting periodic governmental required subcontracting reports including a monthly DBE Plan assessment report.
- Coordinating activities during compliance reviews by Federal agencies.
- Coordinating activities involving small, small disadvantaged, women-owned, HUB Zone, and service disabled veteran enterprises, as related to the subcontracting program.
- Monitoring attainment of proposed goals.

## 8. OUTREACH EFFORTS

A. Efforts will be taken to assure that small, small disadvantaged, women-owned, HUB Zone, and service disabled veteran business concerns will have an equitable opportunity to compete, along with large businesses, for subcontract work. Outreach efforts will be made through:

- i. Contacts with minority and small business trade associations.
- ii. Contacts with business development organizations.
- iii. Contacts with the TxDOT General Service Division, Business Opportunities Program (BOP) Branch.
- iv. Attendance at SBA procurement conferences and trade fairs.
- v. Mentor-Protégé relationships.

- B. Internal efforts will be made to guide and encourage purchasing agents, buyers, etc., to utilize small, small disadvantaged, women-owned, HUB Zone, and service disabled veteran enterprises, as follows:
  - i. By notifying appropriate internal purchasing agents and buyers of small, small disadvantaged, women-owned, HUB Zone, and service disabled veteran business sources.
  - ii. By monitoring efforts to achieve the goals of the subcontracting plan.

## 9. PLANS FOR SUBCONTRACTORS FOR THE DEVELOPER

- A. The Developer shall include in all subcontracts subject to this plan the following language incorporated by reference in accordance with all applicable FAR regulations:

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

*The Contractor shall pay the subcontractor or subprovider under this prime contract for satisfactory work performed within ten (10) days after the Contractor receives payment for the work performed by the subcontractor. Also, any retained monies on a subcontractor's work shall be paid to the subcontractor within ten (10) days after satisfactory completion of all the subcontractor's work. Completion of all the subcontractor's work shall include testing, maintenance and other similar periods that are the responsibility of the subcontractor.*

*SUBCONTRACTOR hereby specifically agrees to be bound and to comply with the subcontracting requirements of the terms and conditions of the CDA including but not limited to, the requirement that SUBCONTRACTOR, except small business concerns, adopt and comply with a plan similar to this plan and submit such plan for review and acceptance by the DEVELOPER.*

## 10. COMPLIANCE WITH REPORTING REQUIREMENTS

- A. The Developer agrees to submit monthly reports and to cooperate in any studies or surveys, as may be required by the Contracting Agency, in order to determine the extent of the compliance by the Owner to achieve the goal of the DBE plan. These reports will be due within 15 days after the end of a calendar month and will be submitted until all DBE subcontracting or material supply activity is completed.

- B. The Developer agrees to submit all applicable Standard Forms. SMS 4901, SMS 4901-M/S, SMS 4901-T, SMS 4903 and SMS 4904 located on the TxDOT website at [www.txdot.state.tx.us/forms/bop](http://www.txdot.state.tx.us/forms/bop)
- C. To ensure that DBE requirements are complied with, TxDOT will monitor The Developer's efforts by reviewing monthly reports submitted to TxDOT by The Developer indicating progress in achieving the DBE contract goal and by compliance reviews conducted on the project site by TxDOT.

## 11. RECORDS

- A. The Developer agrees to maintain the following types of records to document compliance with the DBE plan:
  - i. Small, small disadvantaged, women-owned, HUB Zone, and service disabled veteran business concern source lists, guides, and the other data identifying these suppliers, subcontractor, etc.
  - ii. Organizations contacted for providing small, small disadvantaged, women-owned, HUB Zone, and service disabled veteran business sources.
  - iii. Records on each subcontract solicitation resulting in an award showing whether or not small and small disadvantaged business concerns were contacted, and if not, why not; whether or not small, small disadvantaged, women-owned, HUB Zone, and service disabled veteran business concerns were contacted, and if not, why not; and, if applicable the reason the award was not made to a small or small disadvantaged business concern.
  - iv. Records of any outreach efforts to contact trade associations, business development, business development organizations, and conferences and trade fairs, to locate DBEs.
  - v. Records of internal guidance and encouragement provided to buyers through workshops, seminars, training, etc., and performance monitoring to evaluate compliance with program requirements.
  - vi. Records on a contract-by-contract basis to support award data submitted by the offeror to the government, including name, address, and business size of each subcontractor.

## 12. TRAINING

The Developer will ensure that all applicable training requirements will be accomplished with each subcontractor through orientation and/or acknowledgement of safety requirements included in all subcontract agreements.

### **13. EEO**

All Federal employment requirements to include EEO, affirmative action, labor, and all other applicable requirements will be posted at project site and reference to these requirements attached to all subcontract agreements.

### **14. IMPLEMENTATION**

In order to effectively implement this plan to the extent consistent with efficient contract performance, The Developer shall perform the following functions:

- A. Assist disadvantaged business concerns by arranging solicitations time for the preparation of bids, quantities, specifications and delivery schedules, so as to facilitate the participation of such concerns. Where the lists of potential DBE subcontractors are excessively long, reasonable effort shall be made to give all such business concerns an opportunity to compete over a period of time.
- B. Provide adequate and timely consideration of the potentialities of DBE subcontractors in all "make-or-buy" decisions.
- C. Counsel and discuss subcontracting opportunities with representatives of DBE's.
- D. Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as DBE's for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in The Developer's subcontracting plan.

**SPECIAL PROVISION**

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**Disadvantaged Business Enterprise in Federal-Aid Construction  
for Comprehensive Development Agreements**

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

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

1. **Policy.** It is the policy of the DOT and the Texas Department of Transportation (henceforth the "Department") that DBEs, as defined in 49 CFR Part 26, Subpart A and the Department's DBE Program, shall have the opportunity to participate in the performance of contracts financed in whole or in part with Federal funds. The DBE requirements of 49 CFR Part 26, and the Department's DBE Program, and the Contractor's approved DBE Performance Plan apply to this contract as follows:
  - a. The Contractor will solicit DBEs through reasonable and available means, as defined in 49 CFR Part 26, Appendix A and the Department's DBE Program, or show a good faith effort to meet the DBE goal for this contract.
  - b. The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.



- c. The requirements of this Special Provision shall be physically included in any subcontract.
- d. By signing the contract proposal, the Bidder is certifying that the DBE goal as stated in the proposal will be met by obtaining commitments from eligible DBEs or that the Bidder will provide acceptable evidence of good faith effort to meet the commitment, and that, if selected for the CDA, the Bidder will submit a DBE Performance Plan meeting the requirements set forth in Section 1.A.2.m, below.

## 2. Definitions.

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

an established, regular business that engages in, as its principal business and under its own name, the purchase and sale or lease of the products in question.

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

- i. "Broker" is an intermediary or middleman that does not take possession of a commodity or act as a regular dealer selling to the public.
- j. "Race-neutral DBE Participation" means any participation by a DBE through customary competitive procurement procedures.
- k. "Race-conscious" means a measure or program that is focused specifically on assisting only DBEs, including women-owned businesses.
- l. "Texas Unified Certification Program" or "TUCP" provides one-stop shopping to applicants for certification, such that applicants are required to apply only once for a DBE certification that will be honored by all recipients of federal funds in the state. The TUCP by Memorandum of Agreement established six member entities to serve as certifying agents for Texas in specified regions.
- m. **"DBE Performance Plan"** means the plan submitted by the selected Bidder for a CDA project describing the methods to be employed for achieving TxDOT's DBE participation goals for the Project, including Bidder's exercise of good faith efforts. The selected Bidder's DBE Performance Plan is subject to TxDOT review, comment and approval prior to execution of the CDA. Each DBE Performance Plan must at a minimum include the following:
  - Specific categories of services and work anticipated for DBE participation on the project
  - Identification of DBEs for performance of design work and other professional services, to the extent known at the date of submission of the DBE Performance Plan
  - Identification of DBEs for construction subcontracts, to the extent known at the date of submission of the DBE Performance Plan
  - Schedule for submission of DBE commitment agreements (using Form No. SMS. 4901), based on Bidder's initial project schedule; provided, however, that:

- (1) DBE commitment agreements for design work and other professional services must be submitted at least 30 days prior to commencement of design work or other professional services for the applicable segment or phase of the work under the CDA;
  - (2) DBE commitment agreements for construction subcontracts must be submitted at least 30 days prior to commencement of construction for the applicable segment or phase of the work under the CDA.
- Detailed description of (1) good faith efforts the Bidder has exercised to identify DBEs and obtain commitment agreements prior to the date of submission of the DBE Performance Plan, and (2) good faith efforts that will be exercised by the Contractor following execution of the CDA to achieve the DBE participation goal for the project.
  - The name, experience, qualifications and responsibilities of the Bidder's Civil Rights/DBE Compliance Manager

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

- a. After conditional award of the contract, the Contractor shall, in consultation with the Department's Business Opportunity Programs (BOP) Office, develop and submit a DBE Performance Plan meeting the requirements set forth in Section 1.A.2.m, above, and shall also submit a completed Form No.SMS.4901, "DBE Commitment Agreement" for each DBE he/she intends to use to satisfy the DBE goal, to the extent known at the date of submission of the DBE Performance Plan. The DBE Performance Plan must be submitted to the Department's Business Opportunity Programs (BOP) Office in Austin, Texas not later than 5:00 p.m. on the 30<sup>th</sup> business day, excluding national holidays, after the conditional award of the contract. The DBE Performance Plan is subject to review, comment and approval by TxDOT prior to and as a condition of execution of the CDA.
- b. DBE prime Contractors may receive credit toward the DBE goal for work performed by his/her own forces and work subcontracted to DBEs. A DBE prime must make a good faith effort to meet the goals. In the event a DBE prime subcontracts to a non-DBE, that information must be reported on Form No. SMS.4902.
- c. A Contractor who cannot meet the contract goal, in whole or in part, shall make adequate good faith efforts to obtain DBE participation as so stated and defined in 49 CFR Part 26, Appendix A. The following is a list of the types of action that may be considered as good faith efforts. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or

exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

- Soliciting through all reasonable and available means (e.g. attendance at prebid meetings, advertising, and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The solicitation must be done within sufficient time to allow the DBEs to respond to it. Appropriate steps must be taken to follow up initial solicitations to determine, with certainty, if the DBEs are interested.
- Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the Contractor might otherwise prefer to perform the work items with its own forces.
- Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- Negotiating in good faith with interested DBEs to make a portion of the work available to DBE subcontractors and suppliers and select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiations includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
- A Bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional cost involved in finding and using DBEs is not in itself sufficient reason for a bidders failure to meet the Contract DBE goal as long as such cost are reasonable. Also, the ability or desire of the Contractor to perform the work of the Contract with its own organization does not relieve the Bidder of the responsibility to make good faith effort. Contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
- Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The Contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate cause for the rejection or non-solicitation of bids and the Contractors efforts to meet the project goal.
- Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or Contractor.
- Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- Effectively using the services of available minority/women community organizations; minority/women Contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

- If the Program Manager of the BOP Office determines that the Contractor has failed to meet the good faith effort requirements, the Contractor will be given an opportunity for reconsideration by the Director of the BOP Office.
  - d. Should the Bidder to whom the contract is conditionally awarded refuse, neglect or fail to submit an acceptable DBE Performance Plan, the proposal guaranty filed with the bid shall become the property of the state, not as a penalty, but as liquidated damages to the Department.
  - e. The preceding information shall be submitted directly to the Business Opportunity Programs Office, Texas Department of Transportation, 125 E. 11th Street, Austin, Texas 78701-2483.
  - f. The Contractor shall not terminate for convenience a DBE subcontractor named in the commitment submitted under Section 1.A.3.a. of this Special Provision. Prior to terminating or removing a DBE subcontractor named in the commitment, the Contractor must have a written consent of the Department.
  - g. The Contractor shall also make a good faith effort to replace a DBE subcontractor that is unable to perform successfully with another DBE, to the extent needed to meet the contract goal. The Contractor shall submit a completed Form No.4901, "DBE Commitment Agreement," for the substitute DBE firm(s). Any substitution of DBEs shall be subject to approval by the Department. Prior to approving the substitution, the Department will request a statement from the DBE concerning it being replaced.
  - h. The Contractor shall designate a DBE liaison officer who will administer the Contractor's DBE program and who will be responsible for maintenance of records of efforts and contacts made to subcontract with DBEs.
  - i. Contractors are encouraged to investigate the services offered by banks owned and controlled by disadvantaged individuals and to make use of these banks where feasible.

**4. Eligibility of DBEs.**

- a. The member entities of the TUCP certify the eligibility of DBEs and DBE joint ventures to perform DBE subcontract work on DOT financially assisted contracts.
- b. The Department maintains the Texas Unified Certification Program DBE Directory containing the names of firms that have been certified to be eligible to participate as DBE's on DOT financially assisted contracts. This Directory is available from the Department's BOP Office. An update of the Directory can be found on the Internet at <http://www.dot.state.tx.us/business/tucpinfo.htm>.

- c. Only DBE firms certified at the time commitments are submitted are eligible to be used in the information furnished by the Contractor as required under Section 1.A.3.a. and 3.g. above. For purposes of the DBE goal on this project, DBEs will only be allowed to perform work in the categories of work for which they are certified.
- d. Only DBE firms certified at the time of execution of a contract/subcontract/purchase order, are eligible for DBE goal participation.

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

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

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

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

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

may negotiate a reasonable price with the material supplier.

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

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

Consistent with industry practices and the DOT/Department's DBE program, a DBE subcontractor may enter into second-tier subcontracts, amounting up to 70% of their contract. Work subcontracted to a non-DBE does not count towards DBE goals. If a DBE does not perform or exercise responsibility for at least 30% of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that the DBE is not performing a CUF.

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

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

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

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

only for the fee or commission it receives as result of the lease arrangement.

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

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

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

- (1) If the materials or supplies are obtained from a DBE manufacturer, count 100% of the cost of the materials or supplies toward DBE goals. (Definition of a DBE manufacturer found at Section 1.A.5.c.(1) of this provision.)

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

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

For purposes of this Section 1.A.5.c.(2), a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business:

- (A) To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
- (B) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating, or maintaining a place of business as provided in the first paragraph under Section 1.A.5.c.(2), if the person both owns and operates



distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

- (C) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of Section 1.A.5.c.(2).
  - (3) With respect to materials or supplies purchased from DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals.
  - (4) Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- d. If the Contractor chooses to assist a DBE firm, other than a manufacturing material supplier or regular dealer, and the DBE firm accepts the assistance, the Contractor may act solely as a guarantor by use of a two-party check for payment of materials to be used on the project by the DBE. The material supplier must invoice the DBE who will present the invoice to the Contractor. The Contractor may issue a joint check to the DBE and the material supplier and the DBE firm must issue the remittance to the material supplier. No funds shall go directly from the Contractor to the material supplier. The DBE firm may accept or reject this joint checking arrangement.
- The Contractor must obtain approval from the Department prior to implementing the use of joint check arrangements with the DBE. Submit to the Department, Joint Check Approval Form 2178 for requesting approval. Provide copies of cancelled joint checks upon request. No DBE goal credit will be allowed for the cost of DBE materials that are paid by the Contractor directly to the material supplier.
- e. No DBE goal credit will be allowed for supplies and equipment the DBE subcontractor leases from the contractor or its affiliates.

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

**6. Records and Reports.**

- a. The Contractor shall submit monthly reports, after work begins, on DBE payments to meet the DBE goal and for DBE or HUB race-neutral participation. Report payments made to non-DBE HUBs. The monthly report is to be sent to the Area Engineer. These reports will be due within 15 days after the end of a calendar month. These reports will be required until all DBE subcontracting or material supply activity is completed. Form No. SMS.4903, "DBE or HUB Progress Report," is to be used for monthly reporting. Form No. SMS.4904, "DBE or HUB Final Report," is to be used as a final summary of DBE payments submitted upon completion of the project. The original final report must be submitted to the Business Opportunity Programs Office and a copy must be submitted to the Area Engineer. These forms may be obtained from the Department or may be reproduced by the Contractor. The Department may verify the amounts being reported as paid to DBEs by requesting copies of cancelled checks paid to DBEs on a random basis. Cancelled checks and invoices should reference the Department's project number.
- b. DBE subcontractors and/or material suppliers should be identified on the monthly report by Vendor Number, name, and the amount of actual payment made to each during the monthly period. Negative reports are required when no activity has occurred in a monthly period.
- c. All such records must be retained for a period of 3 years following completion of the contract work, and shall be available at reasonable times and places for inspection by authorized representatives of the Department or the DOT. Provide copies of subcontracts or agreements and other documentation upon request.
- d. Prior to receiving final payment, the Contractor shall submit Form SMS.4904, "DBE or HUB Final Report". If the DBE goal requirement is not met, documentation supporting Good Faith Efforts, as outlined in Section 1.A.3.c. of this Special Provision, must be submitted with the "DBE or HUB Final Report."
- e. Provide a certification of prompt payment, the Prompt Payment Certification Form 2177, to certify that all subcontractors and suppliers were paid from the previous months payments and retainage was released for those whose work is complete. Submit

the completed form each month and the month following the month when final acceptance occurred at the end of the project.

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

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

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

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

When a DBE subcontractor, named in the commitment under Section 1.A.3.a. of this Special Provision, is terminated or fails to complete its work on the contract for any reason, the prime contractor is required to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal.

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

- B. **Article B. Race-Neutral Disadvantaged Business Enterprise Participation.** It is the policy of the DOT that Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 26 Subpart A, be given the opportunity to compete fairly for contracts and subcontracts financed in whole or in part with Federal funds and that a maximum feasible portion of the Department's overall DBE goal be

met using race-neutral means. Consequently, if there is no DBE goal, the DBE requirements of 49 CFR Part 26, apply to this contract as follows:

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

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

**SPECIAL PROVISION**  
**009---009**  
**Measurement and Payment**

For this project, Item 009, "Measurement and Payment," of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

**Article 9.6. Progress Payments, Section A, Retainage** is voided and replaced by the following:

**A. Retainage.** Retainage will not be withheld on this project.

**Article 9.6. Progress Payments, Section B, Payment Provisions for Subcontractors** is voided and replaced by the following:

**B. Payment Provisions for Subcontractors.** For the purposes of this Article only, the term subcontractor includes suppliers and the term work includes materials provided by suppliers at a location approved by the department. Pay the subcontractors for work performed within 10 days after receiving payment for the work performed by the subcontractor. Also, pay any retainage on a subcontractor's work within 10 days after satisfactory completion of all of the subcontractor's work. Completed subcontractor work includes vegetative establishment, test, maintenance, performance, and other similar periods that are the responsibility of the subcontractor.

For the purpose of this Section, satisfactory completion is accomplished when:

- the subcontractor has fulfilled the Contract requirements of both the Department and the subcontract for the subcontracted work, including the submittal of all information required by the specifications and the Department; and
- the work done by the subcontractor has been inspected, approved, and paid by the Department.

The inspection and approval of a subcontractor's work does not eliminate the Contractor's responsibilities for all the work as defined in Article 7.14, "Contractor's Responsibility for Work."

The Department may pursue actions against the Contractor, including withholding of estimates and suspending the work, for noncompliance with the subcontract requirements of this Section upon receipt of written notice with sufficient details showing the subcontractor has complied with contractual obligations as described in this Article.

These requirements apply to all tiers of subcontractors. Incorporate the provisions of this Article into all subcontract or material purchase agreements.

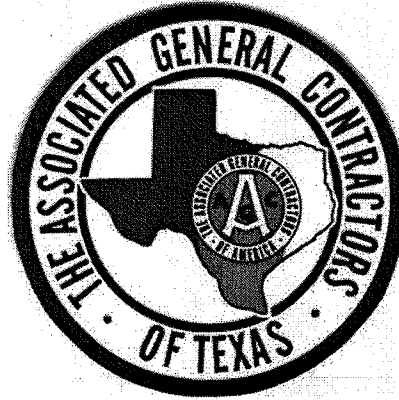
**EXHIBIT 17**

**DEVELOPER'S JOB TRAINING / SMALL BUSINESS MENTORING PLAN**

[Attached]

# Developer's Job Training / Small Business Mentoring Plan

## ON THE JOB TRAINING PROGRAM



### AGC OF TEXAS HIGHWAY, HEAVY, UTILITIES AND INDUSTRIAL BRANCH

PREPARED BY

# AGC OF TEXAS

HIGHWAY, HEAVY, UTILITIES AND INDUSTRIAL BRANCH  
P.O. BOX 2185  
AUSTIN, TX 78768

REVISED DECEMBER 2006

AN EQUAL EMPLOYMENT OPPORTUNITY PROGRAM



U.S. DEPARTMENT OF LABOR  
OFFICE OF FEDERAL CONTRACT COMPLIANCE  
WASHINGTON, D.C. 20210

July 29, 1968

MEMORANDUM

TO: Contract Compliance Officers

FROM: Ward McCreedy  
Acting Director

SUBJECT: Acceptable Affirmative Action Program for  
Certain Federally-Involved Contract Construction  
Projects in Texas

The Texas Highway-Heavy Branch of the Associated General Contractors has committed itself and its 235 contractor members, beginning this month, to a positive program of recruitment, training, and up-grading of minority groups for the construction industry. The 235 members of the Branch now employ approximately 22,000 workmen of whom some 70% are of minority groups, about evenly divided among Negroes and Mexican-Americans. The 70% minority representation throughout the labor force also exists among the machine operator and other higher-paying skills.

The Affirmative Action program of the Branch is: (1) to seek, employ, and train as many minorities as may be available and to continue this program so long as the economic situation warrants, (2) to immediately recruit and hire 350 minorities evenly divided among Negroes and Mexican-Americans and place them in a training program consisting of 24 skilled trades, of which 85% of the trainees are to become machine operators.

This Office recommends that agencies find participation by a bidder in this program constitutes acceptable affirmative action with respect to the 24 skills covered in the Training Program. Therefore, a statement of such participation should be accepted in lieu of that portion of a required affirmative action plan which would otherwise be directed to these job categories. However, if the low bidder intends to use construction craftsmen in other categories usually described as the mechanical crafts (electrical, ironwork, plumbing, pipefitting, sheetmetal), the usual determination for affirmative action programs will apply, unless similar multi-employer programs have been accepted by this Office.

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE SOLICITOR  
WASHINGTON 20210

JUL 23 1968

Mr. Robert W. Norris  
Staff General Counsel  
Texas Highway-Heavy Branch  
Associated General Contractors  
P. O. Box 1609  
Austin, Texas 78767

RECEIVED

JUL 25 1968

A. G. C.  
AUSTIN, TEXAS

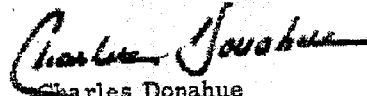
Dear Mr. Norris:

This is with further reference to your June 6 letter and subsequent conversations with members of my staff regarding the approval of your On-the-Job Training Program, which we understand complies with the standards established by the Office of Federal Contract Compliance.

Our review for Davis-Bacon purposes indicates that the proposed training program conforms with the criteria outlined in our All-Agency Memorandum No. 74, dated August 28, 1967, and subsequent policy statements regarding bona fide youth, poverty and similar manpower training programs. Accordingly, the program is approved.

As indicated in our discussions, we will continue to follow our present policy of not incorporating trainee rates into any wage determinations issued by this office.

Yours sincerely,

  
Charles Donahue  
Solicitor

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE REGIONAL DIRECTOR  
7TH FLOOR — 1100 COMMERCE STREET

Dallas, Texas 7520

October 3, 1972

Mr. Tom Johnson  
Texas Chapter  
Associated General Contractors  
P.O. Box 2185  
Austin, Texas 78767



Dear Mr. Johnson:

This office is in receipt of a letter from the Assistant Secretary for Manpower, U. S. Department of Labor, allowing highway-heavy contractors to utilize the on-job training program which was approved by the Secretary of Transportation to satisfy their Order 72-2(2) on highway-heavy type construction.

It was pointed out that your on-job training program parallels the objectives of 29 CFR 5a and therefore, participation in the program exempts participating contractors from the requirements of 29 CFR 5a on highway-heavy type construction. As you know, highway-heavy construction is defined as construction such as dams, streets, utilities, site grading, air fields and similar type construction.

Should any awarding agencies have any questions about the applicability of this training program, I hope they will not hesitate to contact this office.

Sincerely,

*Truman Branscum*  
Truman Branscum  
Regional Director

U.S. DEPARTMENT OF LABOR  
EMPLOYMENT STANDARDS ADMINISTRATION

Office of Federal Contract Compliance

~~XXXXXXXXXXXXXXXXXXXX~~  
2320 La Branch - Room 261  
Houston, Texas 77004



March 21, 1972

Mr. Thomas L. Johnson  
Executive Secretary  
AGC, Texas Highway-Heavy Branch  
P. O. Box 2185  
Austin, Texas

Dear Mr. Johnson:

On March 10, 1972, I met with Mr. Nathaniel Pearson, Assistant Director of the Office of Federal Contract Compliance, for the purpose of discussing the Manpower Development and Training Programs sponsored by AGC, Highway-Heavy Branches, in the southwestern states.

In our discussions, Mr. Pearson indicated that prior to these programs receiving approval from OFCC as an approved Department of Labor Affirmative Action Program, they had to be updated in the following manner:

1. The starting pay of a trainee must be increased to 70% of the prevailing wage rate of a journeyman in the particular trade for which the trainee is being trained.
2. A specific numerical goal for the number of minorities to be trained must be established on a yearly basis.
3. A formal monthly reporting system to the Regional Director must be established.
4. Minority community involvement must be continued, and minority group referral sources must be utilized.

I am in receipt of your letter of March 20, 1972, in which your Association agrees to these requirements. My office feels that the numerical

U.S. DEPARTMENT OF LABOR  
EMPLOYMENT STANDARDS ADMINISTRATION  
Office of Federal Contract Compliance  
WASHINGTON, D.C. 20210



MAY 11 1972

RECEIVED

MAY 20 1972

In Reply Refer To: 4506-14

A.G.C.  
AUSTIN, TEXAS

TO: HEADS OF ALL AGENCIES

FROM: *George L. Holland*  
George L. Holland  
Director

SUBJECT: Approval of Texas Heavy-Highway Plan

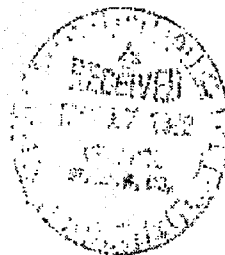
*The Office of Federal Contract Compliance has granted approval to the Texas Heavy-Highway Plan as an acceptable voluntary plan.*

*The following crafts are utilized by the Texas Heavy-Highway Industry:*

*Electricians  
Painters  
Carpenters  
Operating Engineers  
1. Operators  
2. Mechanics*

*Pipefitters and Plumbers  
Ironworkers  
Cement Masons*

*A copy of the Plan will be forwarded to your Office.*



U.S. DEPARTMENT OF LABOR  
EMPLOYMENT STANDARDS ADMINISTRATION  
Office of Federal Contract Compliance  
WASHINGTON, D.C. 20210



APR 24 1972

RECEIVED

MAY 13 1972

A.G.C.  
AUSTIN, TEXAS

In Reply Refer To: 4506-14

Mr. Thomas L. Johnson  
Executive Secretary  
Associated General Contractors  
P. O. Box 2185  
Austin, Texas 78767

Dear Mr. Johnson:


The Office of Federal Contract Compliance is granting approval to the Texas Heavy-Highway Plan as an acceptable voluntary plan.

The following crafts are utilized by the Texas Heavy-Highway Industry:

Electricians	Pipefitters and Plumbers
Ironworkers	Painters
Cement Masons	Carpenters
Operating Engineers	
1. Operators	
2. Mechanics	

We look forward to a successful plan and continued progress in the area of equal employment opportunity.

Sincerely,

  
George L. Holland  
Director

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# ON THE JOB TRAINING PROGRAM AGC OF TEXAS HIGHWAY, HEAVY UTILITIES AND INDUSTRIAL BRANCH

## A NOTE TO TRAINEES

Welcome to the AGC of Texas On the Job Training Program. This program was initiated to increase the participation of minorities, women and disadvantaged persons in the construction skilled trades on TxDOT Federal-aid construction projects. It gives eager, hardworking individuals a means to learn new skills and earn higher wages. The training time is cut just as short as possible, so each trainee must apply himself or herself to the fullest extent. While this may sound difficult, the rewards are great. After successful completion of your training, you will become a skilled employee and your wages will reflect your new expertise.

Your employer welcomes you into this training program and looks forward to making you more valuable to the operation of the business. With hard work and effort you will see your wages rise, which will in turn help raise the standard of living for you and your family.

The job classifications listed herein contain outlines of what you should expect from your training. Each of the training curricula serves as a general guideline. As contractors expect different things from their employees, it is the employer's decision how to handle your training and when to graduate you from the program. Keep in mind, however, that the hours listed are a maximum, and you shall not be kept in the training program for longer than the maximum number of hours.

We hope the AGC of Texas On-the-Job Training Program will be a fresh start in your career, and enable you to increase your knowledge, pay and value to your employer. With your best effort and your employer's best knowledge and help, let's begin.



## CONTRACTORS'/SUPERVISORS' QUICK GUIDE TO PROGRAM PROCEDURES

The contractor shall begin assigning and scheduling OJT training by February 15 of each year. At least one trainee shall begin training by March 15.

Within seven days of intent to begin training, the contractor shall electronically submit to AGC an **AGC OJT Enrollment Request Form** AND mail a hard copy signed by the trainee and a contractor representative. AGC will review the request and send a letter to the contractor confirming or rejecting trainee enrollment. If approved, a copy of the letter will be forwarded to the affected area engineer(s). AGC will forward an electronic version of the enrollment request to TxDOT's Office of Civil Rights.

The contractor is required to furnish each trainee with a copy of the program schedule. AGC will provide these to the contractor for distribution.

Each week thereafter the contractor shall electronically submit a **Weekly Reporting Form** both to AGC and the affected area engineer(s), regardless of whether training occurred for that week.

If a trainee is transferred to another project, the contractor shall advise the new and previous area engineers in sufficient time to allow for TxDOT trainee interviews.

Upon completion or termination of training, the Contractor must notify the area engineer(s) and AGC within seven business days by noting it on the Weekly Reporting Form. AGC shall supply a copy of the final form to TxDOT's Office of Civil Rights (OCR). Graduation ceremonies are encouraged and AGC will furnish the contractor with a diploma and wallet card to be given to the trainee upon graduation.

As a peripheral measure, outreach and recruitment opportunities will be facilitated by AGC. Two joint meetings will be scheduled by AGC of Texas each year to review training and recruitment effort. Before a recruitment meeting, AGC will send letters to TxDOT, FHWA, and member contractors requesting ideas for recruitment events, invitee lists, and other related participation.

Annual Outreach Reporting Forms detailing recruitment meetings and outreach events shall be retained by AGC and shall list participants (to include organizations, and federal and state officials) and potential recruits from the outreach efforts. They will also document all assistance given from FHWA and TxDOT and requested by AGC and member contractors. The Reporting Forms will be available to FHWA and TxDOT by request.

AGC shall retain training records for a period of three years following completion of the contract work. Such records shall be made available at reasonable times and places for inspection by authorized representatives of TxDOT and the Federal Highway Administration.

## **Policy Statement**

The Associated General Contractors (AGC) of Texas has reinstated its On-the-Job Training (OJT) Program in accordance with regulations of the U.S. Department of Transportation at 23 CFR Part 230, Subpart A, Equal Employment Opportunity on Federal and Federal-aid Construction Contracts (including Supportive Services). The program is designed to increase participation of minority groups, disadvantaged persons and women in all phases of the highway construction industry.

## **Nondiscrimination in Programs and Activities**

Federal nondiscrimination programs require that Federal-aid recipients, sub recipients, and Contractors prevent discrimination and ensure nondiscrimination in all of their programs and activities, whether those programs and activities are federally funded or not. The factors prohibited from serving as a basis for action or inaction which discriminates include race, color, national origin, sex, age or disability. The efforts to prevent discrimination must address, but not be limited to a program's impacts, access, benefits, participation, treatment, services, contracting opportunities, training opportunities, investigation of complaints, allocation of funds, prioritization of projects, and the functions of right-of-way, research, planning, and design.

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

Authorities for non-discrimination include but are not limited to: Title VI and Title VII of the Civil Rights Act of 1964, the Civil Rights Restoration Act of 1987, the Age Discrimination Act of 1967 and 1975, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and Title 23, United States Code, Section 324.

For Equal Employment Opportunity, also see the FHWA 1273 incorporated into each contract and subcontract to the lowest tier as required by 23 CFR Part 633.102.

## **Supportive Services**

The primary purpose of the supportive services is to increase the effectiveness of approved on-the-job training programs, particularly their effectiveness in providing meaningful training opportunities for minorities, women, and the disadvantaged on Federal-aid highway projects.

Outreach and recruitment opportunities will be facilitated by AGC. Two joint meetings will be scheduled by AGC of Texas each year to review training and recruitment effort. Before a recruitment meeting, AGC will send letters to TxDOT, FHWA, and member contractors requesting ideas for recruitment events, invitee lists, and other related topics.

Under the Texas Business Opportunity and Workforce Development Center, opportunities are available to assist trainees, the workforce of Disadvantaged Business Enterprises, and Contractors. Assistance may vary, but may include the purchase of tools, a stipend for the trainee, transportation assistance, recruiting, counseling, acquisition of special equipment, day care assistance, etc. Additional information may be obtained from the Texas Business Opportunity and Workforce Development Center at 512-486-5500.

**Contractor Annual Goal Methodology**

To determine the annual trainee goal, the Texas Department of Transportation (TxDOT) will consider the average of the Contractor’s previous three fiscal year earnings on Federal-aid contracts.

The following table depicts the annual trainee goal methodology. TxDOT will notify Contractors by January 15<sup>th</sup> of each year by certified mail of their annual trainee goal.

**ANNUAL ESTIMATE OF TRAINEES BASED UPON CONTRACT AMOUNT**

Average Annual Estimated (Range) Contract Amount		Trainees Required Annually
Over	\$220,000,000.01	10
	\$195,000,000.01 to \$220,000,000.00	9
	\$170,000,000.01 to \$195,000,000.00	8
	\$145,000,000.01 to \$170,000,000.00	7
	\$120,000,000.01 to \$145,000,000.00	6
	\$95,000,000.01 to \$120,000,000.00	5
	\$70,000,000.01 to \$95,000,000.00	4
	\$45,000,000.00 to \$70,000,000.00	3

**Contractor Responsibilities**

Within 30 days of TxDOT annual notification, the Contractor shall assign and schedule trainees to begin their training on a TxDOT Federal-aid highway construction project(s) or show good faith efforts as to why the goal cannot be achieved.

The Contractor may provide training to a trainee on any project that they are a prime contractor or subcontractor. The contractor may also provide training to a trainee through the use of a subcontractor that is currently working for the contractor.

The number of trainees shall be distributed among the work classifications on the basis of the Contractor’s needs and the availability of journeymen in the various classifications within a reasonable area of recruitment.

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

The Contractor will periodically review the training and promotion potential of minorities, women and disadvantaged employees and will encourage eligible employees to apply for such training and promotion.

### **Contractor Good Faith Efforts**

Within 30 days of the annual notification, the Contractor must develop an action plan to fill the assigned training slots. Within 60 days of the annual notification, one or more of the trainees must begin their training on the project(s). Should the Contractor not have any individuals enrolled and undergoing training by that time, the following information must be provided in writing to AGC.

1. The Contractor's written action plan.
2. A listing of recruitment sources used for minority, women, and disadvantaged individuals, such as minority, women and disadvantaged organizations, associations, newspapers, flyers etc.
3. A copy of the applicant log that shows name of the applicant, address, phone number, gender, race, date of application, and reason for non-hire as a trainee.
4. The Metropolitan Statistical Area(s) used for outreach and recruitment where each of the Contractor's projects is located.

AGC will forward the information to TxDOT's Office of Civil Rights Contract Compliance Section:

### **Contractor Reporting Requirements**

The Contractor is required to notify AGC by electronically submitting a Contractor OJT Enrollment Request Form within seven (7) business days of intent to assign trainees to a project. In addition, a hard copy, signed by the trainee and a contractor representative, must be sent via mail to the AGC Chapter Office at 300 Barton Springs Road/Austin, TX 78704, Attn: OJT documents. AGC will provide a copy of the enrollment request to TxDOT's Office of Civil Rights (OCR).

Upon receipt of the Contractor OJT Enrollment Request Form, AGC will, within 5 business days, either approve or deny the request and notify the Contractor of the decision in writing. If the request is approved, AGC will notify the applicable TxDOT Area Engineer(s) and OCR confirming the trainee enrollment.

By Wednesday of each week the Contractor will report on the previous week's OJT activity by electronically submitting an OJT Weekly Reporting Form to AGC and to the applicable Area Engineer. If there are no hours worked during the week, the Contractor's weekly report will reflect no hours.

If a trainee is transferred to another project, the Contractor must notify both the Area Engineer on the previous project and the Area Engineer the trainee is being transferred to.

Upon completion or termination of training, the Contractor must notify the area engineer(s) and AGC within seven business days by noting it on the Weekly Reporting Form. AGC shall

supply a copy of the final form to TxDOT's Office of Civil Rights (OCR). Graduation ceremonies are encouraged and AGC will furnish the contractor with a diploma and wallet card to be given to the trainee upon graduation.

### **Trainee Requirements**

No employee will be employed as a trainee in any classification in which he/she has successfully completed a training course leading to journeyman status, or in which he/she has been employed as a journeyman.

### **Determination of Trainee Participation**

Credit will be allowed toward the Contractor's annual goal for the year in which the trainee entered training. The Contractor's annual goal will only be credited once for each trainee and only for the year the trainee entered into training.

Credit will be allowed for each trainee employed on the contract and who is currently enrolled or becomes enrolled in an approved training program.

Credit will be allowed should the Contractor train, certify and advance the trainee to journeyman worker status upon successful demonstration of the required proficiency standards.

No credit will be allowed for any trainee involuntarily terminated by the Contractor unless the Contractor can clearly justify the action. When a trainee is terminated for any reason, the Contractor is required to make a good faith effort to replace the trainee within 30 days of the termination. The replacement trainee need not be in the same classification code as the terminated trainee.

No credit will be allowed when the Contractor fails to provide the required training or evidences a lack of good faith effort in meeting the requirements of this program.

### **Trainee Wage Rates**

The trainee will be paid at minimum an established percentage of the prevailing wage of the area. The percentage varies by classification and by amount of time spent in training. The wage rates for each classification are listed in the classification descriptions, located in this booklet.

### **Contractor's Compliance**

A Contractor will be determined to be in compliance upon demonstration that the requirements of the OJT Program have been met. A Contractor that has failed to meet the requirements of the OJT Program shall be in material breach of their contracts. In such an instance, the Department reserves the right to terminate the contract, assess liquidated damages, or other such remedy or remedies as the Department deems appropriate.

### **Monitoring**

Pursuant to 23 CFR Part 230.113(f)(5), the Area Engineer's Office will receive on a weekly basis the OJT Weekly Reporting Form, which will contain sufficient statistical data and narrative content to enable evaluation of both progress and problems.

Area Office personnel will conduct labor interviews and wage rate monitoring utilizing the Construction Division's Labor Standards Review Form. The Department may conduct interviews of trainees on a quarterly or annual basis to verify their training status and/or progress toward completing their training programs.

To ensure that trainee goals of the Contractor's Federal-aid assisted contracts are complied with, the Department will monitor the Contractor's recruitment efforts, training and hiring. This will be accomplished by a review of the Contractor OJT Enrollment Request Form and the OJT Weekly Reporting Form.

The Department will continually monitor the Contractor's OJT progress through an OJT database developed and maintained by TxDOT. The OJT database will consist of information obtained from the Contractor's reporting forms.

### **Annual Report**

On an annual basis, TxDOT will publish and forward to FHWA a report on the achievement of the Department's annual training goal. (OJT Annual Report Form, Appendix C)

In the event TxDOT does not achieve the annual training goal, TxDOT shall inform the FHWA in writing by January 31<sup>st</sup> the specific reasons the goal was not achieved and the steps TxDOT took in their methodology to adjust future goals.

### **Records**

Pursuant to 23 CFR Part 230.1 13(f)(6), Contractors will keep track of trainees receiving training on Federal-aid highway construction projects. The Contractor will conduct a six month follow-up review of the employment status of each graduate who completes an on-the-job training program on a Federal-aid highway construction project subsequent to the effective date of the contract for supportive services.

Pursuant to 23 CFR Part 230.1 13(f)(9), Contractors and subcontractors will make available to the Department and FHWA access to all records upon request.

The Contractor shall retain the original training records for a period of three years following completion of the contract work and such records shall be available at reasonable times and places for inspection by authorized representatives of the Department and the Federal Highway Administration. AGC will retain trainee records for all Contractors using the AGC OJT Program.

The Contractor shall furnish each trainee with a copy of the training schedule that will be followed. The Contractor will provide each trainee with a certificate showing the type and length of training satisfactorily completed. These documents can be obtained from AGC upon request.

# **APPENDIX A**

## **Special Provision**

## SPECIAL PROVISION

000---807

### On-the-Job Training Program

- 1. Description.** Texas Department of Transportation's (TxDOT's) program to meet the requirements of the Federal-aid Highway Act of 1970 and 23 CFR (Code of Federal Regulations) Part 230, Subpart A. The objective is to develop skill improvement programs to provide opportunities for unskilled workers, particularly minorities, women, and disadvantaged persons, to acquire training in the skilled construction trades.
- 2. Trainee Assignment.** TxDOT's Office of Civil Rights will allocate training assignments to prequalified contractors based on the past contract volume of Federal-aid work performed with TxDOT. TxDOT will notify each contractor who has met the volume of work threshold at the beginning of each reporting year and advise them of the number of trainees they are expected to support.
- 3. Program Requirements.** Contractors found to have reached the level(s), as identified in the TxDOT On-The-Job Training (OJT) program document, are required to fulfill all of the requirements of the OJT program at no additional cost to the department other than contractor requested reimbursement of \$0.80 per hour for a trainee.

The contractors are required to compensate the trainee at least 60% of the appropriate minimum journeyman's rate specified in the contract for the first half of the training period, 75% for the third quarter of the training period and 90% for the last quarter of the training period.

Contractors will promptly notify pertinent project engineers of the trainee's work location in sufficient time to allow for observation or interviews.

The program document is available through the TxDOT Office of Civil Rights Contract Compliance Section at 125 E. 11<sup>th</sup> Street, Austin, Texas 78701.

- 4. Non-Compliance.** A contractor's failure to comply with the requirements of this Special Provision shall constitute a material breach of this contract. In such a case, the department reserves the right to terminate the contract, assess liquidated damages, or such other remedy or remedies as the department deems appropriate.



## **APPENDIX B**

### **Overview of Training Programs**

# CLASSIFICATION INDEX

## AGC Code Classification

901	Carpenter, Rough
902	Concrete Finisher (Paving)
903	Concrete Finisher (Structures)
904	Form Builder (Structures)
905	Form Setter (Structures)
906	Piledriver
907	Pipelayer
908	Asphalt Paving Machine
909	Bulldozer, over 150 HP
910	Concrete Paving Finishing Machine
911	Backhoe
912	Crane or Excavator
913	Front End Loader (2 Y2 CY and less)
914	Front End Loader (over 2 Y2 CY)
915	Motor Grader Operator
916	Roller, Steel Wheel (Plant Mix Pavements)
917	Roller, Steel Wheel (Other-Flatwheel or Tamping)
918	Roller, Pneumatic (Self-Propelled)
919	Scrapers (over 17 CY)
920	Tractor Operator (80 HP and less)
921	Tractor Operator (Over 80 HP)
922	Trenching Machine, Heavy
923	Reinforcing Steel Setter (Structures)
924	Steel Worker (Structural)
925	Foundation Drill Operator, truck mounted
926	Mechanic
927	Welder
928	Crusher or Screening Plant Operator
929	Truck Driver
930	Asphalt Distributor
931	Asphalt Raker
932	Blaster
933	Spreaderbox Person
934	Sign Erector
935	Oiler
936	Utility Operator
937	Service Person
942	Electrician
943	Batching Plant Scaleperson
944	Wagon Drill, Boring Machine or Post Hole Driller Operator
945	Reinforcing Steel Setter (Paving)
946	Form Setter (Paving)
947	Self Propelled Sweeper Operator
948	Bulldozer, Under 150 HP
949	Scrapers (Under 17 CY)

CARPENTER, ROUGH – Code 901

Approximate training time: 26 weeks or 1040 hours.

Minimum starting wage: 70% of prevailing wage in area.

Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area  
Minimum wage after 13 weeks or 520 hours: 90 % of prevailing wage in area

Wages after successful completion of training program: The prevailing wage in the area of the state where employed.

\* \* \*

I. Orientation and Safe Use of Tools of the Trade	
A. Power and hand tools .....	20 hours
B. Materials selection .....	20 hours
II. Applied Techniques of Highway Construction Carpentry	
A. Safety procedures .....	5 hours
B. Pier, pile and cap formwork .....	145 hours
C. Decking formwork .....	150 hours
D. Parapet and hand railing formwork .....	150 hours
E. Endwall formwork .....	150 hours
F. Box culverts, inlets and headwall formwork .....	150 hours
III. Blueprint or Construction Plans Reading and Application .....	50 hours
IV. Basic Form Design Familiarity .....	95 hours
A. Safety procedures .....	5 hours
V. Stripping and Salvage of Forms for Re-use .....	95 hours
A. Safety Procedures .....	5 hours
Total .....	1040 hours

CONCRETE FINISHER (Paving) – Code 902

Approximate training time: 26 weeks or 1040 hours

Minimum starting wage: 70% of prevailing wage in area.

Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area. Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.

Wages after successful completion of training program: The prevailing wage in the area of the state where employed.

\* \* \*

- I. Orientation and Observation
  - A. Safety procedures..... 5 hours
  - B. Observation of use of straight edges and steel trowels..... 25 hours
  - C. Observation of forming a finishing of edges and joints..... 25 hours
  
- II. Care and Maintenance
  - A. Safety procedures..... 5 hours
  - B. Routine cleaning work area and materials, holding materials, tools and handling canvas belting or burlap strips ..... 245 hours
  
- III. Actual Operation of Equipment
  - A. Safe operating procedures..... 10 hours
  - B. Basic operation of tools ..... 200 hours
  - C. Use of straight edges or steel trowels ..... 200 hours
  - D. Forming and finishing edges, joints, curbs and gutters ..... 325 hours
  
- Total.....1040 hours

CONCRETE FINISHER (Structures) – Code 903

Approximate training time: 26 weeks or 1040 hours

Minimum starting wage: 70% of prevailing wage in area.

Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area.

Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.

Wages after successful completion of training program: The prevailing wage in the area of the state where employed.

\* \* \*

I. Orientation and Observation

- A. Safety procedures..... 5 hours
- B. Observation of use of machine in operation ..... 50 hours
- C. Starting and manipulating levers for moving  
equipment and attachments..... 45 hours

II. Care and Maintenance

- A. Safety procedures..... 5 hours
- B. Routine fueling, lubricating and servicing..... 245 hours

a. Actual Operation of Equipment

- A. Safe operating procedures..... 10 hours
- B. Basic operation of machine..... 200 hours
- C. Use of trowels or floats ..... 100 hours
- D. Operation of trowels or floats or finishing machine ..... 380 hours

Total ..... 1040 hours

FORM BUILDER (Structures) – Code 904

Approximate training time: 26 weeks or 1040 hours

Minimum starting wage: 70% of prevailing wage in area

Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area

Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area

Wages after successful completion of training program: The prevailing wage in the area of the state where employed.

\* \* \*

I. Orientation and Safe Use of Tools of the Trade

- A. Power and hand tools 20 hours
- B. Materials selection 20 hours

a. Applied Techniques of Highway Construction Carpentry

- A. Safety procedures..... 5 hours
- B. Pier, pile and cap formwork..... 145 hours
- C. Decking formwork..... 150 hours
- D. Parapet and hand railing formwork..... 150 hours
- E. Endwall formwork ..... 150 hours
- F. Box culverts, inlets and headwall formwork .....150 hours

a. Blueprint or Construction Plans Reading and Application..... 50 hours

- b. Basic Form Design Familiarity..... 95 hours
  - A. Safety procedures 5 hours

- a. Stripping and Salvage of Forms for Re-use.....95 hours
  - A. Safety Procedures.....5 hours

Total ..... 1040 hours

FORM SETTER (Structures) – Code 905

Approximate training time: 26 weeks or 1040 hours

Minimum starting wage: 70% of prevailing wage in area.

Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area.

Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.

Wages after successful completion of training program: The prevailing wage in the area of the state where employed.

\* \* \*

I. Orientation and Observation	
A. Safety procedures	5 hours
B. Observation of placing of forms	20 hours
C. Observation of form stripping and setting of precast concrete	30 hours
a. Care and Maintenance	
A. Safety procedures	5 hours
B. Help strip forms and clean work area	25 hours
a. Actual Operation of Form Setting	
A. Safe operating procedures	5 hours
B. Hold and help align forms. Drive stakes for braces and help erect scaffolding	250 hours
C. Observe and assist in setting precast concrete	50 hours
D. Measure space between forms, fit together, line, plumb vertically, set to elevation	300 hours
E. Check forms while concrete is being poured	350 hours
Total.....	1040 hours

PILE DRIVER – Code 906

Approximate training time: 26 weeks or 1040 hours

Minimum starting wage: 70% of prevailing wage in area.

Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area  
Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area

Wages after successful completion of training program: The prevailing wage in the area of the state where employed.

\* \* \*

- I. Orientation and Observation
  - A. Safety procedures..... 5 hours
  - B. Observation of machine in operation..... 50 hours
  - C. Starting and manipulating levers for moving equipment and attachments..... 45 hours
- II. Care and Maintenance
  - A. Safety procedures..... 5 hours
  - B. Routine fueling, lubricating and servicing..... 345 hours
- a. Actual Operation of Equipment
  - A. Safe operating procedures..... 10 hours
  - B. Basic operation of crane or pile driving rig in hoisting and moving..... 200 hours
  - C. Placement of pile in preparation for driving..... 140 hours
  - D. Seating of pile hammer on pile in preparation for driving..... 140 hours
  - E. Driving of pile..... 100 hours
- Total ..... 1040 hours



PIPE LAYER - Code 907

Approximate training time: 13 weeks or 520 hours

Minimum starting wage: 70% of prevailing wage in area.

Minimum wage after 7 weeks or 280 hours: 85% of prevailing wage in area

Wages after successful completion of training program: The prevailing wage in the area of the state where employed.

\* \* \*

- I. Orientation and Observation
  - A. Safety procedures..... 5 hours
  - B. Observation of spade operation and laying of pipe ..... 20 hours
  - C. Study of various types of pipe and related materials ..... 5 hours
  
- a. Care and Maintenance
  - A. Safety procedures..... 5 hours
  - B. Ditch preparation, handle materials and tools..... 20 hours
  
- a. Actual Handling of Pipe and Spade
  - A. Ditch grading with compressed air driven or hand spade..... 50 hours
  - B. Handle materials, assist in lowering pipe ..... 50 hours
  - C. Work with pipe layer in laying all types of pipe  
and duct. Adjust pipe to elevation insert spigot  
end of pipe into bell end of last laid pipe..... 365 hours
  
- Total..... 520 hours

ASPHALT PAVING MACHINE - Code 908

Approximate training time: 26 weeks or 1040 hours

Minimum starting wage: 70% of prevailing wage in area.

Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area.

Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.

Wages after successful completion of training program: The prevailing wage in the area of the state where employed.

\* \* \*

- I. Orientation and Observation
  - A. Safety procedures ..... 5 hours
  - B. Observation of machine in operations ..... 35 hours
  - C. Starting and manipulating levers for moving  
equipment and attachments ..... 30 hours
  
- II. Care and Maintenance
  - A. Safety procedures ..... 5 hours
  - B. Routine fueling, lubricating and servicing ..... 150 hours
  
- III. Actual Operation of Equipment
  - A. Safety operating procedures ..... 5 hours
  - B. Observation of machine in operations ..... 120 hours
  - C. Operating of machine ..... 690 hours
  
- Total ..... 1040 hours

BULLDOZER, OVER 150 H.P. - Code 909

Approximate training time: 18 weeks or 720 hours

Minimum starting wage: 70% of prevailing wage in area.

Minimum wage after 9 weeks or 360 hours: 80% of prevailing wage in area.

Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.

Wages after successful completion of training program: The prevailing wage in the area of the state where employed.

\* \* \*

- I. Orientation and Observation
  - A. Safety procedures..... 5 hours
  - B. Observation of machine in operation..... 35 hours
  - C. Starting and manipulating levers for moving equipment and attachments..... 30 hours
  
- II. Care and Maintenance
  - A. Safety procedures..... 5 hours
  - B. Routine fueling, lubricating and servicing..... 35 hours
  
- a. Actual Operation of Equipment
  - A. Safe operating procedures..... 5 hours
  - B. Movement and stockpiling of material ..... 150 hours
  - C. Pushing and rough grading ..... 125 hours
  - D. Clearing and grubbing..... 125 hours
  - E. Finish grading ..... 175 hours
  - F. Special applications ..... 30 hours
  
- Total..... 720 hours

CONCRETE PAVING FINISHING MACHINE - Code 910

Approximate training time: 26 weeks or 1040 hours

Minimum starting wage: 70% of prevailing wage in area.

Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area.

Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.

Wages after successful completion of training program: The prevailing wage in the area of the state where employed.

\* \* \*

- I. Orientation and Observation
  - A. Safety procedures..... 5 hours
  - B. Observation of machine in operation..... 35 hours
  - C. Starting and manipulating levers for moving equipment and attachments.....30 hours
  
- II. Care and Maintenance
  - A. Safety procedures..... 5 hours
  - B. Routine fueling, lubricating and servicing..... 150 hours
  
- a. Actual Operation of Equipment
  - A. Safe operating procedures..... 5 hours
  - B. Screed regulation indoctrination and operation ..... 120 hours
  - C. Operation of machine..... 690 hours
  
- Total..... 1040 hours

BACKHOE – Code 911

Approximate training time: 26 weeks or 1040 hours

Minimum starting wage: 70% of prevailing wage in area.

Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area.

Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.

Wages after successful completion of training program: The prevailing wage in the area of the state where employed.

\* \* \*

I. Orientation and Observation

- A. Safety procedures..... 5 hours
- B. Observation of machine in operation..... 50 hours
- C. Starting and manipulating levers for moving  
equipment and attachments..... 45 hours

II. Care and Maintenance

- A. Safety procedures..... 5 hours
- B. Routine fueling, lubricating and servicing..... 295 hours

a. Actual Operation of Equipment

- A. Safe operating procedures..... 5 hours
- B. Trenching operations (for Pipe laying, etc.)..... 300 hours
- C. Excavation (for structures, footings, etc.)..... 300 hours
- D. Special applications and functions..... 35 hours

Total..... 1040 hours

CRANE OR EXCAVATOR – Code 912

Approximate training time: 26 weeks or 1040 hours

Minimum starting wage: 70% of prevailing wage in area.

Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area.

Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.

Wages after successful completion of training program: The prevailing wage in the area of the state where employed.

\* \* \*

- I. Orientation and Observation
  - A. Safety procedures..... 10 hours
  - B. Observation of machine in operation..... 50 hours
  - C. Starting and manipulating levers for moving equipment and attachments..... 40 hours
- II. Care and Maintenance
  - A. Safety procedures..... 10 hours
  - B. Routine fueling, lubricating and servicing..... 340 hours
- a. Actual Operation of Equipment
  - A. Safe operating procedures..... 10 hours
  - B. Excavation for footings and removal of unsuitable materials..... 200 hours
  - C. Loading and unloading materials ..... 130 hours
  - D. Trenching for pipe, etc..... 100 hours
  - E. Hoisting materials ..... 100 hours
  - F. Placement of beams, pipe, girders, piles, etc ..... 50 hours
- Total..... 1040 hours

FRONT END LOADER (21/2 C.Y. and less) – Code 913

Approximate training time: 13 weeks or 520 hours

Minimum starting wage: 70% of prevailing wage in area.

Minimum wage after 7 weeks or 280 hours: 85% of prevailing wage in area

Wages after successful completion of training program: The prevailing wage in the area of the state where employed.

\* \* \*

- I. Orientation and Observation
  - A. Safety procedures..... 5 hours
  - B. Observation of machine in operation..... 20 hours
  - C. Starting and manipulating levers for moving equipment and attachments..... 15 hours
  
- II. Care and Maintenance
  - A. Safety procedures..... 5 hours
  - B. Routine fueling, lubricating and servicing..... 35 hours
  
- a. Actual Operation of Equipment
  - A. Safe operating procedures..... 5 hours
  - B. Loading materials..... 250 hours
  - C. Excavation..... 150 hours
  - D. Special applications ..... 35 hours
  
- Total..... 520 hours

FRONT END LOADER (over 2 1/2 C.Y.) – Code 914

Approximate training time: 13 weeks or 520 hours

Minimum starting wage: 70% of prevailing wage in area.

Minimum wage after 7 weeks or 280 hours: 85% of prevailing wage in area.

Wages after successful completion of training program: The prevailing wage in the area of the state where employed.

\* \* \*

- I. Orientation and Observation
  - A. Safety procedures..... 5 hours
  - B. Observation of machine in operation..... 20 hours
  - C. Starting and manipulating levers for moving equipment and attachments..... 15 hours
  
- II. Care and Maintenance
  - A. Safety procedures..... 5 hours
  - B. Routine fueling, lubricating and servicing..... 35 hours
  
- a. Actual Operation of Equipment
  - A. Safe operating procedures..... 5 hours
  - B. Loading materials..... 200 hours
  - C. Excavation..... 150 hours
  - D. Charge hoppers with materials on asphalt and concrete plants..... 50 hours
  - E. Special applications ..... 35 hours
  
- Total ..... 520 hours



MOTOR GRADER OPERATOR – Code 915

Approximate training time: 26 weeks or 1040 hours

Minimum starting wage: 70% of prevailing wage in area.

Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area.

Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.

Wages after successful completion of training program: The prevailing wage in the area of the state where employed.

\* \* \*

I. Orientation and Observation	
A. Safety procedures.....	5 hours
B. Observation of machine in operation.....	100 hours
C. Starting and manipulating levers for moving equipment and attachments.....	95 hours
II. Care and Maintenance	
A. Safety procedures.....	5 hours
B. Routine fueling, lubricating and servicing.....	35 hours
a. Actual Operation of Equipment	
A. Safe operating procedures.....	5 hours
B. Scraping and leveling dirt on roadway .....	180 hours
C. Spreading and mixing materials on roadway.....	170 hours
D. Shaping and blading subgrades.....	150 hours
E. Balancing and rough shaping base course materials.....	150 hours
F. Fine grading and dressing of shoulders and slopes.....	145 hours
Total .....	1040 hours

ROLLER, STEEL WHEEL (PLANT MIX PAVEMENTS)—CODE 916

Approximate training time: 26 weeks or 1040 hours

Minimum starting wage: 70% of prevailing wage in area.

Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area.

Wages after successful completion of training program: The prevailing wage in the area of the state where employed.

\* \* \*

I. Orientation and Observation	
a. Safety procedures.....	5 hours
b. Observation of machine in operation.....	35 hours
II. Care and Maintenance	
c. Safety procedures.....	5 hours
d. Routine fueling , lubricating and servicing.....	35 hours
III. Actual Operation of Equipment	
e. Safe operating procedures.....	5 hours
f. Roll base course to desired compaction.....	455 hours
g. Roll asphalt surfaces to desired compaction and smoothness and assure proper sealing of joints .....	500 hours
Total .....	1040 hours

ROLLER, STEEL WHEEL (Other-Flatwheel or Tamping) – Code 917

Approximate training time: 26 weeks or 1040 hours

Minimum starting wage: 70% of prevailing wage in area.

Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area

Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area

Wages after successful completion of training program: The prevailing wage in the area of the state where employed.

\* \* \*

I. Orientation and Observation	
A. Safety procedures.....	5 hours
B. Observation of machine in operation.....	35 hours
a. Care and Maintenance	
A. Safety procedures.....	5 hours
B. Routine fueling, lubricating and servicing.....	35 hours
a. Actual Operation of Equipment	
A. Safe operating procedures.....	5 hours
B. Roll base course to desired compaction.....	455 hours
C. Roll asphalt surfaces to desired compaction and smoothness and assure proper sealing of joints.....	500 hours
Total.....	1040 hours

ROLLER, PNEUMATIC (Self-Propelled) – Code 918

Approximate training time: 13 weeks or 520 hours

Minimum starting wage: 70% of prevailing wage in area.

Minimum wage after 7 weeks or 280 hours: 85% of prevailing wage in area

Wages after successful completion of training program: The prevailing wage in the area of the state where employed.

\* \* \*

I. Orientation and Observation	
A. Safety procedures.....	5 hours
B. Observation of machine in operation.....	10 hours
a. Care and Maintenance	
A. Safety procedures.....	5 hours
B. Routine fueling, lubricating and servicing.....	25 hours
a. Actual Operation of Equipment	
A. Safe operating procedures.....	5 hours
B. Roll base course to desired compaction.....	200 hours
C. Roll asphalt surfaces to desired compaction and smoothness and assure proper sealing of joints .....	270 hours
Total .....	520 hours

SCRAPERS (over 17 C.Y.) – Code 919

Approximate training time: 13 weeks or 520 hours

Minimum starting wage: 70% of prevailing wage in area.

Minimum wage after 7 weeks or 280 hours: 85% of prevailing wage in area.

Wages after successful completion of training program: The prevailing wage in the area of the state where employed.

\* \* \*

- I. Orientation and Observation
  - A. Safety procedures..... 5 hours
  - B. Observation of machine in operation..... 20 hours
  - C. Starting and manipulating levers for moving equipment and attachments..... 15 hours
- II. Care and Maintenance
  - A. Safety procedures..... 5 hours
  - B. Routine fueling, lubricating and servicing..... 35 hours
- a. Actual Operation of Equipment
  - A. Safe operating procedures..... 5 hours
  - B. Loading ..... 150 hours
  - C. Spreading material ..... 150 hours
  - D. Rough roadway grading..... 70 hours
  - E. Compaction of embankment..... 65 hours
- Total..... 520 hours

TRACTOR OPERATOR (80 H.P. and less) – Code 920

Approximate training time: 13 weeks or 520 hours

Minimum starting wage: 70% of prevailing wage in area.

Minimum wage after 7 weeks or 280 hours: 85% of prevailing wage in area

Wages after successful completion of training program: The prevailing wage in the area of the state where employed.

\* \* \*

- I. Orientation and Observation
  - A. Safety procedures..... 5 hours
  - B. Observation of machine in operation..... 30 hours
  - C. Starting and manipulating levers for moving equipment and attachments..... 25 hours
- II. Care and Maintenance
  - A. Safety procedures..... 5 hours
  - B. Routine fueling, lubricating and servicing..... 35 hours
- a. Actual Operation of Equipment
  - A. Safe operating procedures..... 5 hours
  - B. Pulling compaction implements..... 150 hours
  - C. Pull graders for dressing operations..... 150 hours
  - D. Ground clearing assistance ..... 115 hours
- Total..... 520 hours

TRACTOR OPERATOR (Over 80 H.P.) – Code 921

Approximate training time: 13 weeks or 520 hours

Minimum starting wage: 70% of prevailing wage in area.

Minimum wage after 7 weeks or 280 hours: 85% of prevailing wage in area.

Wages after successful completion of training program: The prevailing wage in the area of the state where employed.

\* \* \*

I. Orientation and Observation	
A. Safety procedures.....	5 hours
B. Observation of machine in operation.....	30 hours
C. Starting and manipulating levers for moving equipment and attachments.....	25 hours
II. Care and Maintenance	
A. Safety procedures.....	5 hours
B. Routine fueling, lubricating and servicing.....	35 hours
a. Actual Operation of Equipment	
A. Safe operating procedures.....	5 hours
B. Pushing other equipment to aid in loading or unloading operations.....	150 hours
C. Pulling compaction and mixing implements.....	150 hours
D. Ground clearing assistance .....	115 hours
Total .....	520 hours

TRENCHING MACHINE, HEAVY – Code 922

Approximate training time: 26 weeks or 1040 hours

Minimum starting wage: 70% of prevailing wage in area.

Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area

Minimum wage after 13 weeks or 520 hours; 90% of prevailing wage in area

Wages after successful completion of training program: The prevailing wage in the area of the state where employed.

\* \* \*

I. Orientation and Observation	
A. Safety procedures.....	10 hours
B. Observation of machine in operation.....	50 hours
C. Starting and manipulating levers for moving equipment and attachments.....	40 hours
II. Care and Maintenance	
A. Safety procedures.....	10 hours
B. Routine fueling, lubricating and servicing.....	340 hours
a. Actual Operation of Equipment	
A. Safe operating procedures.....	10 hours
B. Excavation for footing and removal of unsuitable materials.....	200 hours
C. Trenching for pipe, etc.....	380 hours
Total.....	040 hours



REINFORCING STEEL SETTER (Structures) – Code 923

Approximate training time: 18 weeks or 720 hours

Minimum starting wage: 70% of prevailing wage in area.

Minimum wage after 9 weeks or 360 hours: 80% of prevailing wage in area

Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area

Wages after successful completion of training program: The prevailing wage in the area of the state where employed.

\* \* \*

I. Orientation and Observation	
A. Safety procedures.....	5 hours
B. Observation of steel being set and welding of rods.....	15 hours
a. Care and Maintenance	
A. Safety procedures.....	5 hours
B. Steel bar placement.....	50 hours
a. Actual Steel Setting	
A. Rod fastening....	80 hours
B. Rod cutting.....	80 hours
C. Rod welding....	80 hours
D. Rod placement.....	255 hours
E. Fabrication of reinforcement assembly.....	150 hours
Total.....	720 hours

STEEL WORKER (Structural) – Code 924

Approximate training time: 26 weeks or 1040 hours

Minimum starting wage: 70% of prevailing wage in area.

Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area

Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area

Wages after successful completion of training program: The prevailing wage in the area of the state where employed.

\* \* \*

- I. Orientation and Observation
  - A. Safety procedures..... 5 hours
  - B. Observation of steel worker ..... 20 hours
  
- a. Care and Maintenance
  - A. Safety procedures..... 5 hours
  - B. Tool Review..... 5 hours
  
- a. Operating with Steel Workers
  - A. Raise and place fabricated structural steel .....150 hours
  - B. Emphasis on girders, plates and columns ..... 100 hours
  - C. Fasten steel members together by welding or bolting ..... 405 hours
  - D. Signal erection crane, rig equipment ..... 350 hours

FOUNDATION DRILL OPERATOR – Code 925

Approximate training time: 18 weeks or 720 hours

Minimum starting wage: 70% of prevailing wage in area.

Minimum wage after 9 weeks or 360 hours: 85% of prevailing wage in area

Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area

Wages after successful completion of training program: The prevailing wage in the area of the state where employed.

\* \* \*

I. Orientation and Observation	
A. Orientation and observation.....	5 hours
B. Observation of machine in operation.....	35 hours
C. Starting and manipulating levers for moving equipment and attachments.....	30 hours
II. Care and Maintenance	
A. Safety procedures.....	5 hours
B. Routine fueling, lubricating and servicing.....	35 hours
a. Actual Operation of Equipment	
A. Safe operating procedures.....	5 hours
B. Small hole drilling.....	200 hours
C. Large hole drilling.....	200 hours
D. Casing operation .....	75 hours
E. General operating.....	130 hours
Total.....	720 hours

MECHANIC – Code 926

Approximate training time: 36 weeks or 1440 hours

Minimum starting wage: 70% of prevailing wage in area.

Minimum wage after 8 weeks or 320 hours: 75% of prevailing wage in area

Minimum wage after 13 weeks or 520 hours: 80% of prevailing wage in area

Minimum wage after 20 weeks or 800 hours: 85% of prevailing wage in area

Minimum wage after 30 weeks or 1200 hours: 90% of prevailing wage in area

Wages after successful completion of training program: The prevailing wage in the area of the state where employed.

\* \* \*

- I. Orientation and Observation
  - A. Safety procedures ..... 15 hours
  - B. Cleaning, disassembling and inspection of engine parts ... 40 hours
  - C. Installation and adjustment of minor parts..... 50 hours
  
- II. Care and Maintenance
  - A. Safety procedures..... 15 hours
  - B. Engine reconditioning..... 200 hours
  - C. Clutch installation.... 50 hours
  - D. Transmission reconditioning..... 100 hours
  
- a. Actual Operation of Equipment
  - A. Safe operating procedures..... 20 hours
  - B. Electrical systems..... 200 hours
  - C. Hydraulic systems..... 200 hours
  - D. Final drive and track assemblies ..... 150 hours
  - E. Welding and fabrication 100 hours
  - F. General field maintenance ..... 300 hours
  
- Total..... 1440 hours

WELDER – Code 927

Approximate training time: 26 weeks or 1040 hours

Minimum starting wage: 70% of prevailing wage in area.

Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area

Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area

Wages after successful completion of training program: The prevailing wage in the area of the state where employed.

\* \* \*

I. Orientation and Observation

- A. Safety procedures ..... 5 hours
- B. Welding equipment ..... 20 hours
- C. Materials selection ..... 20 hours
- D. Observation of welder ..... 20 hours

a. Applied Techniques of Welding

- A. Safety procedures ..... 5 hours
- B. Acetylene-cutting, brazing and welding ..... 300 hours
- C. Electric-cutting and welding ..... 300 hours

a. Actual Welding Operations

- A. Safety procedures ..... 5 hours
- B. Cut, lay out, fit and weld sheet metal, cast iron and other metal parts ..... 185 hours
- C. Fabricate and repair equipment ..... 180 hours

Total ..... 1040 hours

CRUSHER OR SCREENING PLANT OPERATOR - Code 928

Approximate training time: 26 weeks or 1040 hours

Minimum starting wage: 70% of prevailing wage in area.

Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area.

Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.

Wages after successful completion of training program: The prevailing wage in the area of the state where employed.

\* \* \*

- I. Orientation and Observation
  - A. Safety procedures..... 5 hours
  - B. Observation of machine in operation..... 35 hours
  - C. Starting of crusher operating conveyors ..... 30 hours
  
- a. Care and Maintenance
  - A. Safety procedures..... 5 hours
  - B. Routine fueling, lubricating and servicing..... 150 hours
  
- a. Actual Operation of Equipment
  - A. Safe operating procedures..... 5 hours
  - B. Operation of conveyors and crusher operations..... 120 hours
  - C. Operation of crusher ..... 690 hours
  
- Total..... 1040 hours

TRUCK DRIVER – Code 929

Approximate training time: 26 weeks or 1040 hours

Minimum starting wage: 70% of prevailing wage in area.

Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area

Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area

Wages after successful completion of training program: The prevailing wage in the area of the state where employed.

\* \* \*

- I. Orientation and Observation
  - A. Safety procedures ..... 10 hours
  - A. Observation (as a passenger) of vehicle in operation .....50 hours
  - B. Starting and manipulating vehicle .....40 hours
  
- a. Care and Maintenance
  - A. Safety procedures..... 10 hours
  - B. Routine fueling, lubricating and servicing..... 340 hours
  
- a. Actual Operation of Equipment
  - A. Safe operating procedures..... 10 hours
  - B. Loading and unloading materials and operation of vehicle ..... 580 hours
  
- Total..... 1040 hours

ASPHALT DISTRIBUTOR – Code 930

Approximate training time: 26 weeks or 1040 hours

Minimum starting wage: 70% of prevailing wage in area.

Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area.

Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.

Wages after successful completion of training program: The prevailing wage in the area of the state where employed.

\* \* \*

- I. Orientation and Observation
  - A. Safety procedures..... 10 hours
  - B. Observation of vehicle in operation..... 35 hours
  - C. Starting and manipulating valves and levers  
to distribute material and move equipment..... 30 hours
  
- II. Care and Maintenance
  - A. Safety procedures..... 5 hours
  - B. Routine fueling, lubricating and servicing..... 35 hours
  
- III. Actual Operation of Equipment
  - A. Safe operating procedures..... 5 hours
  - B. Regulates valves and levers to distribute oil  
or bituminous liquid for highway surfacing..... hours
  - C. Operation of equipment ..... 805 hours
  
- Total..... 1040 hours



ASPHALT RAKER – Code 931

Approximate training time: 13 weeks or 520 hours

Minimum starting wage: 70% of prevailing wage in area.

Minimum wage after 7 weeks or 280 hours: 85% of prevailing wage in area.

Wages after successful completion of training program: The prevailing wage in the area of the state where employed.

\* \* \*

I. Orientation and Observation	
A. Safety procedures.....	5 hours
B. Observation of placement of materials .....	5 hours
C. Perform duties of asphalt shoveler.....	35 hours
II. Care and Maintenance	
A. Safety procedures.....	5 hours
B. Routine fueling, lubricating and servicing.....	35 hours
a. Actual Operation of Equipment	
A. Safe operating procedures.....	5 hours
B. Adjustment of screed to regulate width and depth of material .....	35 hours
C. Distribution of material.....	395 hours
Total .....	520 hours

BLASTER – Code 932

Approximate training time: 26 weeks or 1040 hours

Minimum starting wage: 70% of prevailing wage in area.

Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area.

Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.

Wages after successful completion of training program: The prevailing wage in the area of the state where employed.

\* \* \*

I. Orientation and Observation

- A. Safety procedures..... 5 hours
- B. Observation of work of Powder man ..... 50 hours
- C. Assist Powder man by carrying explosives, placing  
in holes, connecting lead wires ..... 45 hours

II. Applied Techniques of Powder man

- A. Safety procedures..... 15 hours
- B. Storage, transporting, placing and discharging  
of explosives ..... 335 hours

III. Actual Blasting Operations

- A. Safe operating procedures..... 25 hours
- B. Use of detonators and explosives..... 100 hours
- C. Storage, movement and placing of explosives..... 300 hours
- D. Placing wires, detonators and explosives,  
tamping and discharging ..... 165 hours

Total ..... 1040 hours

SPREADERBOX PERSON – Code 933

Approximate training time: 13 weeks or 520 hours

Minimum starting wage: 70% of prevailing wage in area.

Minimum wage after 7 weeks or 280 hours: 85% of prevailing wage in area

Wages after successful completion of training program: The prevailing wage in the area of the state where employed.

\* \* \*

I. Orientation and Observation	
A. Safety procedures.....	5 hours
B. Observation of machine in operation.....	25 hours
C. Starting, stopping and manipulating levers for moving equipment and attachments.....	20 hours
II. Care and Maintenance	
A. Safety procedures	5 hours
B. Routine fueling, lubricating and servicing	30 hours
a. Actual Operation of Equipment	
A. Selection and loading of materials.....	40 hours
B. Spreading of stone or other granular materials on spread way sub-base or base.....	395 hours
Total.....	520 hours

SIGN ERECTOR – Code 934

Approximate training time: 26 weeks or 1040 hours

Minimum starting wage: 70% of prevailing wage in area.

Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area

Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area

Wages after successful completion of training program: The prevailing wage in the area of the state where employed.

\* \* \*

- I. Orientation and Safe Use of Tools and Equipment
  - A. Power and hand tools ..... 20 hours
  - B. Special fittings and hardware ..... 10 hours
  - C. Specifications or design for concrete mixer..... 20 hours
- a. Applied Techniques of Sign Erection
  - A. Preparation of layout for signs ..... 30 hours
  - B. Cuts, ties and sets reinforcing steel for footings ..... 25 hours
  - C. Sets forms for, places concrete and sets anchor bolts ..... 300 hours
  - D. Erects wood or metal structures ..... 250 hours
  - E. Places clamps, brackets or other required hardware  
on structures ..... 250 hours
- III. Blueprint or Construction Plans Reading ..... 50 hours
- IV. Basic Design Familiarity
  - A. Safety procedures ..... 5 hours
- a. Stripping and Salvage of Forms for Re-use ..... 75 hours
  - A. Safety procedures ..... 5 hours
- Total ..... 1040 hours

OILER – Code 935

Approximate training time: 26 weeks or 1040 hours

Minimum starting wage: 70% of prevailing wage in area.

Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area

Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area

Wages after successful completion of training program: The prevailing wage in the area of the state where employed.

\* \* \*

I. Orientation and Safe Use of Tools of the Trade	
A. Lubrication requirements of mechanical equipment.....	20 hours
B. Materials selection .....	20 hours
a. Applied Techniques of the Oiler	
A. Safety procedures.....	5 hours
B. Equipment characteristics and lubrication points .....	145 hours
C. Oil changes, filter changes, grease guns, hard packing of grease, greasing bearings .....	450 hours
D. Minor adjustments to drive chains and clutches .....	150 hours
a. Shop and Field Practices	50 hours
i. Equipment Operation and Operation of Oil, Grease and Fuel Service Truck .....	190 hours
A. Safety procedures.....	10 hours
Total .....	1040 hours

UTILITY OPERATOR – Code 936

Approximate training time: 26 weeks or 1040 hours

Minimum starting wage: 70% of prevailing wage in area.

Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area

Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area

Wages after successful completion of training program: The prevailing wage in the area of the state where employed.

\* \* \*

- I. Orientation and Observation
  - A. Safety procedures..... 5 hours
  - B. Observation of machine in operation..... 50 hours
  - C. Starting and manipulating levers for moving equipment and attachments..... 45 hours
  
- II. Care and Maintenance
  - A. Safety procedures..... 5 hours
  - B. Routine fueling, lubricating and servicing..... 295 hours
  
- a. Actual Operation of Equipment
  - A. Safe operating procedures..... 5 hours
  - B. Operation of various equipment..... 600 hours
  - C. Special applications and functions..... 35 hours
  
- Total..... 1040 hours

SERVICE PERSON—CODE 937

Approximate training time: 13 weeks or 520 hours.

Minimum starting wage: 70% of prevailing wage in area.

Minimum wage after 7 weeks or 280 hours; 85% of prevailing wage in area.

Wages after successful completion of training program: The prevailing wage in the area of the state where employed.

\* \* \*

I. Orientation and Observation	
A. Safety procedures.....	20 hours
B. Observing fueling, greasing and cleaning filters .....	40 hours
C. Fuel and grease used for different types of equipment.....	40 hours
II. Actual Operation	
A. Servicing all types of equipment.....	80 hours
B. Installation and adjustment of minor parts.....	80 hours
C. General field maintenance and operation of service truck.....	260 hours
Total .....	520 hours

ELECTRICIAN – Code 942

Approximate training time: 104 weeks or 4160 hours

Minimum starting wage: 70% of prevailing wage in area.

Minimum wage after 26 weeks or 1040 hours: 80% of prevailing wage in area.

Minimum wage after 52 weeks or 2080 hours: 85% of prevailing wage in area.

Minimum wage after 78 weeks or 3120 hours: 90% of prevailing wage in area.

Wages after successful completion of training program: The prevailing wage in the area of the state where employed.

\* \* \*

I. Orientation	
A. Safety procedures .....	50 hours
B. Basic rules of National Electrical Code .....	100 hours
C. Basic tools – their care and uses .....	100 hours
II. Applied Techniques of Electrical Construction	
A. Wire ways – types, uses and methods of installation.....	900 hours
B. Circuit wiring.....	800 hours
C. Protective equipment – switches, panels, etc.....	300 hours
D. Feeders and services .....	300 hours
E. Lighting fixtures and wall outlets .....	250 hours
F. Control wiring.....	150 hours
G. Testing of completed work .....	100 hours
III. Technical Studies and Review	
A. Advance study of National Electrical Code.....	100 hours
B. Construction blueprints, reading and application .....	200 hours
a. Underground Construction and Outside Lighting	
A. Underground conduit and wire .....	300 hours
B. Installation of outside lighting, maintenance and repairs .....	400 hours
V. Care and Maintenance of Trade Tools and Equipment .....	110 hours
Total .....	4160 hours



BATCHING PLANT SCALEPERSON—CODE 943

Approximate training time: 13 weeks or 520 hours

Minimum starting wage: 70% of prevailing wage in area.

Minimum wage after 7 weeks or 280 hours: 85% of prevailing wage in area.

Wages after successful completion of training program: The prevailing wage in the area of the state where employed.

\* \* \*

- I. Orientation and Observation
  - A. Safety Procedures..... 5 hours
  - B. Observation of equipment in operation..... 35 hours
  - C. Adjustment of scales, operation of controls and weighing..... 50 hours
  
- II. Care and Maintenance
  - A. Safety procedures..... 5 hours
  - B. Routine cleaning, lubrication and servicing..... 75 hours
  
- III. Actual Operation of Equipment
  - A. Safe operating procedures..... 10 hours
  - B. Operating controls and scales for measurement  
and discharge of concrete or asphaltic materials  
into trucks, carriers or mixer..... 340 hours
  
- Total..... 520 hours

WAGON DRILL, BORING MACHINE OR POST HOLE DRILLER OPERATOR –  
Code 944

Approximate training time: 18 weeks or 720 hours

Minimum starting wage: 70% of prevailing wage in area.

Minimum wage after 9 weeks or 360 hours: 80% of prevailing wage in area

Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area

Wages after successful completion of training program: The prevailing wage in the area of the state where employed.

\* \* \*

- I. Orientation and Observation
  - A. Orientation and Observation 5 hours
  - B. General drilling procedures and operation..... 65 hours
  
- a. Care and Maintenance
  - A. Safety procedures..... 5 hours
  - B. Routine fueling, lubricating and servicing..... 35 hours
  
- a. Actual Operation of Equipment
  - A. Safe operating procedures..... 5 hours
  - B. Small hole drilling..... 200 hours
  - C. Large hole drilling..... 200 hours
  - D. Casing operation ..... 75 hours
  - E. General operating..... 130 hours
  
- Total ..... 720 hours

REINFORCING STEEL SETTER (Paving) – Code 945

Approximate training time: 18 weeks or 720 hours

Minimum starting wage: 70% of prevailing wage in area.

Minimum wage after 9 weeks or 360 hours: 80% of prevailing wage in area

Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area

Wages after successful completion of training program: The prevailing wage in the area of the state where employed.

\* \* \*

- I. Orientation and Observation
  - A. Safety Procedures..... 5 hours
  - B. Observation of steel being set..... 15 hours
  
- II. Care and Maintenance
  - A. Safety procedures..... 5 hours
  - B. Steel bar placement..... 50 hours
  
- III. Actual Steel Setting
  - A. Rod tying..... 80 hours
  - B. Rod cutting..... 80 hours
  - C. General rod placement..... 485 hours
  
- Total..... 720 hours

FORM SETTER (Paving) – Code 946

Approximate training time: 26 weeks or 1040 hours

Minimum starting wage: 70% of prevailing wage in area.

Minimum wage after 8 weeks or 320 hours: 80% of prevailing wage in area.

Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.

Wages after successful completion of training program: The prevailing wage in the area of the state where employed.

\* \* \*

I. Orientation and Observation	
A. Safety procedures.....	5 hours
B. Observation of setting grade line.....	20 hours
C. Observation of pulling, loading, hauling and placing forms .....	30 hours
a. Care and Maintenance	
A. Safety procedures.....	5 hours
B. Routine cleaning of forms and care of air and hand tools .....	25 hours
a. Actual Operation of Form Setting	
A. Safe operating procedures.....	5 hours
B. Set grade line.....	100 hours
C. Pull, load, haul and place forms.....	150 hours
D. Set forms to finish grade.....	300 hours
E. Drive pins.....	100 hours
F. Check alignment .....	150 hours
G. Spray forms.....	100 hours
H. Check forms while pouring concrete.....	50 hours
Total .....	1040 hours

SELF PROPELLED SWEEPER OPERATOR – Code 947

Approximate training time: 8 weeks or 320 hours

Minimum starting wage: 70% of prevailing wage in area.

Minimum wage after 6 weeks or 240 hours: 85% of prevailing wage in area

Wages after successful completion of training program: The prevailing wage in the area of the state where employed.

\* \* \*

- I. Orientation and Observation
  - A. Safety procedures..... 5 hours
  - B. Observation of machine in operation..... 5 hours
  - C. Starting and manipulating levers for moving equipment and attachments..... 10 hours
- II. Care and Maintenance
  - A. Safety procedures..... 5 hours
  - B. Routine fueling, lubricating and servicing..... 20 hours
- a. Actual Operation of Equipment
  - A. Safe operating procedures..... 5 hours  
Note: Point out necessity to wear eye protection while operating the sweeper
  - B. Proper start-up, proper engagement and position of broom and proper sweeping technique 15 hours
  - C. Removal and replacement of broom wafers ..... 10 hours
  - D. Operation of sweeper in cleaning of pavements ..... 245 hours
- Total ..... 320 hours

BULLDOZER, UNDER 150 H.P. - Code 948

Approximate training time: 18 weeks or 720 hours

Minimum starting wage: 70% of prevailing wage in area.

Minimum wage after 9 weeks or 360 hours: 80% of prevailing wage in area. Minimum wage after 13 weeks or 520 hours: 90% of prevailing wage in area.

Wages after successful completion of training program: The prevailing wage in the area of the state where employed.

\* \* \*

- I. Orientation and Observation
  - A. Safety procedures ..... 5 hours
  - B. Observation of machine in operation..... 35 hours
  - C. Starting and manipulating levers for moving equipment and attachments..... 30 hours
  
- II. Care and Maintenance
  - A. Safety procedures..... 5 hours
  - B. Routine fueling, lubricating and servicing..... 35 hours
  
- a. Actual Operation of Equipment
  - A. Safe operating procedures..... 5 hours
  - B. Movement and stockpiling of material ..... 150 hours
  - C. Pushing and rough grading ..... 125 hours
  - D. Clearing and grubbing..... 125 hours
  - E. Finish grading ..... 175 hours
  - F. Special applications ..... 30 hours
  
- Total ..... 720 hours

SCRAPERS (under 17 C.Y.) – Code 949

Approximate training time: 13 weeks or 520 hours

Minimum starting wage: 70% of prevailing wage in area.

Minimum wage after 7 weeks or 280 hours: 85% of prevailing wage in area

Wages after successful completion of training program: The prevailing wage in the area of the state where employed.

\* \* \*

I. Orientation and Observation	
A. Safety procedures.....	5 hours
B. Observation of machine in operation.....	20 hours
C. Starting and manipulating levers for moving equipment and attachments.....	15 hours
II. Care and Maintenance	
A. Safety procedures.....	5 hours
B. Routine fueling, lubricating and servicing.....	35 hours
a. Actual Operation of Equipment	
A. Safe operating procedures.....	5 hours
B. Loading .....	150 hours
C. Spreading material .....	150 hours
D. Rough roadway grading.....	70 hours
E. Compaction of embankment .....	65 hours
Total.....	520 hours

# **APPENDIX C**

## **Reporting Forms**



## CONTRACTOR OJT ENROLLMENT REQUEST FORM

Name: _____		SSN (minimum last 4 digits): _____	
Address: _____			
City, State: _____		Zip Code: _____	Phone: _____
<input type="checkbox"/> Upgrade	<input type="checkbox"/> New Hire	<input type="checkbox"/> Replacement	
Previous Classification: _____			

<input type="checkbox"/> Male	<input type="checkbox"/> Female
-----	
<input type="checkbox"/> White (Not of Hispanic Origin)	<input type="checkbox"/> Asian or Pacific Islander
<input type="checkbox"/> Black (Not of Hispanic Origin)	<input type="checkbox"/> American Indian or Alaskan Native
<input type="checkbox"/> Hispanic	<input type="checkbox"/> Other (Please Specify): _____

Contractor: _____	
Contact Person: _____	Phone: _____
Address: _____	City, State, ZIP: _____
Email: _____	

Job Classification _____	Planned training start date: _____
Contract CSJ and County: _____	

\_\_\_\_\_  
Trainee Signature

\_\_\_\_\_  
Contractor Representative Signature

\_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
Print or Type Name

The Contractor shall electronically submit this form within 7 days to the Texas Department of Transportation's (TxDOT) Office of Civil Rights at TxDOT-OJT-Program. Upon receipt of this application and if appropriate, TxDOT will furnish an enrollment confirmation letter to the Contractor and the applicable Area Engineer(s).

## OJT WEEKLY REPORTING FORM

Name of Trainee: _____		SSN (minimum last 4 digits): _____	
Job Classification: <u>Form Setter (Structures)</u>		Contractor/Employer: _____	
Begin Date of Workweek: _____		End Date of Workweek: _____	
Contract CSJ: _____	County: _____	Hours Worked: _____	
Contract CSJ: _____	County: _____	Hours Worked: _____	
Contract CSJ: _____	County: _____	Hours Worked: _____	
Cumulative Hrs to Date: _____		Percentage of Full Wage (beginning of period): _____	
Hourly Wage Rate: _____		Percentage of Training completed: _____	

Classification: **Form Setter (Structures)**

Code: 905

Date Proficiency Achieved: \_\_\_\_\_

- |      |  |       |
|------|--|-------|
| I.   | Orientation and observation  |       |
|      | a. Safety Procedures   | _____ |
|      | b. Observation of placing of forms   | _____ |
|      | c. Observation of form stripping and setting of precast concrete                       | _____ |
| II.  | Care and maintenance   |       |
|      | a. Safety procedures   | _____ |
|      | b. Help strip forms and clean work area  | _____ |
| III. | Actual operation of form setting   |       |
|      | a. Safe operating procedures   | _____ |
|      | b. Hold and help align forms. Drive stakes for braces and help erect scaffolding       | _____ |
|      | c. Observe and assist in setting precast concrete                                      | _____ |
|      | d. Measure space between forms, fit together, line, plumb vertically, set to elevation | _____ |
|      | e. Check forms while concrete is being poured  | _____ |

**Special Instructions:**

Graduate this Trainee as of: \_\_\_\_\_

Check box if reimbursement is requested. Reimbursement is \$0.80 per training hour upon graduation. Reimbursement will be made under one active Federal-aid Contract only identified here.

County \_\_\_\_\_ CSJ \_\_\_\_\_

Terminate this Trainee as of: \_\_\_\_\_

Reason for Termination (Give Details): \_\_\_\_\_

Narrative Description of Progress or Problems: \_\_\_\_\_

Trainee (Please Print) \_\_\_\_\_

Contractor Representative \_\_\_\_\_

**LABOR STANDARDS REVIEW (TxDOT Form)**

Project CSJ: \_\_\_\_\_ County: \_\_\_\_\_ Date: \_\_\_\_\_

Employer: \_\_\_\_\_

---

**Employee Interview**

Employee Name: \_\_\_\_\_

Job Classification: \_\_\_\_\_ Wage Rate: \_\_\_\_\_

Describe your work duties and tools used: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Work being performed (observed): \_\_\_\_\_

\*Do you work over 40 Hours per week? \_\_\_\_\_ Overtime Wage Rate: \_\_\_\_\_ How Paid? (cash or check) \_\_\_\_\_

\* Work on all projects (private, municipal, state or county) is counted for overtime.

Is any money deducted from your pay besides income and social security taxes? If so, explain:  
\_\_\_\_\_  
\_\_\_\_\_

Has employee seen posting of minimum wage rates? \_\_\_\_\_ Are you paid weekly? \_\_\_\_\_ If not, how often? \_\_\_\_\_

Are you currently enrolled in an apprenticeship or training program? \_\_\_\_\_

If so, has copy of training program been provided? \_\_\_\_\_

---

**On-the-Job Training** (if applicable)

When did you begin working for this company? Approximate Month/Year: \_\_\_\_\_

Job classification at hire: \_\_\_\_\_

List previous job classification/craft with this company or other companies: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

In which classification/craft training are you enrolled? \_\_\_\_\_

What is the name and title of your trainer? \_\_\_\_\_

Please explain the training you are receiving: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Have you received a copy of the *Contractor OJT Program Enrollment Request Form* that you signed?

Yes  No

Have you received a copy of the *OJT Program* curriculum?

Yes  No

---

**Payroll Review**

Payroll Period: \_\_\_\_\_ Classification: \_\_\_\_\_

Minimum hourly rate: \_\_\_\_\_ Rate Paid: \_\_\_\_\_

\*OJT Current Training Period (if applicable):

First Half @ min. 60%     Third Quarter @ min. 75%     Last Quarter @ min. 90%

\* Trainee's current training quarter. Minimum percentage of prevailing wage rate to be paid for the corresponding quarter.

If employee interview or payroll review indicates non-compliance, describe actions taken:

\_\_\_\_\_

Supplemental Payrolls submitted? \_\_\_\_\_

\_\_\_\_\_  
Reviewer (Signature and Title)

\_\_\_\_\_  
Date

## OJT ANNUAL REPORT FORM

Reporting Period: \_\_\_\_\_  
 Number of contractors selected for OJT: \_\_\_\_\_ Actual number of contractors providing OJT: \_\_\_\_\_  
 OJT trainee goal for the year: \_\_\_\_\_  
 Actual number of OJT participants: \_\_\_\_\_

Enrollments			
Race/Ethnicity	Male	Female	Total
White			
Black			
Hispanic			
Asian or Pacific Islander			
American Indian			
Other			
<b>Totals:</b>			

Active			
Race/Ethnicity	Male	Female	Total
White			
Black			
Hispanic			
Asian or Pacific Islander			
American Indian			
Other			
<b>Totals:</b>			

Graduations			
Race/Ethnicity	Male	Female	Total
White			
Black			
Hispanic			
Asian or Pacific Islander			
American Indian			
Other			
<b>Totals:</b>			

Terminations			
Race/Ethnicity	Male	Female	Total
White			
Black			
Hispanic			
Asian or Pacific Islander			
American Indian			
Other			
<b>Totals:</b>			

**APPENDIX D**

**Federal Regulation 23CFR Part 230**

**§ 230.111 Implementation of special requirements for the provision of on-the-job training.**

(a) The State highway agency shall determine which Federal-aid highway construction contracts shall include the "Training Special Provisions" (appendix B) and the minimum number of trainees to be specified therein after giving appropriate consideration to the guidelines set forth in § 230.111(c). The "Training Special Provisions" shall supersede section 7(b) of the Special Provisions (appendix A) entitled "Specific Equal Employment Opportunity Responsibilities." Minor wording revisions will be required to the "Training Special Provisions" in areas having "Hometown" or "Imposed Plan" requirements.

(b) The Washington Headquarters shall establish and publish annually suggested minimum training goals. These goals will be based on the Federal-aid apportioned amounts and the minority population. A State will have achieved its goal if the total number of training slots on selected federally aided highway construction contracts which have been awarded during each 12-month period equals or exceeds the State's suggested minimum annual goal. In the event a State highway agency does not attain its goal during a calendar year, the State highway agency at the end of the calendar year shall inform the Administrator of the reasons for its inability to meet the suggested minimum number of training slots and the steps to be taken to achieve the goal during the next calendar year. The information is to be submitted not later than 30 days from the end of the calendar year and should be factual, and should not only indicate the situations occurring during the year but show the project conditions at least through the coming year. The final determination will be made on what training goals are considered to be realistic based on the information submitted by a State.

(c) The following guidelines shall be utilized by the State highway agency in selecting projects and determining the number of trainees to be provided training therein:

(1) Availability of minorities, women, and disadvantaged for training.

(2) The potential for effective training.

(3) Duration of the contract.

(4) Dollar value of the contract.

(5) Total normal work force that the average bidder could be expected to use.

(6) Geographic location.

(7) Type of work.

(8) The need for additional journeymen in the area.

(9) Recognition of the suggested minimum goal for the State.

(10) A satisfactory ratio of trainees to journeymen expected to be on the contractor's work force during normal operations (considered to fall between 1:10 and 1:4).

(d) Training programs which are established shall be approved only if they meet the standards set forth in appendix B with regard to:

(1) The primary objectives of training and upgrading minority group workers, women and disadvantaged persons.

(2) The development of full journeymen.

(3) The minimum length and type of training.

(4) The minimum wages of trainees.

(5) Trainees certifications.

(6) Keeping records and furnishing reports.

(e)(1) Training programs considered by a State highway agency to meet the standards under this directive shall be submitted to the FHWA division Administrator with a recommendation for approval.

(2) Employment pursuant to training programs approved by the FHWA division Administrator will be exempt from the minimum wage rate provisions of section 113 of title 23 U.S.C. Approval, however, shall not be given to training programs which provide for employment of trainees at wages less than those required by the Special Training Provisions. (Appendix B.)

(f)(1) Apprenticeship programs approved by the U.S. Department of Labor as of the date of proposed use by a Federal-aid highway contractor or subcontractor need not be formally approved by the State highway agency or the FHWA division Administrator. Such programs, including their minimum wage provisions, are acceptable for use, provided they are administered

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# Developer's Job Training / Small Business Mentoring Plan

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## Mentoring and Job Training

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### 1 INTRODUCTION

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Small businesses are essential to economic competitiveness in the transportation industry. Therefore, the Developer has created a Small Business Mentor Protégé Program to provide opportunities for small businesses to participate in public-private partnerships in the areas of design and construction.



Disadvantaged Business Enterprises. (DBEs) — Any business so certified in Accordance with 49 CFR Part 26.

Historically Underutilized Businesses (HUBs) — Any business so certified by the Texas Buildings and Procurement Commission (TB&PC) (formerly the General Services Commission).

Small Business Enterprises (SBEs) — Any business certified as a DBE and/or HUB or otherwise so certified by TxDOT.

Developer Mentor (Mentor) — Employees from the Developer.

Developer Protégé (Mentor Protégé) — DBEs/ HUBs/ SBEs that sign an agreement with the Developer to participate in the Developer-Small Business Mentor Protégé program.

Session — A series of meetings for the Developer-Small Business Mentor Protégés.

The Developer's Small Business Mentor Protégé Program provides an opportunity to selected Small Business Mentor Protégés to learn about the Developer's business opportunities and its business practices. Mentor Protégés will receive information to assist them in bidding and performing on the Developer's contracts by working directly with the Developer and appropriate subcontractors gaining valuable on-the-job training during a one (1) year mentoring period.

The Small Business Mentor Protégé Program will offer participants the opportunity to enhance their business skills by focusing on fundamental construction business tenets:

1. Schedule and scheduling

- a) Short-term and long-term scheduling
- b) How to schedule
- c) Progressing a schedule
- d) Keeping on schedule
- e) Identifying and applying appropriate resources
- f) Schedule recovery

2. Creating a cost budget and measuring costs

- a) Establishing a budget with appropriate cost codes
- b) Monitoring the budget by conducting weekly review of cost reports
- c) Anticipating necessary changes to the budget
- d) Adjusting the budget
- e) Identifying changed conditions

3. Measuring cash flow and profitability

- a) Cash in vs. Cash out
- b) Relationship of cash flow to profitability

4. Understanding the role of bonds and insurance

5. Clarifications to the contract documents, when requested by the Mentor Protégé

6. Human resources

7. Project safety

The Developer will introduce the Mentor Protégés to key Developer staff and to TxDOT's project staff and provide networking opportunities with those individu-

als. Developer Mentors, in collaboration with the Developer's staff, subcontractors, bonding agents, and other applicable parties, will meet with the Mentor Protégés during regularly scheduled meetings and will work individually with the Mentor Protégés as needed to achieve program goals. The Developer will publish Developer Bulletins that identify the firms participating in the Mentor Protégé program in order to improve awareness of the program and to achieve program goals.

To be eligible for the program, the small business must have been certified by the State of Texas as a DBE, HUB, or SBE for at least one consecutive year and must perform a category of work or supply a type of material that adds value to the project (e.g., design services, concrete supplier, rebar tier). Firms interested in participating in the program must submit a Small Business Mentor Protégé application to the Developer. The Developer will offer participation in the program to each DBE, HUB, or SBE that has an active role in the project, and will endeavor to maintain a minimum of five (5) active participants at any one time during the design and construction phase of the project. A total of two (2) active participants will be mentored during the operation and maintenance period after Service Commencement. The actual number of Protégés participating in the program will depend on the total number of candidate firms working on the project that express interest in the program.

Once selected by the Developer, the Mentor Protégé must sign a Mentor Protégé agreement (to be developed by Developer) to commit the necessary time and efforts needed for the successful training. This is a voluntary program and either party may withdraw at any time by providing notice outlining the reason for withdrawal from the program (a courtesy copy will be provided to TxDOT). Upon completion of the one year (1) program, the Developer will provide each Mentor Protégé with a Certificate of Completion.

The Developer has identified the following list of available resources to locate and solicit DBEs, HUBs, and SBEs:

- I. Owner provided subcontractor listings
- II. Texas Unified Certification Program (TUCP) directory
- III. Procurement Marketing and Access Network (PRO-Net) of the Small Business Administration (SBA);
- IV. The Developer's Internal Vendor Database — created from letters of introduction, pre-qualification documents, and personal interviews with small, small disadvantaged, women-owned, HUB Zone, and service disabled veteran enterprise representatives;
- V. The Blue Book of Building and Construction, regional directories of building and construction vendors;
- VI. MBE Contractor Directory — compiled and maintained by the Associated General Contractors of America;
- VII. Office of Small and Disadvantaged Business Utilization Specialist;
- VIII. National Directories
  - National Directory of Women-Owned Businesses
  - National Directory of Minority-Owned Business Firms
  - Smoke Signals
  - The Business Women's Network Directory
  - National Center of American Indian-Owned Businesses
- IX. Databases
  - Minority Business Development Agency (MBDA)
  - GSA's Office of Enterprise Development Vendor Profile Database
  - Databases Established by Various Government Agencies
- X. Publications
  - Small Business Resource Guide
  - Federal Acquisition Report
  - Washington Business Journal's Book of Lists
  - Minorities in Business Daily
  - Local Newspaper and Trade Publications

XI. Trade and Professional Associations

- National Foundation for Women Business Owners (INFWBO)
- National Minority Supplier Development Council, Inc.
- National Association of Minority Contractors
- National Center for American Indian Enterprise Development
- National Business League
- Latin American Management Association
- The National Black Business Council, Inc.
- Hispanic Business Professional Women Association

XII. Texas Department of Transportation

- Education and Outreach, including the Learning, Information, Networking, Collaboration (LINC) Mentor – Protégé Program  
[http://www.txdot.gov/business/business\\_outreach/education\\_outreach.htm](http://www.txdot.gov/business/business_outreach/education_outreach.htm)
- Small Business Briefings  
[http://www.txdot.gov/business/business\\_outreach/small\\_business.htm](http://www.txdot.gov/business/business_outreach/small_business.htm)

The Developer Small Business Mentor Protégé program aims to provide effective mentoring to DBEs/HUBs/SBEs that have already been selected as subcontractors for the project. The Developer will make best efforts to mentor the Protégés while the Protégés are working on the project, attending project meetings, and participating in project discussions, allowing Protégés to gain an understanding of the conduct of project operations and receive one-on-one training opportunities. The intent of this approach is to provide actual project experience.

Each Mentor Protégé will be invited to participate in project meetings through which the Mentor Protégé will gain practical experience related to project operations. Meeting topics may include planning strategies, schedule reviews, budgeting and cost tracking, subcontractor interface coordination, insurance, bonding, safety (including safety task assessments), celebratory events, and quality reviews. The various meetings are held either at the project office or at the particular field site, as applicable.

This approach will provide the Mentor Protégé with practical, hands-on project operations experience, which has been shown to provide the most successful method of providing training—actual, real-time experience.

**A. Mentor Protégé:**

The Mentor Protégé is responsible for complying with the Mentor Protégé Agreement, as described below:

- Attend and be on-time for all meetings related to the Program.
- Perform assignments given by the Mentor.
- Hold the Developer, including its employees, or agents harmless from any claim, suit, action, or demand of Mentor Protégé or Mentor Protégé's creditors, or any other person arising out of the Mentor Protégé Agreement.

**B. Mentor**

A Developer Mentor is assigned to each Mentor Protégé and will perform the mentoring activities described in this Program plan. The Mentor is responsible to ensure the Mentor Protégé receives and understands the information presented during the meetings. The Mentor will have regular contact with each Mentor Protégé to respond to any questions that the Mentor Protégés may have regarding the Program.

The Mentor will complete a monthly report for each Protégé that outlines topics covered, progress towards completion, and recommended future training. The Mentor will submit each monthly report to the Developer's DBE Liaison Manager and TxDOT by the 10th working day of the following month.



## **EXHIBIT 18**

### **Unplanned Revenue Impacting Facilities Provisions**

#### **Long Range Transportation Plans and Programs**

Unplanned Revenue Impacting Facilities exclude all projects included in any of the following long range transportation plans and programs:

1. 2006-2008 Statewide Transportation Improvement Program (STIP)
2. Unified Transportation Program (UTP) (2006)
  - a. 2006 Statewide Preservation Program (SPP)
  - b. 2006 Statewide Mobility Program (SMP)
3. Mobility 2025 Plan, Amended April 2005 by the Regional Transportation Council, the MPO for the Dallas Fort Worth Metropolitan region
4. Mobility 2030 Plan, adopted by the Regional Transportation Council on January 11, 2007

(All as in existence or in effect at the Proposal Due Date)

**EXHIBIT 19**

**REQUIRED CAPACITY IMPROVEMENTS, PROJECT EXTENSIONS AND TECHNOLOGY ENHANCEMENTS**

**A. Capacity Improvements**

No Capacity Improvements are required.

**B. Project Extensions**

No Project Extensions are required.

**C. Technology Enhancements**

Developer shall have no obligation to undertake Technology Enhancements during the last 15 years of the Term in the following circumstances:

- (a) The costs incurred to implement such Technology Enhancements cannot be reasonably recovered (including a reasonable rate of return on equity invested) over the remaining Term;
- (b) Developer submits to TxDOT a reasonable analysis demonstrating item (a) above, and setting forth reasonably detailed cost and financial information for such Technology Enhancements, including information on cost subsidies from TxDOT; and
- (c) Developer does not receive from TxDOT, within 60 days after TxDOT receives such analysis, written notice under which TxDOT commits to subsidize such cost to the extent necessary to enable Developer to recover such costs (including a reasonable rate of return on equity invested). TxDOT's commitment to subsidize such cost may take the form of a commitment to pay as costs of such improvements are incurred or to pay an up front lump sum payment, in either case to the extent necessary to enable Developer to realize a reasonable rate of return on its own additional equity invested.

## EXHIBIT 20

### INSURANCE COVERAGE REQUIREMENTS

#### 1. Builder's Risk Insurance During Construction

At all times during the period from the commencement of Construction Work until the last Service Commencement Date and during any other period in which other construction work is in progress during the Operating Period, Developer shall, or shall require the Design-Build Contractor, to procure and keep in force a policy of builder's risk insurance as specified below.

(a) The policy shall provide coverage for "all risks" of direct physical loss or damage to the portions or elements of the Project under construction, excluding terrorism but including the perils of earthquake, earth movement, flood, storm, tempest, windstorm, hurricane, and tornado and subsidence; shall contain extensions of coverage that are typical for a project of the nature of the Project; and shall contain only those exclusions that are typical for a project of the nature of the Project.

(b) The policy shall cover (i) all property, roads, buildings, structures, fixtures, materials, supplies, foundations, pilings, machinery and equipment that are part of or related to the portions or elements of the Project under construction, and the works of improvement, including permanent and temporary works and materials, and including goods intended for incorporation into the works located at the Site, in storage or in the course of inland transit on land to the Site, and (ii) unless covered by property insurance pursuant to Section 2 of this Exhibit 20, all existing property and improvements that are within the construction work zone or are or will be affected by the Construction Work.

(c) The policy shall provide coverage per occurrence up to the full replacement cost of the covered property loss, plus an allowance for professional fees, demolition and debris removal, without risk of co-insurance; provided, however, that the policy may include a sublimit for earth movement and flood of not less than \$5,000,000 per occurrence and \$10,000,000 aggregate.

(d) Developer, TxDOT and the Design-Build Contractor shall be the named insureds on the policy as their respective interests appear. Developer also may, but is not obligated to, include other Contractors as named insured as their respective interests appear. The policy shall be written so that no act or omission of any insured shall vitiate coverage of the other named insureds. Developer may name itself or the Collateral Agent as loss payee under the policy.

(e) The policy shall include coverage for (i) foundations, including pilings, but excluding normal settling, shrinkage, or expansion, (ii) physical damage resulting from machinery accidents but excluding normal and natural wear and tear, corrosion, erosion, inherent vice or latent defect in the machinery, (iii) plans, blueprints and specifications, (iv) physical damage resulting from faulty work or faulty materials, but excluding the cost of making good such faulty work or faulty materials, (v) physical damage resulting from design error or omission but excluding the cost of making good such design error or omission, (vi) demolition and debris removal coverage, (vii) the increased replacement cost due to any change in applicable codes or other Laws, (viii) expense to reduce loss, (ix) building ordinance

compliance, with the building ordinance exclusion deleted, and (x) "soft cost expense" (including costs of Governmental Approvals, mitigation costs, attorneys' fees, and other fees and costs associated with such damage or loss or replacement thereof).

(f) The policy shall provide a deductible or self-insured retention not exceeding \$1,000,000 per occurrence.

## 2. Property Insurance

At all times during the Term, Developer shall procure and keep in force, or cause to be procured and kept in force, a policy of property insurance as specified below.

(a) The policy shall provide coverage for "all risks" of direct physical loss or damage to the Project, excluding terrorism but including the perils of earthquake, earth movement, flood, storm, tempest, windstorm, hurricane, tornado and subsidence, shall contain extensions of coverage that are typical for a project of the nature of the Project; and shall contain only those exclusions that are typical for a project of the nature of the Project.

(b) The policy shall cover all property, roads, buildings, structures, fixtures, materials, supplies, foundations, pilings, machinery and equipment that are part of or related to the Project.

(c) The policy shall provide coverage per occurrence sufficient to reinstate the insured property and for a sum not less than the probable maximum loss, plus an allowance for professional fees, demolition and debris removal, without risk of co-insurance. Developer and its insurance consultant shall perform the maximum probable loss analysis using industry standard underwriting practices. The probable maximum loss analysis and recommended policy limit based thereon, as well as any exclusions, shall be subject to the review and comment by TxDOT to verify reasonableness under industry standard underwriting practices, prior to issuance of the policy or renewal of any policy. Developer and its insurance consultant shall review annually the probable maximum loss values for the covered property and shall adjust the coverage limit accordingly for the period during which the property Insurance Policy is required hereunder.

(d) Developer shall be the named insured on the policy. TxDOT shall be identified as an additional insured as its interest appears. Developer also may, but is not obligated to, include Contractors as additional insureds as their respective interests appear. The policy shall be written so that no acts or omissions of a named insured shall vitiate coverage of the other named insureds. Developer may name itself or the Collateral Agent as loss payee under the policy. TxDOT shall be named as additional loss payee as its interest may appear; provided that during all portions of the last five years of the Term that there are no outstanding Security Documents, TxDOT shall be named as the loss payee. If TxDOT is the loss payee and receives proceeds of such insurance for insured loss or damage, TxDOT shall hold such proceeds available to pay and reimburse Developer for reasonable costs it incurs to repair and replace the loss or damage. However, at Developer's request, TxDOT will negotiate an amendment to the Project Trust Agreement for the purpose of establishing a property insurance proceeds account under the Project Trust Agreement, on commercially reasonable terms that shall include joint control of funds therein, into which such proceeds during the last five years of the Term will be deposited and held available for use to pay for restoration and repair of the damage or loss (with unspent proceeds, if any, to be disposed of in the same manner as proceeds in the Handback Requirements Reserve).

(e) To the extent available, the policy shall include coverage for (i) foundations, including pilings, but excluding normal settling, shrinkage, or expansion, (ii) physical damage resulting from machinery accidents but excluding normal and natural wear and tear, corrosion, erosion, inherent vice or latent defect in the machinery, (iii) plans, blueprints and specifications, (iv) physical damage resulting from faulty work or faulty materials, but excluding the cost of making good such faulty work or faulty materials, (v) physical damage resulting from design error or omission but excluding the cost of making good such design error or omission, (vi) physical damage resulting from mechanical breakdown or electrical apparatus breakdown, (vii) demolition and debris removal coverage, (viii) the increased replacement cost due to any change in applicable codes or other Laws, (ix) expense to reduce loss, (x) building ordinance compliance, with the building ordinance exclusion deleted, and (xi) "soft cost expense" (including costs of Governmental Approvals, mitigation costs, attorneys' fees, and other fees and costs associated with such damage or loss or replacement thereof).

(f) The policy shall provide a deductible or self-insured retention not exceeding \$1,000,000 per occurrence.

### 3. Business Interruption Insurance

At all times during the Term commencing on the first Service Commencement Date, Developer shall procure and keep in effect or cause to be procured and kept in effect, business interruption insurance coverage that satisfies the following requirements.

(a) Such Insurance Policy shall insure against interruption or loss of Toll Revenues resulting from physical loss or damage to any portion of the Project caused by occurrence of any risk which is required to be insured under the all risk property insurance specified in Section 2 above.

(b) The policy shall cover interruption or loss of Toll Revenues for up to one full year from the date of the interruption. The amount of coverage shall be adjusted annually to reflect the projected Toll Revenues for the next 12-month period.

(c) TxDOT and Developer shall be named insureds on the policy providing business interruption insurance coverage. The policy shall be written so that no acts or omissions of a named insured shall vitiate coverage of the other named insureds.

(d) The policy shall provide a deductible or self-insured retention per occurrence not exceeding the first 15 days of loss following the date of interruption.

(e) The policy shall be in form and substance as is then standard in the State for policies of like coverage.

### 4. Commercial General Liability Insurance

At all times during the Term, Developer shall procure and keep in force, or cause to be procured and kept in force, commercial general liability insurance as specified below. During any period in which Developer, at its election, maintains in effect builder's third party liability insurance pursuant to Section 5 below, the commercial general liability Insurance Policy need not duplicate the builder's third party liability insurance coverage.

(a) The policy shall be in form reasonably acceptable to TxDOT, and shall be an occurrence form. The policy shall contain extensions of coverage that are typical for a project of the nature of this Project, and shall contain only those exclusions that are typical for a project of the nature of this Project.

(b) The policy shall insure against the legal liability of the insureds named in Section 4(d), relating to claims by third parties for accidental death, bodily injury or illness, property damage, personal injury and advertising injury, and shall include the following specific coverages:

- (i) Contractual liability;
- (ii) Premises/operations;
- (iii) Independent contractors;
- (iv) Products and completed operations (with acknowledgement that the Project constitutes the premises and not a product);
- (v) Broad form property damage (including nuisance; interference with rights of way, water, light or air; false arrest; detainment; and broader definition of "damage");
- (vi) Hazards commonly referred to as "XCU", including explosion, collapse and underground property damage;
- (vii) Fellow employee coverage for supervisory personnel;
- (viii) Incidental medical malpractice;
- (ix) No exclusion for work performed within 50 feet of a railroad;
- (x) Except with regard to indemnifying a professional advisor, consultant, sub-consultant, Supplier or manufacturer engaged by Developer, no application of any limitation or exclusion for bodily injury or property damage arising out of professional services, including engineering, architecture and surveying, in any manner to (A) coverage respecting Developer's supervision, coordination, management, scheduling or other similar services or (B) the products and completed operations coverage;
- (xi) Broad named insured endorsement; and
- (xii) Non-owned automobile liability, unless covered by the automobile liability policy pursuant to Section 6 of this Exhibit 20.

(c) The policy shall have limits of not less than \$25,000,000 per occurrence and in the aggregate per policy period. Such limits shall be shared by all insured and additional insured parties and shall reinstate annually.

(d) Developer, TxDOT and the Indemnified Parties shall be the named insureds, provided that the scope of coverage for TxDOT and the Indemnified Parties shall be limited to acts, omissions and activities relating to the Project, the CDA Documents and the Principal

Project Documents. The policy shall be written so that no act or omission of a named insured shall vitiate coverage of the other named insured.

(e) The policy shall provide one of the following, as Developer selects:

(i) A deductible or self-insured retention not exceeding \$100,000 per occurrence;

(ii) A deductible or self-insured retention not exceeding \$250,000 per occurrence with an aggregate of \$2,000,000 per policy period; or

(iii) A deductible (but not self-insured retention) of \$500,000 per occurrence but only if the primary policy and any excess policy are written to obligate the insurers to compensate the claimant on a first dollar basis (meaning that the insurer meets the third party claim in full and recovers the deductible from Developer).

#### 5. Builder's Third-Party Liability Insurance

During any period in which Construction Work or other work of construction is in progress, Developer, at its election, may procure and keep in effect builder's third party liability insurance, as specified below, in lieu of commercial general liability insurance coverage for construction activities (but Developer shall maintain commercial general liability insurance coverage for all non-construction-related activities).

(a) The policy shall insure against liability to third parties for accidental death, bodily injury or illness, property damage, personal injury and advertising injury, arising out of the Construction Work or other work of construction or the improvements under construction. The policy shall contain extensions of coverage that are typical for a project of the nature of the Project, and shall contain only those exclusions that are typical for a project of the nature of the Project.

(b) If Developer obtains a warranty against defects from the Design-Build Contractor, then Developer shall continue the policy in effect for not less than the warranty period.

(c) The policy shall otherwise include the same provisions as described for the commercial general liability insurance under Sections 4(b) through (e) above.

#### 6. Automobile Liability Insurance

At all times during the Term, Developer shall procure and keep in force comprehensive, business, or commercial automobile liability insurance as specified below.

(a) Each policy shall cover accidental death, bodily injury and property damage liability arising from the ownership, maintenance or use of all owned, non-owned and hired vehicles connected with performance of the Work, including loading and unloading. The policy shall contain extensions of coverage that are typical for a project of the nature of the Project, and shall contain only those exclusions that are typical for a project of the nature of the Project.

(b) Developer shall be the named insured under its automobile liability policy.

(c) Developer's policy shall have a limit per policy period of not less than \$25,000,000 for any one claim and in the aggregate.

(d) Each policy shall provide a deductible or self-insured retention not exceeding \$50,000 per occurrence.

#### 7. Pollution Liability Insurance

At all times during the Term, Developer shall procure and keep in force, or cause to be procured and kept in force, pollution liability insurance as specified below.

(a) The policy shall cover sums that the insured becomes liable to pay to a third party or that are incurred by the order of a regulatory body consequent upon a pollution incident, subject to the policy terms and conditions. Such policy shall cover claims related to pollution conditions to the extent such are caused by the performance of Work or by other activities that occur on the Project.

(b) Developer shall be the named insured under such policy. The Indemnified Parties shall be identified as additional insureds as their respective interests appear. The policy shall be written so that no acts or omissions of a named insured shall vitiate coverage of the other named insureds. The insured vs. insured exclusion shall be deleted, so that the policy will insure Developer against, and respond to, pollution liability claims and actions of TxDOT against Developer.

(c) The policy shall have a limit of not less than \$2,000,000 per occurrence and in the aggregate per policy period, unless applicable regulatory standards impose more stringent coverage requirements.

(d) The policy shall provide a deductible or self-insured retention not exceeding \$250,000 per occurrence.

#### 8. Professional Liability Insurance

At all times during the Term that professional services are rendered respecting design and construction of the Project until the first to occur of (1) five years after the professional services have concluded for the Project or (2) expiration of all applicable statutes of limitation and repose applicable to professional services performed for the Project, Developer shall cause the Design-Build Contractor or its lead design subcontractor (in the case of the Design Work) and each Contractor (other than NTTA) that is under direct contract with Developer and provides professional services to Developer respecting such design and construction (in the case of any other design or engineering work) to procure and keep in force professional liability insurance as specified below. Such insurance requirements also shall apply in like manner to professional services for any Renewal Work or Upgrades having an estimated cost in excess of \$10 million. Developer may satisfy such insurance via a Project policy covering all the foregoing providers of professional services, provided no insured v. insured or similar exclusion precludes coverage of professionals for claims made by Developer or TxDOT or their respective successors or assigns.

(a) Each policy shall provide coverage of liability of the party performing the professional services arising out of any negligent act, error or omission in the performance of professional services or activities for the Project.



(b) Each policy shall have a limit of not less than \$10,000,000 per claim and in the aggregate. The aggregate limit need not reinstate annually.

(c) Each policy shall provide a deductible or self-insured retention not exceeding \$1,000,000 per occurrence.

Developer shall cause each other Contractor (other than NTTA) that is under direct contract with Developer and provides professional services to Developer to procure and keep in force professional liability insurance of not less than \$2,000,000 per claim and in the aggregate per annual policy period. Such policy need not be Project-specific or include a tail period for making claims, and shall include a commercially reasonable deductible.

#### 9. Workers' Compensation Insurance

At all times when work is being performed by any employee of Developer or a Contractor (other than NTTA), Developer shall procure and keep in force, or cause to be procured and kept in force, a policy of workers' compensation insurance for the employee in conformance with applicable Law. Developer and/or the Contractor (other than NTTA), whichever is the applicable employer, shall be the named insured on these policies. Such policy need not be Project-specific. The workers' compensation Insurance Policy shall contain the following endorsements:

(a) An endorsement extending the policy to cover the liability of the insureds under the Federal Employer's Liability Act;

(b) A voluntary compensation endorsement;

(c) An alternative employer endorsement; and

(d) An endorsement extending coverage to all states operations on an "if any" basis.

#### 10. Employer's Liability Insurance

At all times during the Term, Developer shall procure and keep in force, or cause to be procured and kept in force, employer's liability insurance as specified below.

(a) The policy shall insure against liability for death, bodily injury, illness or disease for all employees of Developer working on or about any Site or otherwise engaged in the Work.

(b) Developer shall be the named insured.

(c) The policy shall have a limit of not less than \$25,000,000 per accident and in the aggregate per policy period.

(d) Such policy need not be Project-specific.

#### 11. Railroad Protective Liability Insurance

Developer shall procure and keep in force, or cause to be procured and kept in force, railroad protective liability insurance as may be required by any railroad in connection with Work

across, under or adjacent to it's the railroad's tracks or railroad right-of-way. In the event any agreement between TxDOT and a railroad includes railroad protective insurance requirements applicable to the Work, Developer shall procure and keep in force or cause to be procured and kept in force, insurance meeting such requirements. The railroad shall be the named insured on any such policy.

## 12. Contractors' Insurance

(a) At all times during the Term, Developer shall cause each Contractor (other than NTTA) that performs Work on the Site to provide commercial general liability insurance that complies with Section 16.1 of the Agreement, with commercially reasonable limits and deductibles or self-insured retentions, in circumstances where the Contractor (other than NTTA) is not covered by Developer-provided liability insurance. Developer shall cause each such Contractor (other than NTTA) that provides such insurance to include each of the Indemnified Parties as additional insureds under such Contractor's (other than NTTA) liability Insurance Policies. Such insurance need not be Project-specific TxDOT shall have the right to contact the Contractors (other than NTTA) directly in order to verify the above coverage.

(b) At all times during the Term, Developer shall cause each Key Contractor that has vehicles on the Site or uses vehicles in connection with the Work to procure and keep in force, comprehensive, business, or commercial automobile liability insurance meeting the requirements as specified below.

(i) Each policy shall cover accidental death, bodily injury and property damage liability arising from the ownership, maintenance or use of all owned, non-owned and hired vehicles connected with performance of the Work. The policy shall contain extensions of coverage that are typical for a project of the nature of the Project, and shall contain only those exclusions that are typical for a project of the nature of the Project.

(ii) Each such Key Contractor shall be the named insured under its respective automobile liability policy.

(iii) Each policy shall have a combined single limit per policy period of not less than \$1,000,000.

(iv) Each policy shall include each of the Indemnified Parties as additional insureds.

(c) At all times during the Term, Developer shall cause each Contractor (other than NTTA) that has vehicles on the Site or uses vehicles in connection with the Work (other than Key Contractors subject to subsection (b) above) to maintain an automobile liability policy which provides at least the minimum coverage for its employees and automobiles or such higher limit that is required by Law. Developer shall use diligent efforts to cause each such Contractor (other than NTTA) to include in the policy each of the Indemnified Parties as additional insureds.

## EXHIBIT 21

### NONCOMPLIANCE POINTS SYSTEM, PERSISTENT DEVELOPER DEFAULT AND MEASURES OF LIQUIDATED DAMAGES

#### **1. Noncompliance Points System**

The table attached as Attachment 1 to this Exhibit 21 identifies Developer failures and breaches that may result in the assessment of Noncompliance Points, the number of Noncompliance Points that may be assessed for each such failure or breach, and the cure period available to Developer for each such failure or breach, other than for Developer's failure to submit a deliverable by its due date.

#### **2. Trigger Points for Persistent Developer Default and Uncured Noncompliance Points**

2.1 A Persistent Developer Default under clause (a) of the definition thereof shall exist on any date (whether before or after the last Service Commencement Date) that:

(a) The cumulative number of Noncompliance Points, cured or uncured, assessed during any consecutive 365-day period (including any period prior to the last Service Commencement Date) equals or exceeds the following:

(i) For any consecutive 365-day period ending prior to the last Service Commencement Date, and for any consecutive 365-day period entirely within an Upgrade construction period, 140;

(ii) For any consecutive 365-day period a portion of which includes any days prior to the last Service Commencement Date or any days of an Upgrade construction period, 140; and

(iii) For any other consecutive 365-day period, 100.

(b) The cumulative number of Noncompliance Points, cured or uncured, assessed during any consecutive 1095-day period (including any period prior to the last Service Commencement Date) equals or exceeds the following:

(i) For any consecutive 1095-day period ending prior to the last Service Commencement Date, and for any consecutive 1095-day period entirely within an Upgrade construction period, 270;

(ii) For any consecutive 1095-day period a portion of which includes any days prior to the last Service Commencement Date or any days of an Upgrade construction period, but includes not more than 365 days outside such periods, 270;

(iii) For any consecutive 1095-day period a portion of which includes any days prior to the last Service Commencement Date or any days of an Upgrade construction period, but includes more than 365 and not more than 730 days outside such period, 250;

(iv) For any consecutive 1095-day period a portion of which includes any days prior to the last Service Commencement Date or any days of an Upgrade construction

period, but includes more than 730 and not more than 1094 days outside such periods, 225; and

(v) For any other consecutive 1095-day period, 200.

For purposes of this Section 2.1 only, Tier 1 Noncompliance Points shall be assessed at 100% of the assigned number of points, Tier 2 Noncompliance Points shall be assessed at 50% of the assigned number of points and Tier 3 Noncompliance Points shall be assessed at 0% of the assigned number of points.

**2.2 A Persistent Developer Default** under clause (b) of the definition thereof shall exist on any date (whether before or after the Operating Period commences) that the cumulative number of breaches or failures to perform, cured or uncured, within clause (b) of the definition of Persistent Developer Default during any consecutive 365-day period equals or exceeds the following:

(a) For any consecutive 365-day period ending prior to the last Service Commencement Date, and for any consecutive 365-day period entirely within an Upgrade construction period, 90;

(b) For any consecutive 365-day period a portion of which includes any days prior to the last Service Commencement Date or any days of an Upgrade construction period, 90; and

(c) For any other consecutive 365-day period, 60.

**2.3** The number of cured Noncompliance Points that would otherwise then be counted under this Section 2 is subject to reduction in accordance with Section 17.3.6.2 of the Agreement.

**2.4** TxDOT shall be entitled to immediate and automatic commencement of liquidated damages under Section 17.4.2.2 of the Agreement, without further notice, on any date that the number of Uncured Noncompliance Points equals or exceeds the following:

(a) On any date occurring prior to three months after the last Service Commencement Date, 50; and

(b) On any date occurring on or after three months after the last Service Commencement Date, 35.

### **3. Liquidated Damage Amounts**

#### **3.1 For Late Service Commencement and Late Final Acceptance**

(a) Liquidated damages for late Service Commencement for all Project Segments shall equal \$50,000 per day for each day that the last Service Commencement Date is later than the Service Commencement Deadline, as the Service Commencement Deadline may be extended pursuant to this Agreement.

(b) [RESERVED]

(c) Liquidated damages for late Final Acceptance for any Project Segment shall equal \$7,000 per day for each day that the date of Final Acceptance is later than the applicable Final Acceptance Deadline as the Final Acceptance Deadline may be extended pursuant to this Agreement. Such \$7,000 per day amount shall apply separately to each Project Segment. In no event, however, shall the cumulative amount of liquidated damages on any given day for failure to achieve Final Acceptance Deadlines exceed \$14,000.

(d) If liquidated damages would accrue simultaneously for failure to meet the Service Commencement Deadline and any Final Acceptance Deadline, then only the liquidated damages for failure to meet the Service Commencement Deadline shall accrue.

### **3.2 For Single Noncompliance Point**

Liquidated damages under Section 17.4.2.1 of the Agreement on account of the assessment of any single Noncompliance Point shall equal \$7,400 per point, subject to Sections 18.3.1.2 and 18.3.1.3 of the Agreement. For the avoidance of doubt, Tier 1, Tier 2 and Tier 3 Noncompliance Points shall be assessed under this Section 3.2 at 100% of the assigned number of points.

### **3.3 For Accumulated Uncured Noncompliance Points**

Liquidated damages under Section 17.4.2.2 of the Agreement on account of the accumulation of assessed Uncured Noncompliance Points as provided in Section 2 above shall equal \$13,200 per day and shall continue as provided in Section 17.4.2.2 of the Agreement. For the avoidance of doubt, Tier 1, Tier 2 and Tier 3 Noncompliance Points shall be assessed under this Section 3.3 at 100% of the assigned number of points.

### **3.4 For Lane Rental Charges**

(a) Subject to Sections 3.4(d) and (e) below, Lane Rental Charges shall be assessed for any period between the Operating Commencement Date and the applicable Service Commencement Date during which one or more General Purpose Lanes are closed beyond or have a width that is less than the minimum requirements set forth in Section 18.3.1 of the Technical Provisions.

(b) Lane Rental Charges shall apply to both scheduled and unscheduled occurrences. Lane Rental Charges shall be assessed for every quarter hour or part thereof. For the period between the Operating Commencement Date and the applicable Service Commencement Date, Developer shall report to the Independent Engineer on a daily basis any General Purpose Lane closures or reduced widths which give rise to Lane Rental Charges. Liquidated damages shall be applied according to Table 3.4.

**Table 3.4 Lane Rental Charges**

Number of General Purpose Lanes Closed Or Reduced In Width Below Minimum	Hourly Lane Rental Charge (Each Direction)			
	Period A	Period B	Period C	Period D
1	\$37,600	\$24,400	\$8,600	\$0
2	\$76,300	\$44,200	\$20,200	\$1,500
3	\$135,100	\$98,800	\$41,500	\$4,800
4	\$261,700	\$192,600	\$93,000	\$19,500

(c) The hours that apply to each period are as follows:

Period A: Monday through Thursday 6:00 a.m. – 9:00 a.m. and 3:00 p.m. – 8:00 p.m.; Friday 6:00 a.m. – 9:00 a.m. and 3:00 p.m. – 9:00 p.m.

Period B: Monday through Friday 9:00 a.m. – 3:00 p.m.

Period C: Saturday 10:00 a.m. – 7:00 p.m.; Sunday 12:00 noon – 8:00 p.m.

Period D: Monday 8:00 p.m. – Tuesday 6:00 a.m.; Tuesday 8:00 p.m. – Wednesday 6:00 a.m.; Wednesday 8:00 p.m. – Thursday 6:00 a.m.; Thursday 8:00 p.m. – Friday 6:00 a.m.; Friday 9:00 p.m. – Saturday 10:00 a.m.; Saturday 7:00 p.m. – Sunday 12:00 noon; Sunday 8:00 p.m. – Monday 6:00 a.m.

(d) Developer shall not be assessed Lane Rental Charges for rolling lane closures for the purpose of construction activities above operational General Purpose Lanes. In this context a rolling lane closure is defined as a lane closure of less than 15 minutes during the period of Period D provided that (i) the lanes are reopened such that queued traffic is dispersed and (ii) any rolling lane closures required on the main lanes of the Dallas North Tollway shall require the prior written approval of and coordination with NTTA.

(e) Developer shall only be required to pay to TxDOT Lane Rental Charges if any of the following clauses applies: (i) Developer shall be required to pay to TxDOT the portion of the cumulative Lane Rental Charges assessed during Period A, Period B, Period C and Period D, if any, that exceeds \$15,000,000; (ii) Developer shall be required to pay to TxDOT the portion of the cumulative Lane Rental Charges assessed during Period A and Period B, if any, that exceeds \$3,000,000; or (iii) Developer shall be required to pay to TxDOT the portion of the cumulative Lane Rental Charges assessed during Period A and Period B, if any, to the extent that such assessment did not commence within Period C or Period D. To the extent that more than one such clause applies, Developer shall only be assessed Lane Rental Charges under one such clause. If the cumulative Lane Rental Charges assessed during Period A, Period B, Period C and Period D do not exceed \$15,000,000 or the cumulative Lane Rental Charges assessed during Period A and Period B do not exceed \$3,000,000, Developer shall not be entitled to receive any credit.

### **3.5 Adjustments**

Each of the foregoing amounts of liquidated damages shall be increased annually on January 1 of each year after the Effective Date by a percentage equal to the percentage increase in the CPI between the CPI for October of the second immediately preceding year and the CPI for October of the immediately preceding year; provided that in no event shall the amount be less than the amount in effect during the immediately preceding year.

**ATTACHMENT 1 TO EXHIBIT 21**

**NONCOMPLIANCE POINTS TABLE**

**Assessment Categories for Non-Compliance Cure Periods and Assessment of Points**

	<b>Cure Periods (Sections 18.2.2.2 and 18.2.2.3)</b>	<b>Assessment of Noncompliance Points (Sections 18.3.1.6, 18.3.1.7 and 18.3.1.8)</b>
A	Cure period shall be deemed to start upon the date Developer first obtained knowledge of, or first reasonably should have known of, the breach or failure. For this purpose Developer shall be deemed to first obtain knowledge of the breach or failure not later than the date of delivery of the initial notice to Developer, as described in <u>Section 18.2.2.2</u> of the Agreement.	Provided that the breach or failure is not cured, Noncompliance Points shall first be assessed at the end of the first cure period, and shall be assessed again at the end of each subsequent cure period, as described in <u>Section 18.3.1.6</u> of the Agreement.
B	Cure period shall be deemed to start from the date on which the breach or failure occurred, whether or not an initial notice has been delivered to Developer, as described in <u>Section 18.2.2.3</u> of the Agreement.	Noncompliance Points shall first be assessed on the date of the initial notification under <u>Section 18.2</u> of the Agreement (the start of the first cure period). Provided that the breach or failure is not then cured, Noncompliance Points shall be assessed again at the end of the first and each subsequent cure period, as described in <u>Section 18.3.1.7</u> of the Agreement.
C	No cure period applicable	Noncompliance Points shall be assessed on the date of the initial notification under <u>Section 18.2</u> of the Agreement, as described in <u>Section 18.3.1.8</u> of the Agreement.



**List of Noncompliance Items, Assessment Categories and Cure Periods**

Ref	Main Heading	Sub Heading	Failure to:	Number of Points	Assessment Category	Cure Period	Tier
1	General	General Requirements	Comply with any Technical Provision Section entitled "General Requirement," except where provided elsewhere in this Attachment 1.	1	B	14 Days	Tier 2
2	General	Governmental Approval	Deliver to TxDOT prior to beginning construction any executed copy of a Governmental Approval the Developer obtained as required by Section 6.2.1 of the Agreement.	1	B	7 Days	Tier 2
3	General	Governmental Approval	Submit any application for a Governmental Approval to TxDOT for approval or review and comment prior to submitting to any Governmental Entity as required by Section 6.2.2 of the Agreement.	1	A	7 Days	Tier 2
4	General	Governmental Approval	Comply with the provisions of Section 6.2.5 of the Agreement with respect to Additional Properties outside the Project Right of Way.	1	B	30 Days	Tier 1
5	Project Management	Meetings	Comply with a meeting requirement of any Technical Provision Section, except where provided elsewhere in this Attachment 1.	1	C	None	Tier 2
6	General	Notification of breach	Notify TxDOT and Independent Engineer of the occurrence of any breach or failure specified in this Attachment in accordance with Section 18.2.1 of the Agreement.	2	C	None	Tier 1
7	General	TxDOT and Independent Engineer access	Comply with any reasonable request of the provisions of Section 9.3.1.3 or 9.3.3.3 of the Agreement with respect to cooperation with, and access for, TxDOT's Authorized Representative(s) and or Independent Engineer to the Project, Developer's Project offices and operations buildings, and Developer's data.	1	A	1 Day	Tier 1
8	General	TxDOT and Independent Engineer comments to Submittals	Respond to TxDOT's or the Independent Engineer's comments or objections or modify a Submittal in accordance with Section 6.3.7.2 of the Agreement.	1	A	7 Days	Tier 2
9	General	TxDOT Facilities	Comply with a requirement of Section 2.1.3 of the Technical Provisions.	1	A	7 Days	Tier 3
10	Financial	Reports	Deliver to TxDOT an update of the audit and opinion obtained from the independent model auditor that provided to TxDOT an opinion on suitability of the Base Case Financial Model, as required by Section 5.4.5 of the Agreement.	1	A	7 Days	Tier 2
11	Insurance	Verification of coverage	Provide TxDOT with a copy of any insurance policy or evidence of payment of any premium all in accordance with Section 16.1.2.4 of the Agreement.	1	A	21 Days	Tier 2

Ref	Main Heading	Sub Heading	Failure to:	Number of Points	Assessment Category	Cure Period	Tier
12	Contracting and Labor Practices	Adoption of written ethical policies	Implement written policies for ethical standards within 90 days after the Effective Date in accordance with Section 10.7 of the Agreement.	2	B	30 Days	Tier 2
13	Contracting and Labor Practices	Affiliates	Submit a copy of the proposed contract with an Affiliate in accordance with Section 10.5.2 of the Agreement.	1	B	7 Days	Tier 2
14	Contracting and Labor Practices	Compliance with DBE plan	Comply with the requirements of Section 10.9 of the Agreement with respect to the Disadvantaged Business Enterprise provisions.	2	A	30 Days	Tier 2
15	Contracting and Labor Practices	Disclosure of Contracts and Contractors	Provide TxDOT and the Independent Engineer with a list of all Contracts, Contractors, guarantees of Key Contracts and the guarantors with each monthly report required under this Agreement or the Technical Provisions in accordance with Section 10.1.1 of the Agreement.	1	B	7 Days	Tier 2
16	Contracting and Labor Practices	Notification of Contractors	Comply with a requirement of Section 10.1.2 of the Agreement.	1	B	14 Days	Tier 2
17	Project Management	Audit	Carry out internal audits of the Project Management Plan at the times prescribed in the Project Management Plan in accordance with Section 9.1.7 of the Agreement.	1	B	7 days	Tier 1
18	Project Management	Construction Quality Management	Construct the Works in accordance with the requirements of Section 2.2.10 of the Technical Provisions.	1	A	30 Days	Tier 1
19	Project Management	Contractors	Cause each of its Contractors (other than NTTA) at every level to comply with the applicable requirements of the approved Project Management Plan in accordance with Section 9.1.8 of the Agreement.	1	B	7 Days	Tier 2
20	Project Management	Contractors	Comply with the requirements of Section 10.2.1 of the Agreement.	4	A	7 Days	Tier 2
21	Project Management	Coordination	Comply with a requirement of any Technical Provision Section, entitled "Administrative Requirements" except where provided elsewhere in this Attachment 1.	1	B	7 Days	Tier 2
22	Project Management	Deliverables	Prepare, implement, maintain, update or submit a Plan, a report, a deliverable or a submittal required by, or compliant with, any Technical Provision Section or the Agreement, except where provided elsewhere in this Attachment 1.	1	B	7 Days	Tier 2
23	Project Management	Document Management	Manage documents in accordance with Section 2.1.2 of the Technical Provisions.	1	A	7 Days	Tier 2
24	Project Management	Inspection	Comply with a requirement of any Technical Provision Section or the Agreement with regard to inspection, except where provided elsewhere in this Attachment 1.	2	B	2 Days	Tier 1

Ref	Main Heading	Sub Heading	Failure to:	Number of Points	Assessment Category	Cure Period	Tier
25	Project Management	ITS	Provide and maintain ITS interoperability over the Term of the Agreement and coordinate said ITS with the Electronic Toll Collection System (ETCS) such that the communication requirements of the ETCS are accommodated all in accordance with the requirements of Section 17 of the Technical Provisions.	1	B	90 Days	Tier 1
26	Project Management	Key Personnel	Comply with a requirement with regard to Key Personnel of any Technical Provision Section or the Agreement, except where provided elsewhere in this Attachment 1.	2	B	14 Days	Tier 1
27	Project Management	Maintenance and inspection of records	Keep, maintain or make available to TxDOT and the Independent Engineer any book, record or document in accordance with Section 22.1.1, 22.1.2 or 22.1.3. of the Agreement.	1	A	7 Days	Tier 1
28	Project Management	Quality Management	Establish, maintain, update or comply with any requirement of a Quality Management Plan in accordance with Section 9.1 of the Agreement or Section 2.2 of the Technical Provisions.	2	A	7 Days	Tier 1
29	Project Management	Safety	Observe a requirement of the safety plan or to carry out any construction, operation or maintenance activity in contravention of (or in absence of) the safety plan or in a manner that represents a hazard to project workers or the general public in accordance with Section 2.7 of the Technical Provisions.	3	A	1 Day	Tier 1
30	Project Management	Safety	Comply with Section 24.3.4 of the Technical Provisions.	4	B	1 Day	Tier 1
31	Project Management	Schedule	Comply with a schedule requirement of any Technical Provision Section or the Agreement, except where provided elsewhere in this Attachment 1.	2	B	7 Days	Tier 2
32	Project Management	Submission	Develop and submit a part of, or change or addition or revision to, the PMP at the time required all in accordance with Section 9.1.2 or 9.1.3 of the Agreement and Attachment 1 to the Technical Provisions.	1	B	14 Days	Tier 2
33	Project Management	Traffic Management	Provide a Lane Closure Notice in accordance with Section 18.2.1.3 of the Technical Provisions.	1	A	1 Day	Tier 3
34	Environmental Compliance	Air quality	Take measures to minimize or mitigate the effects of dust; or, within one hour adjust such measures; all in accordance with Section 4.7 of the Technical Provisions.	1	B	4 Hours	Tier 2
35	Environmental Compliance	CEPP	Maintain and update the complete Comprehensive Environmental Protection Program (CEPP) as required by Section 4.3 or 4.4 of the Technical Provisions.	2	A	7 Days	Tier 1

Ref	Main Heading	Sub Heading	Failure to:	Number of Points	Assessment Category	Cure Period	Tier
36	Environmental Compliance	Contravention of Environmental Approvals	Follow the CEPP or any of its constituent parts for any work activity as required by Section 4.3 of the Technical Provisions.	1	B	1 Day	Tier 1
37	Environmental Compliance	Environmental Approvals	Comply with Section 4.2 of the Technical Provisions.	5	B	7 Days	Tier 1
38	Environmental Compliance	Mitigation	Comply with a requirement of Section 7.9.1 or 8.1.4 of the Agreement	3	B	7 Days	Tier 1
39	Environmental Compliance	Noise	Comply with Section 4.3.2 of the Technical Provisions with respect to noise.	1	B	1 Hour	Tier 1
40	Environmental Compliance	Notification	Notify TxDOT of Hazardous Materials or a Recognized Environmental Condition as set forth in Section 7.9.1 of the Agreement.	1	A	1 Day	Tier 1
41	Environmental Compliance	Property Access	Comply with Section 4.5 of the Technical Provisions.	1	A	4 Hours	Tier 1
42	Environmental Compliance	Public hearings	Organize a public hearing or meeting as required by Section 4.3 of the Technical Provisions.	4	A	30 Days	Tier 1
43	Utility Adjustments	Maintain service	Maintain a utility service fully operational in accordance with Section 6.4 of the Technical Provisions.	3	A	3 Days	Tier 1
44	Utility Adjustments	Record keeping	Maintain accurate records of utility work or to provide copies to TxDOT in accordance with Section 7.5.4.6 of the Agreement or Section 6.1.5 or 6.4.9 of the Technical Provisions.	1	A	7 Days	Tier 1
45	Utility Adjustments	Utility Information	Prepare and submit to TxDOT the utility information in accordance with Section 7.5.5 of the Agreement.	1	B	30 Days	Tier 1
46	Design and Construction	Construction Requirements	Comply with a construction requirement of any Technical Provision Section, except where provided elsewhere in this Attachment 1.	1	A	30 Days	Tier 1
47	Design and Construction	Construction warranties	Ensure extension of a third party warranty to TxDOT or failure to correct any defective Work that would void any such warranty all as required by Section 7.12.1 of the Agreement.	1	A	14 Days	Tier 2
48	Design and Construction	Design Requirements	Comply with a requirement of any Technical Provision Section, entitled "Design Requirements" except where provided elsewhere in this Attachment 1.	1	A	30 Days	Tier 1
49	Design and Construction	Haz-Mat	Comply with a requirement of Section 24.3.5 of the Technical Provisions	3	B	7 Days	Tier 1
50	Design and Construction	Implementation of Directive Letters	Implement a Directive Letter in accordance with Section 14.1.6 of the Agreement.	3	B	14 Days	Tier 1
51	Design and Construction	Land Surveys	Comply with Section 9 of the Technical Provisions except where provided elsewhere in this Attachment 1.	1	A	7 Days	Tier 2

Ref	Main Heading	Sub Heading	Failure to:	Number of Points	Assessment Category	Cure Period	Tier
52	Design and Construction	Punch list	Prepare, maintain or deliver a Punch List, or a modification thereto, to TxDOT and the Independent Engineer, all as required by Section 7.8.2.3 of the Agreement.	1	B	30 Days	Tier 2
53	Design and Construction	Records	Comply with a mapping or surveying requirement of Section 26.3.1, Section 26.3.2, Section 26.3.3 or Section 26.5.2 of the Technical Provisions.	7	C	None	Tier 1
54	Design and Construction	ROW (Generally)	Comply with a requirement of Sections 7.3 or 7.4 of the Technical Provisions.	7	A	7 Days	Tier 3
55	Design and Construction	Testing	Provide a test result or a report as required by Section 9.3.4 of the Agreement.	1	B	7 Days	Tier 2
56	Design and Construction	Traffic Management	Comply with a requirement of Section 18.4 of the Technical Provisions.	2	B	4 Hours	Tier 1
57	Tolling	Disclosure	Disclose a policy regarding privacy of Patron Confidential Information to Patrons in accordance with Section 8.8.8 of the Agreement.	1	A	7 Days	Tier 1
58	Tolling	Managed Lanes Speed	Gather vehicle speed data as set forth in Exhibit 4 to the Agreement, for every 3 hours or part thereof that such data is not gathered.	6	C	None	Tier 2
59	Tolling	Publicity of toll rates	Publicize and make available or otherwise provide the current or prevailing toll rate in accordance with Exhibit 4 to the Agreement.	2	C	None	Tier 1
60	Tolling	Toll pricing	Comply with the Toll Segment tolling methodology in accordance with Exhibit 4 to the Agreement, other than as provided elsewhere in this Attachment 1.	4	C	None	Tier 1
61	Tolling	Tolling Operations	Comply with a requirement of Section 21.3 or 21.5 of the Technical Provisions.	3	B	7 Days	Tier 1
62	Tolling	Toll discounts	Deliver a monthly report to TxDOT and/or Independent Engineer that includes: (i) for each valid transponder account holder that self-declares (or is otherwise identified) as an HOV or Motorcycle during Peak Periods during the HOV Discount Period, the date, time and amount of the undiscounted toll and a unique transaction identifier; and (ii) the total HOV discount for the month that is potentially eligible for reimbursement to Developer, all in accordance with the requirements of Exhibit 4 to the Agreement.	1	B	14 Days	Tier 1
63	Tolling	User privacy	Comply with Section 8.8.1 of the Agreement.	2	A	7 Days	Tier 1
64	Tolling	User privacy	Comply with Section 8.8.4 of the Agreement, other than as provided elsewhere in this Attachment 1.	2	A	7 Days	Tier 1

Ref	Main Heading	Sub Heading	Failure to:	Number of Points	Assessment Category	Cure Period	Tier
65	Tolling	User privacy	Protect Patron Confidential Information as required by Section 8.8.4 of the Agreement with respect to one or more individuals in an isolated incident as opposed to a systematic or repetitive breach.	2	C	None	Tier 1
66	Operations and Maintenance	Access	Provide access to a system in accordance with Section 22.3.4 of the Technical Provisions	1	C	None	Tier 1
67	Operations and Maintenance	Accident reduction program	Implement an accident monitoring and reduction program in accordance with Section 19.2.3 of the Technical Provisions	2	B	14 days	Tier 1
68	Operations and Maintenance	Asset Condition	Achieve a mean Asset Condition Score of 3.5 or more for any Element Category in any quarterly audit as described in Section 19 of the Technical Provisions: a) For each Element Category with a mean Asset Condition Score of less than 3.5 and greater than 2.	6	C	None	Tier 1
69	Operations and Maintenance	Asset Condition	Achieve a mean Asset Condition Score of 3.5 or more for any Element Category in any quarterly audit as described in Section 19 of the Technical Provisions: b) For each Element Category with a mean Asset Condition Score of 2 or less and greater than 1.	9	C	None	Tier 1
70	Operations and Maintenance	Asset Condition	Achieve a mean Asset Condition Score of 3.5 or more for any Element Category in any quarterly audit as described in Section 19 of the Technical Provisions: c) For each Element Category with a mean Asset Condition Score of 1 or less.	12	C	None	Tier 1
71	Operations and Maintenance	Asset Condition	Achieve a mean Asset Condition Score of 2.5 or more for any Element Category as described in Section 19.5.8 of the Technical Provisions: c) For each Element Category with a mean Asset Condition Score of 2 or less.	6	C	None	Tier 1
72	Operations and Maintenance	Asset Condition	Achieve a mean Asset Condition Score of 2.5 or more for any Element Category as described in Section 19.5.8 of the Technical Provisions: c) For each Element Category with a mean Asset Condition Score of 1 or less.	9	C	None	Tier 1
73	Operations and Maintenance	Asset Condition	Achieve an Asset Condition Score of 3 or more in any quarterly audit as described in Section 19 of the Technical Provisions: a) For each Asset Condition Score of 2.	6	C	None	Tier 1
74	Operations and Maintenance	Asset Condition	Achieve an Asset Condition Score of 3 or more in any quarterly audit as described in Section 19 of the Technical Provisions: b) For each Asset Condition Score of 1.	9	C	None	Tier 1
75	Operations and Maintenance	Asset Condition	Achieve an Asset Condition Score of 2 or more as described in Section 19.5.8 of the Technical Provisions.	6	C	None	Tier 1

Ref	Main Heading	Sub Heading	Failure to:	Number of Points	Assessment Category	Cure Period	Tier
76	Operations and Maintenance	Asset Condition	Improve within one month to a condition at or above the Asset Condition score at initial inspection, any Element that has deteriorated below the Asset Condition score at initial inspection.	1	B	14 Days	
77	Operations and Maintenance	Category 1 Defect	Address a Category 1 defect within the time period shown in the Performance and Measurement Table.	3	B	Stated in column entitled "Response to defects" in Performance and Measurement Table	Tier 1
78	Operations and Maintenance	Category 2 Defect	Address a Category 2 defect within the time period shown in the Performance and Measurement Table.	1	B	Stated in column entitled "Response to defects" in Performance and Measurement Table	Tier 1
79	Operations and Maintenance	Fire Life Safety	Comply with Section 24.2 of the Technical Provisions.	3	B	7 Days	Tier 2
80	Operations and Maintenance	Handback Provisions Reserve	Establish and fund the Handback Provisions Reserve when required and provide appropriate account information in accordance with Section 8.11 of the Agreement or Exhibit 14 to the Agreement.	2	B	30 Days	Tier 2
81	Operations and Maintenance	Incident Management Plan	Comply with a requirement in respect of the Incident Management Plan as required by Section 8.9.2.4 of the Agreement or Section 22.3.5 of the Technical Provisions where the failure impacts or has potential to impact on the level of service provided to Users or TxDOT's ability to meet its obligation	4	B	7 Days	Tier 1

Ref	Main Heading	Sub Heading	Failure to:	Number of Points	Assessment Category	Cure Period	Tier
82	Operations and Maintenance	Lane Closures	Maintain a General Purpose Lane open in accordance with Section 18.4.4 of the Technical Provisions.	3	C	None	Tier 1
83	Operations and Maintenance	Traffic Management	Comply with Section 18.3.1(d) of the Technical Provisions with the exception of requirements therein in respect of the General Purpose Lanes; or comply with Section 18.4.4 of the Technical Provisions; all except where provided elsewhere in this Exhibit 21.	3	B	1 Day	Tier 1
84	Operations and Maintenance	Maintenance Management	Coordinate with TxDOT to achieve a smooth transition of maintenance activities from TxDOT in accordance with Section 19.1.4 of the Technical Provisions.	2	B	4 Days	Tier 1
85	Operations and Maintenance	Maintenance Management Plan	Comply with a requirement in respect of the Maintenance Management Plan as required by Section 19.2 of the Technical Provisions except where provided elsewhere in this Attachment 1.	2	B	7 Days	Tier 1
86	Design and Construction	Meetings	Conduct a progress meeting with TxDOT at least once a month or other requested meeting during the course of design and construction in accordance with Section 7.11.3 of the Agreement; or at TxDOT's request conduct a regular quarterly meeting or otherwise meet with TxDOT in accordance with Section 8.4.4 of the Agreement.	1	A	7 Days	Tier 2
87	Operations and Maintenance	Operations Management Plan	Comply with a requirement in respect of the Operations Management Plan as required by Section 22.2 of the Technical Provisions where the failure impacts or has potential to impact on the level of service provided to Users or TxDOT's ability to meet its obligation, except where provided elsewhere in this Attachment 1.	3	B	7 Days	Tier 2
88	Operations and Maintenance	Patrolling	Conduct a patrol in accordance with Section 22.3.3 of the Technical provisions.	5	C	None	Tier 2
89	Operations and Maintenance	Record keeping	Create an O&M Record in accordance with Section 19.2.2 of the Technical Provisions.	1	A	2 days	Tier 1
90	Operations and Maintenance	Record keeping	Use, maintain or update the Maintenance Management Information System in accordance with Section 19.3.3 of the Technical Provisions.	1	A	2 Days	Tier 1
91	Operations and Maintenance	Record keeping	Implement a Maintenance Management Information System in accordance with Section 19.3.3 of the Technical Provisions.	2	A	14 Days	Tier 1
92	Operations and	Safety	Implement and perform Safety Compliance work in accordance with Section 12.4.2 of the Agreement.	2	B	3 Days	Tier 1



Ref	Main Heading	Sub Heading	Failure to:	Number of Points	Assessment Category	Cure Period	Tier
	Maintenance						
93	Operations and Maintenance	Safety	Formally establish or adhere to a policy, procedure, process, or guideline as required by Section 24.1.1 of the Technical Provisions.	3	B	7 Days	Tier 2
94	Operations and Maintenance	Technology Enhancements	Make a technology enhancement as and when necessary in accordance with Section 12.1.3 of the Agreement.	2	A	30 Days	Tier 1
95	Operations and Maintenance	Traffic Control Plans	Submit a Traffic Control Plan to TxDOT 10 days before its planned implementation as required by Section 18.3.1 of the Technical Provisions.	1	B	1 Day	Tier 2
96	Operations and Maintenance	Traffic Control Plans	Implement a traffic control measure in a manner consistent with a Traffic Control Plan as required by Section 18.3.1 of the Technical Provisions.	3	B	1 Day	Tier 2
97	Operations and Maintenance	Traffic Management	Maintain a minimum of 96% Lane availability during Period D on General Purpose Lanes in accordance with Section 18.5.1 of the Technical Provisions.	7	C	None	Tier 1
98	Operations and Maintenance	Traffic Management	Maintain a minimum of 98% Lane availability during Period C on General Purpose Lanes in accordance with Section 18.5.1 of the Technical Provisions.	7	C	None	Tier 1
99	Operations and Maintenance	Traffic Management	Maintain 100% Lane availability during Period B or Period A on General Purpose Lanes in accordance with Section 18.5.1 of the Technical Provisions.	13	C	None	Tier 1
100	Operations and Maintenance	Traffic Management	Maintain a minimum of 50% Lane availability during snow and ice events on General Purpose Lanes in accordance with Section 18.5.1 of the Technical Provisions.	7	C	None	Tier 1
101	Operations and Maintenance	Traffic Management	Maintain a minimum of 98% Lane availability during Period C on Managed Lanes in accordance with Section 18.5.1 of the Technical Provisions	3	C	None	Tier 1
102	Operations and Maintenance	Traffic Management	Maintain a minimum of 96% Lane availability during Period D on Managed Lanes in accordance with Section 18.5.1 of the Technical Provisions.	3	C	None	Tier 1
103	Operations and Maintenance	Traffic Management	Maintain 100% Lane availability during Period A or Period B on Managed Lanes in accordance with Section 18.5.1 of the Technical Provisions	7	C	None	Tier 1
104	Operations and Maintenance	Traffic Management	Maintain a minimum of 50% Lane availability during snow and ice events on Managed Lanes in accordance with Section 18.5.1 of the Technical Provisions in accordance with Section 18.5 of the Technical Provisions.	3	C	None	Tier 1

Ref	Main Heading	Sub Heading	Failure to:	Number of Points	Assessment Category	Cure Period	Tier
105	Operations and Maintenance	Traffic Management	Maintain the minimum required Lane availability during Period A, Period B, Period C or Period D on all trafficked areas other than General Purpose Lanes and Managed Lanes in accordance with Section 18.5.1 of the Technical Provisions.	7	C	None	Tier 2
106	Operations and Maintenance	Traffic Management	Maintain maximum distance of any single continuous General Purpose Lanes closure of 2.0 miles in accordance with Section 18.5.1 of the Technical Provisions.	3	C	None	Tier 1
107	Operations and Maintenance	Traffic Management	Maintain the minimum distance between successive closures of General Purpose Lanes of 5.0 miles in accordance with Section 18.5.1 of the Technical Provisions.	3	C	None	Tier 1
108	Operations and Maintenance	Traffic Management	Limit closures to on-ramps and off-ramps from General Purpose Lanes to Frontage Roads such that at any one time, in either roadway direction, there shall be a maximum of one on-ramp and/or off-ramp closure within a 1.5 mile distance in accordance with the requirements of Section 18.5.1 of the Technical Provisions	13	C	None	Tier 1
109	Operations and Maintenance	Traffic Management	To arrange or ensure that, for periodic maintenance and routine maintenance, no more than two General Purpose Lanes shall be closed at any one time, in one roadway direction during B and D Hours in accordance with Section 18.5.1 of the Technical Provisions.	10	C	None	Tier 1
110	Operations and Maintenance	Traffic Management	Arrange or ensure that, for activities associated with response to a Category 1 Defect, no more General Purpose Lanes shall be closed at any one time, in either roadway direction, than is absolutely necessary to undertake the work; that at least two General Purpose Lanes shall be available at any one time, in either roadway direction, unless the reason for the work activity is such as to make this obligation impractical; and that the Managed Lanes shall be operational and toll free during this period in between appropriate ramps; and ramp access between Frontage Roads and General Purpose Lanes shall be maintained; all in accordance with Section 18.5.1 of the Technical Provisions.	10	C	None	Tier 1

Ref	Main Heading	Sub Heading	Failure to:	Number of Points	Assessment Category	Cure Period	Tier
111	Operations and Maintenance	Traffic Management	Arrange or ensure that, during Renewal Work, no more General Purpose Lanes shall be closed at any one time, in either roadway direction, than is absolutely necessary to undertake the work; that at least two General Purpose Lanes shall be available at any one time, in either roadway direction, unless the reason for the work activity is such as to make this obligation impractical; and that the Managed Lanes shall be operational and toll free during this period in between appropriate ramps; and ramp access between Frontage Roads and General Purpose Lanes shall be maintained; all in accordance with Section 18.5.1 of the Technical Provisions.	13	C	None	Tier 1
112	Operations and Maintenance	Traffic Management Plan	Comply with the Traffic Management Plan as required by Section 18.2 of the Technical Provisions where the failure impacts or has the potential to impact on the level of service provided to Users or TxDOT's ability to meet its obligations.	3	B	1 Day	Tier 1
113	Operations and Maintenance	Updated Standards	Submit a proposed schedule for completing the new improvements, all in accordance with the requirements of Section 8.1.2.4 of the Agreement.	1	B	14 days	Tier 1
114	Operations and Maintenance	Updated Standards	Complete construction and installation of the new improvements all in accordance with the requirements of Section 8.1.2.4 of the Agreement.	1	B	30 Days	Tier 1
115	Tolling	Managed Lanes Speed	Maintain the average of Average Speeds at or above 50 miles per hour in the Managed Lanes for each Toll Segment and for every consecutive 15 minute period, beginning at the top of the hour, in accordance with (and except as may be excused under) Exhibit 4, Section G of the Agreement; such that for each 15 minute period the average of Average Speeds is less than 35 miles per hour.	3	C	None	Tier 1
116	Tolling	Managed Lanes Speed	Maintain the average of Average Speeds at or above 50 miles per hour in the Managed Lanes for each Toll Segment and for every consecutive 15 minute period, beginning at the top of the hour, in accordance with (and except as may be excused under) Exhibit 4, Section G of the Agreement; such that for each 15 minute period the average of Average Speeds is greater than or equal to 35 miles per hour and less than 40 miles per hour.	2	C	None	Tier 1
117	Tolling	Managed Lanes Speed	Maintain the average of Average Speeds at or above 50 miles per hour in the Managed Lanes for each Toll Segment and for every consecutive 15 minute period, beginning at the top of the hour, in accordance with (and except as may be	1	C	None	Tier 2

Ref	Main Heading	Sub Heading	Failure to:	Number of Points	Assessment Category	Cure Period	Tier
			excused under) Exhibit 4, Section G of the Agreement; such that for each 15 minute period the average of Average Speeds is greater than or equal to 40 miles per hour and less than 45 miles per hour.				
118	Tolling	Managed Lanes Speed	Maintain the average of Average Speeds at or above 50 miles per hour in the Managed Lanes for each Toll Segment and for every consecutive 15 minute period, beginning at the top of the hour, in accordance with (and except as may be excused under) Exhibit 4, Section G of the Agreement; such that for each 15 minute period the average of Average Speeds is greater than or equal to 45 miles per hour and less than 50 miles per hour; for every fifth occurrence of such failure.	1	C	None	Tier 3

## DISPUTES BOARD AGREEMENT

THIS DISPUTES BOARD AGREEMENT is made and entered into this 4th day of September, 2009 (the "Effective Date"), by and between the Texas Department of Transportation ("TxDOT"), and LBJ Infrastructure Group LLC, a Delaware limited liability company ("Developer"). TxDOT and Developer are sometimes referred to individually herein as a "Party" and collectively as the "Parties."

### RECITALS

A. TxDOT and Developer are parties to that certain Comprehensive Development Agreement, IH 635 Managed Lanes Project, dated as of the Effective Date (the "Agreement").

B. Section 17.8.4 of the Agreement, provides for the establishment and operation of a disputes review board to resolve each Dispute if, as and when a Dispute arises under the Agreement, other than certain Disputes specified in Section 17.8.1.5 of the Agreement.

NOW THEREFORE, in consideration of the terms, conditions, covenants and agreements contained herein and in the Agreement, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties hereby agree as follows:

#### **Section 1. Definitions and References.**

1.1 Definitions. All capitalized terms used in this Disputes Board Agreement and not defined or modified herein shall have the same meaning as set forth in the Agreement.

1.2 Reference Section of Agreement. Section 17.8.4 of the Agreement discusses the Disputes Board's role in resolving Disputes and is incorporated herein by reference.

1.3 Section References. Unless expressly indicated otherwise, all references in this Disputes Board Agreement to a "Section" mean the Section contained in this Disputes Board Agreement.

#### **Section 2. Purpose and Role of the Disputes Board; Binding Disputes Board Decision.**

The sole purposes of the Disputes Board are to fairly and impartially consider all Disputes brought to it and to resolve such Disputes in a Disputes Board Decision. The Disputes Board is not a supervisory, advisory, or facilitating body and has no role other than as expressly described in this Disputes Board Agreement and in Section 17.8.4 of the Agreement. Notwithstanding that each Disputes Board member will have been engaged by a Party under a Disputes Board Member Joinder Agreement, none of the Disputes Board members shall consider themselves an appointee, representative, agent or advocate of the Party who engaged him or her. Disputes Board members are charged with discharging their responsibilities hereunder in an impartial, objective, independent and professional manner without regard to the particular interests of either Party.

### **Section 3. Selection, Replacement and Removal of Disputes Board Members and Candidates.**

#### **3.1 Selection of Disputes Board Candidates and Disputes Board Members.**

3.1.1 At all times, each Party shall endeavor to maintain a list of five candidates who satisfy the Disputes Board Member Qualifications set forth in Section 4 and have been approved or deemed approved by the other Party to serve on the Disputes Board (each such list being a "Disputes Board Member Candidates List"). No Party shall communicate *ex parte* with a person on its or the other Party's Disputes Board Member Candidates List regarding the substance of a Dispute.

3.1.2 Whenever, a Dispute that is subject to the Dispute Resolution Procedures is referred to the Disputes Board for resolution, each Party shall, within 15 days after notice of such referral is given or received (or within seven days after notice of a Fast-Track Dispute is given or received), appoint and engage one of the approved candidates on its Disputes Board Member Candidates List to serve on the Disputes Board. The Disputes Board empanelled to resolve each Dispute shall consist of three individuals, except as otherwise provided for resolution of Small Claims under Section 5.3.3 or as the Parties may agree pursuant to Section 3.1.4. The panel shall consist of (a) one member selected by TxDOT, (b) one member selected by Developer and (c) a third member selected pursuant to Section 3.1.3. To set forth the terms and conditions of such appointment and engagement, each Party and its appointed Disputes Board member shall enter into a Disputes Board Member Joinder Agreement in the form attached hereto as Attachment 1.

3.1.3 The two members whom TxDOT and Developer appoint to the Disputes Board shall, within 15 days after their appointment (or within seven days after their appointment, if the Dispute for resolution is a Fast-Track Dispute), select the third Disputes Board member (the "Disputes Board Chair") from among the remaining candidates that appear on the Parties' Disputes Board Member Candidate Lists. If the two Disputes Board members appointed by TxDOT and Developer are unable to reach agreement on their selection of the Disputes Board Chair within such time period, then either TxDOT or Developer or both shall request that the Chief Administrative Judge of the Travis County District Courts select the Disputes Board Chair from among the remaining candidates who appear on the Parties' Disputes Board Member Candidate Lists and meet the Disputes Board Member Qualifications. Both Parties waive all rights to appeal the decision of the Chief Administrative Judge, except if the individual designated by such judge to serve as the Disputes Board Chair is not among the candidates remaining on the Parties' Disputes Board Member Candidate Lists or does not meet the Disputes Board Member Qualifications. Within 15 days after the selection of the Disputes Board Chair by the two appointed members or the Chief Administrative Judge (or within seven days after such selection if the Dispute is a Fast-Track Dispute), the Party on whose list the Disputes Board Chair appears and the individual selected to serve as the Disputes Board Chair shall enter into a Disputes Board Member Joinder Agreement.

3.1.4 The Parties may mutually agree at any time prior to issuance of a Disputes Board Decision that the relevant Dispute shall be resolved by the Disputes Board Chair alone rather than by the three member panel, and any such agreement shall be irrevocable when signed in writing. If the Parties so agree, they shall issue a joint written directive stating their mutual agreement that the Disputes Board Chair alone shall resolve the relevant Dispute. Thereafter, the Disputes Board Chair rather than the Disputes Board shall

resolve the relevant Dispute in accordance with the terms and conditions of this Disputes Board Agreement.

### 3.2 Replacing Candidates on a Party's Disputes Board Member Candidates List.

3.2.1 At any time, either Party may replace any of the individuals on its Disputes Board Member Candidates List that are not then serving on the Disputes Board, provided, however, that no such individual shall be added to the Disputes Board Member Candidates List of the proposing Party (the "Nominating Party") until complete Disclosure Statements on such individual are furnished to the other Party (the "Evaluating Party") and the Evaluating Party approves or is deemed to approve such individual for inclusion on the Nominating Party's Disputes Board Member Candidates List. "Disclosure Statements" shall consist of the proposed Disputes Board Member candidate's resume of experience and a discussion of the Disputes Board Member Qualifications as they apply to the proposed candidate. Within 30 days after the Evaluating Party receives a proposed candidate's Disclosure Statements (the "Disputes Board Member Candidate Evaluation Period"), the Evaluating Party shall evaluate the proposed candidate's Disclosure Statements and notify the Nominating Party as to whether the candidate is approved by the Evaluating Party for inclusion on the Nominating Party's Disputes Board Member Candidates List.

3.2.2 During the Disputes Board Member Candidate Evaluation Period, the Evaluating Party (a) shall submit written inquiry to the Nominating Party if, in the Evaluating Party's reasonable judgment, the Disclosure Statements for the proposed candidate are incomplete such that, if they are not supplemented to the Evaluating Party's reasonable satisfaction, such incompleteness will comprise a basis for the Evaluating Party's disapproval of the proposed candidate and (b) may submit written inquiries to the Nominating Party if the Evaluating Party has questions or concerns about the proposed candidate's qualifications to serve on the Disputes Board in light of the Disputes Board Member Qualifications. Within 15 days after the Nominating Party's receipt of any such written inquiry from the Evaluating Party, the Nominating Party shall (or shall cause the proposed candidate to) furnish a written response to the Evaluating Party's inquiry. The Evaluating Party may submit up to three such written inquiries. The Disputes Board Member Candidate Evaluation Period shall be extended a total of 30 days (including the 15 day inquiry response period) for each written inquiry made by the Evaluating Party. The submission of incomplete Disclosure Statements (following written inquiry from the Evaluating Party so that the Nominating Party has the opportunity to supplement any such incomplete Disclosure Statements) or failure by the Nominating Party or its proposed candidate to fully respond to the Evaluating Party's written inquiry shall constitute a basis for the Evaluating Party to disapprove the proposed candidate during the Disputes Board Member Candidate Evaluation Period. If the Evaluating Party notifies the Nominating Party of its approval, or does not notify the Nominating Party of its disapproval, of a proposed candidate within the Disputes Board Member Candidate Evaluation Period (as it may be extended), such candidate shall be approved or deemed approved by the Evaluating Party.

3.2.3 During the course of the Nominating Party replacing five consecutive potential candidates on its Disputes Board Member Candidates List on a cumulative basis over time, the Evaluating Party may, upon notice to the Nominating Party, disapprove up to two proposed candidates for any or no reason. The Evaluating Party may, upon notice to the Nominating Party, only disapprove subsequently proposed candidates of the Nominating Party based on any such candidate's failure to satisfy the Disputes Board Member Qualifications (which failure shall be described in reasonable detail in the Evaluating Party's notice of disapproval).

3.2.4 If the Evaluating Party does not approve a proposed candidate for inclusion on the Nominating Party's Disputes Board Member Candidates List, the Nominating Party shall propose subsequent candidates in reasonably rapid succession, and the selection process shall continue until the Evaluating Party's approval is obtained or deemed obtained as to a proposed candidate's inclusion on the Nominating Party's Disputes Board Member Candidates List.

3.2.5 If the Evaluating Party disapproves a proposed candidate of the Nominating Party due to failure of such candidate to satisfy the Disputes Board Member Qualifications, but the Nominating Party disagrees that such candidate is not qualified or eligible for service, the Nominating Party may seek resolution pursuant to Section 17.8.4 of the Agreement.

### 3.3 Removal of Disputes Board Member; Appointment of Replacement.

3.3.1 Subject to Section 3.3.2, any of the Persons specified in this Section 3.3.1 at any time may terminate the appointment of a Disputes Board member (including the Disputes Board Chair) due to (a) Disputes Board Member Conflict of Interest or (b) Disputes Board Member Misconduct (such termination constituting a termination "For Cause" hereunder). Subject to Section 3.3.2, termination for Cause shall be effective upon service of such Person's notice of termination on the affected Disputes Board member and the Parties. Following termination and removal For Cause, or the death or resignation of a Disputes Board member, the Disputes Board shall not proceed with the resolution of the applicable Dispute until a replacement has been appointed.

(a) Any two members of the Disputes Board may terminate the third Disputes Board member's appointment For Cause;

(b) TxDOT and Developer may, upon mutual agreement, terminate any Disputes Board member's appointment For Cause or without cause; and

(c) TxDOT or Developer may unilaterally terminate the appointment of any Disputes Board member For Cause.

3.3.2 If a Disputes Board member's appointment is terminated For Cause and a Party disagrees that such Disputes Board member should have been terminated For Cause, such Party may, within five Business Days after such Party receives notice of the Disputes Board member's termination of appointment, seek resolution pursuant to Section 17.8 of the Agreement. The Disputes Board member who is the subject of the disputed termination For Cause shall not participate in the resolution of such Dispute, but may be called to provide testimony and evidence. A Party may not unilaterally or by mutual agreement with the other Party terminate the appointment of any Disputes Board member For Cause and then dispute the propriety of such termination. If the resolution of the Dispute is that termination of a Disputes Board member For Cause was unjustified, such termination shall be void.

3.3.3 In the event that one or more Disputes Board members needs to be replaced due to removal, death or resignation of one or more Disputes Board members, replacement Disputes Board members shall be appointed in the same manner as the predecessor Disputes Board members until the Disputes Board is reconstituted as a three person board. The Parties shall commence the process to appoint each replacement Disputes



Board member as soon as notice of removal, death or resignation is given or received and shall complete the appointment as soon as possible, but in no event more than 30 days thereafter.

#### **Section 4. Qualifications and Conduct of Disputes Board Members.**

"Disputes Board Member Qualifications," as they pertain to each Disputes Board Member or proposed candidate for inclusion on a Party's Disputes Board Member Candidate List, consist of the requisite experience described in Section 4.1 and the absence of grounds for disqualification as described in Section 4.2.

4.1 Requisite Experience. All Disputes Board members shall be attorneys who (a) are retired judges with at least ten years prior experience as a sitting judge or (b) are active members of the State Bar of Texas or any other state bar (of the United States) with at least ten years prior experience acting as mediators, arbitrators or dispute board members for commercial disputes, in either case who have not been subject to disciplinary action within the past ten years. Preference shall be given to attorneys who, in addition to meeting the foregoing qualifications, are also experienced in interpreting or adjudicating contract rights and claims involving financing, design, construction, operations and/or maintenance of public infrastructure projects. The other Party cannot disapprove a proposed candidate for inclusion on a Party's Dispute Board Member Candidate List due to lack of preferred qualifications if the Candidate List includes two other candidates who have one of the preferred qualifications.

4.2 Disqualification. No Disputes Board member shall have a Disputes Board Member Conflict of Interest or a financial interest in the Project, in any Contract or in the outcome of any Dispute decided hereunder, except for payments to that member for services on the Disputes Board.

#### 4.3 Effect of Party's Prior Approval of Disputes Board Member.

4.3.1 An Evaluating Party's approval or deemed approval of a proposed candidate for inclusion on the Nominating Party's Disputes Board Member Candidates List shall constitute an irrevocable waiver of any subsequent objection to such individual's lack of qualifications under Section 4.1 (except if such individual's lack of qualifications constitutes Misconduct, as addressed in Section 4.3.2).

4.3.2 No approval or deemed approval by the Evaluating Party of a proposed candidate for inclusion on the Nominating Party's Disputes Board Member Candidates List shall constitute a waiver of any objection to a Conflict of Interest or Misconduct of such individual under Section 4.2, except that any matter fully disclosed in an individual's Disclosure Statements prior to inclusion of such individual on the Nominating Party's Disputes Board Member Candidates List with the approval or deemed approval of the Evaluating Party may not be subsequently asserted by the Evaluating Party as a Conflict of Interest or Misconduct constituting grounds for termination and removal of such individual from the Nominating Party's Disputes Board Member Candidates List or from service as a Disputes Board member.

#### **Section 5. Procedures and Scope of Work of the Disputes Board.**

5.1 Procedures; Modification of Procedures. The Disputes Board shall conduct its proceedings to resolve a Dispute in accordance with the requirements specified or referenced herein; provided, however, that:

(a) The Parties may jointly modify the procedures applicable to the Disputes Board's proceedings to resolve a Dispute, effective upon the Disputes Board Chair's receipt of the Parties' written notice describing such modification in detail (the foregoing being without limitation to any requirements applicable to the Parties' amendment of the Agreement or any requirements applicable to modification of the DRP Rules or the Sections of the Code under which the DRP Rules are promulgated); and

(b) The Disputes Board may modify the procedures applicable to its proceedings to resolve a Dispute so as to be more responsive to the needs of the Parties, provided that (i) the Disputes Board Chair issues written notice to the Parties describing the proposed modification in detail and (ii) both Parties give their written consent thereto. Such modification shall take effect upon the Disputes Board Chair's receipt of the Parties' written consent.

5.2 Jurisdiction. If a responding Party asserts that a particular claim, demand, dispute, disagreement or controversy is a matter identified in Section 17.8.1.5 of the Agreement as beyond the Dispute Board's authority, the Disputes Board shall hear, consider and render a determination with respect to such assertion as a preliminary matter prior to consideration of the underlying matter. If the Disputes Board determines that the claim, demand, dispute, disagreement or controversy is a matter identified in Section 17.8.1.5 of the Agreement as beyond its authority, then it shall issue a Disputes Board Decision dismissing the same, without prejudice to the claiming Party's right to appeal such Disputes Board Decision in accordance with Section 17.8.5.1 of the Agreement or to pursue the claim, demand, dispute, disagreement or controversy in the proper jurisdiction. If the Disputes Board determines the claim, demand, dispute, disagreement or controversy is a matter within its authority, it shall issue such determination in writing to the Parties, including its reasoning, proceed to consideration of the underlying matter, and include in the Disputes Board Decision on the underlying matter findings of fact, conclusions and a decision on the issue of its authority. No appeal may be taken from the Disputes Board's determination that it has the requisite authority over the matter until a Disputes Board Decision is rendered on the underlying matter. If the responding Party asserts lack of authority before the Disputes Board prior to hearings on the underlying matter, then the responding Party's appearance in the Disputes Board proceedings to contest the underlying matter shall be without waiver of or prejudice to its right to appeal in accordance with Section 17.8 of the Agreement the Disputes Board's determination of authority.

### 5.3 Procedures for Disputes Board's Resolution of Disputes.

5.3.1 The Disputes Board shall conduct its proceedings in accordance with the Commercial Rules, including any time periods listed therein for actions by the Disputes Board. "Commercial Rules" means the dispute resolution proceedings set forth in Attachment 2 attached hereto. For Fast-Track Disputes, the time frames provided in the Commercial Rules for Expedited Procedures (as defined in Attachment 2) shall apply in accordance with the Commercial Rules.

5.3.2 Each Disputes Board member, or the Disputes Board Chair on behalf of the Disputes Board, shall promptly notify the Parties if any circumstance has arisen or is likely to arise that would prevent prompt resolution of the applicable Dispute in accordance with the Commercial Rules and this Disputes Board Agreement.

5.3.3 The following provisions pertain to Small Claims:

(a) A "Small Claim" is a Claim or related or similar Claims that arise fairly contemporaneously out of the same set of acts, events or circumstances, that the Parties mutually agree to have resolved solely by the Disputes Board Chair, and that the Parties mutually agree will be subject to an aggregate cap on award. A non-binding example of a Small Claim is where the cumulative amount in controversy of a Claim or related or similar Claims is \$500,000 or less.

(b) Once the Disputes Board Chair is appointed to resolve a Small Claim, the other two Disputes Board member shall be released from further service. Alternately, the Parties may, but are not obligated to, bypass appointment of two Dispute Board members and directly select a mutually acceptable individual from the Dispute Board Member Candidates Lists to serve as the Disputes Board Chair to resolve the Small Claim. Thereafter, in the context of the Disputes Board Chair's resolution of a Small Claim hereunder, all references in the dispute resolution procedures established in Section 17.8.4 of the Agreement to the "Disputes Board" or the "Disputes Board members" shall mean and refer to the Disputes Board Chair. At any time prior to the close of the Disputes Board hearing under R-27 of the Commercial Rules, if, due to amendment of the Dispute as to the amount in controversy, aggregation of the Dispute with other Disputes or other changes that cause a Party to no longer consent to resolution of the Dispute as a Small Claim by the Dispute Board Chair, such Party may, upon notice to the Disputes Board Chair and the other Party, withdraw its assent to resolution of the Dispute as a Small Claim by the Disputes Board Chair and require that a full three-member Disputes Board be empanelled to resolve such Dispute.

(c) The Disputes Board Chair shall have no authority to award compensation or damages in a Disputes Board Decision regarding a Small Claim aggregating more than the mutually agreed aggregate cap on award, and TxDOT or Developer as the claiming Party, as the case may be, asserting a Small Claim hereby irrevocably waives any right, at law or in equity, to any damages or award arising out of such Small Claim in excess of such cap

5.4 Aggregation of Disputes. Either Party shall be entitled to request the Disputes Board to aggregate the consideration of multiple Disputes for resolution by the Disputes Board where common questions of fact, Law and contract interpretation and the efficiencies to be gained in conducting a single proceeding to resolve all such Disputes merit the aggregate consideration of all such Disputes. Upon receipt of such a request, the Disputes Board shall consider the aggregated Disputes in a single proceeding unless, as a preliminary matter, the Disputes Board determines (after considering any evidence presented by the Parties in support of, or in opposition to, the proposed aggregation) that this is inappropriate. The Disputes Board shall revise or deny the proposed aggregation if there are insufficient common questions of fact, Law and contract interpretation among the proposed aggregated Disputes, or if the efficiencies to be gained by conducting a single proceeding to resolve such Disputes are outweighed by the need for separate and independent resolution of some or all of the proposed aggregated Disputes. The Disputes Board shall specify, in a Disputes Board Decision on this matter, which Disputes (if any) are to be aggregated and which Disputes (if any) are to be excluded from aggregation. Those not aggregated shall be considered by a separately empanelled Disputes Board in a separate proceeding. A Disputes Board Decision regarding whether Disputes will be aggregated for resolution in a single proceeding before the Disputes Board shall be final, binding and not subject to appeal.

5.5 Issuance of Disputes Board Decision and Any Minority Report. The Disputes Board should make every effort to reach a unanimous decision among the Disputes Board members. If this proves infeasible, the dissenting Disputes Board member may prepare a minority report. Within 20 days after the final hearing on a Dispute (and within five days after the final hearing on a Fast-Track Dispute), the Disputes Board Chair shall issue to the Parties the Dispute Board Decision, including the Disputes Board's written findings of fact and conclusions of law in support of the Disputes Board Decision.

5.6 Confidential Materials; Return or Destruction Thereof. "Confidential Materials" are all documents, other written materials and information presented or exchanged in a proceeding before the Disputes Board that are confidential pursuant to Section 17.8.9 of the Agreement. Each Disputes Board member shall maintain the privacy of Confidential Materials pursuant to Section 17.8.9 of the Agreement. Within 30 days after the Disputes Board Chair receives written notice of issuance of a final, non-appealable order on a Dispute that was the subject of a Disputes Board Decision, the Disputes Board Chair shall furnish written notice to each Party listing the Confidential Materials in the Disputes Board's possession and, except for those Confidential Materials that a Party directs the Disputes Board to return to such Party in writing within 15 days after receipt of such notice, the Disputes Board Chair shall destroy all copies of all Confidential Materials in the Disputes Board's possession. Until the time for the Disputes Board Chair's issuance of the foregoing written notice, the Disputes Board shall hold all Confidential Materials in confidence.

5.7 Dissolution of Disputes Board. Once there is issued a final, non-appealable order on a Dispute that was the subject of a the Disputes Board Decision, the Disputes Board shall be dissolved and the Disputes Board members serving on such Disputes Board shall be released from further service.

**Section 6. Reserved.**

**Section 7. TxDOT and Developer Responsibilities.**

7.1 TxDOT Responsibilities. TxDOT shall serve upon each Disputes Board member one copy of the Agreement. TxDOT shall also serve upon each Disputes Board member (and concurrently upon Developer) any other documents which are or may become pertinent to the activities of the Disputes Board, including but not limited to any Change Order, Directive Letter or other written direction, instruction, determination or decision of TxDOT.

7.2 Developer Responsibilities. Developer shall serve on each Disputes Board member (and concurrently on TxDOT) one set of any documents which are or may become pertinent to the activities of the Disputes Board, except those documents furnished by TxDOT. Such documents may include, but shall not be limited to, any drawings or sketches, calculations, procedures, schedules, estimates or other documents and Submittals which are used in the performance of the Work or in justifying or substantiating Developer's position.

7.3 Parties' Responsibilities for Costs and Expenses; Cooperation.

7.3.1 Each Party shall be responsible and make payment for its one-half share of all facilities fees, support services costs and other expenses of the Disputes Board's proceedings within 30 days after receipt of invoices for such costs and expenses. A Party that disputes an invoice for any such cost or expense relating to the Disputes Board's proceedings shall notify the other Party of such dispute promptly after receipt of such invoice. If either Party

fails to pay its share of the amount owing under any invoice for such costs and expenses at the time required for payment, then, unless the non-paying Party has promptly disputed the amount due, (a) the other Party may make payment in lieu of the non-paying Party and (b) the paying Party will be entitled to recover (or offset) the amount paid on behalf of the refusing Party, with interest at a floating rate equal to the LIBOR in effect from time to time until the date the amount due is paid, no matter which Party is the prevailing Party.

7.3.2 Each Party shall diligently cooperate with the Disputes Board and the other Party and shall perform such acts as may be necessary to obtain an efficient and expeditious resolution of the Dispute submitted to the Disputes Board. If either Party fails to diligently cooperate with the Disputes Board or the other Party (upon evidence of such failure presented to and evaluated by the Disputes Board) and the Disputes Board determines that such failure was egregious, the Disputes Board shall take into account such egregious failure to cooperate in its Disputes Board Decision; subject, however, to the limitations on the Disputes Board's authority set forth in Section 17.8.4.1 of the Agreement.

## **Section 8. Term.**

Consistent with the DRP Rules, the term of this Disputes Board Agreement shall commence on the Effective Date and continue in full force and effect for the Term of the Agreement and thereafter for so long as either Party has any obligation under the CDA Documents until the applicable statute of limitations on any Dispute in regard to such obligation has expired.

## **Section 9. Payment of Disputes Board Members' Fees, Costs and Expenses.**

9.1 Payment for Services. Payment of fees for work performed and services rendered by each Disputes Board member and for his or her direct out-of-pocket costs and expenses shall be calculated in accordance with the payment terms set forth for such Disputes Board member in his or her Disputes Board Member Joinder Agreement. The personal services of the Disputes Board member are a condition to receiving payments hereunder. Such payments shall be full compensation for work performed and services rendered by each respective Disputes Board member, and for all labor, materials, supplies, equipment and incidentals necessary for such Disputes Board member's participation on the Disputes Board.

9.2 Disputes Board Member Invoices. Each Disputes Board member shall submit invoices concurrently to TxDOT and Developer on a monthly basis for payment of the full amount due for such Disputes Board member's work performed and services rendered in the prior month. Such invoices shall be in a format approved by TxDOT and Developer, accompanied by an itemization of days and hours billed along with a description of activities performed during each day in that billing period, and an itemization of direct non-salary costs incurred supported by copies of the original bills, invoices, expense accounts and miscellaneous supporting data. Such invoices shall specify that the invoiced Party is responsible only for one-half of the invoiced amount. The amount to be paid shall be established from the applicable billing rate set forth in each Disputes Board member's Disputes Board Member Joinder Agreement plus costs and expenses in accordance with such agreement.

9.3 Payment by Parties. Each Party shall be responsible and make payment for one-half of all fees, costs and expenses of the Disputes Board members' service on the Disputes Board. Such costs and expenses include, but are not limited to, required travel of the Disputes Board members, and the costs of witnesses and of any proof produced at the direct

request of the Disputes Board. Each Disputes Board member will be paid within 30 days of the Parties' receipt and acceptance of invoices therefor. A Party that disputes a Disputes Board member's invoice shall notify such member and the other Party in writing of such dispute promptly after receipt of such invoice. If either Party fails to pay its share of the amount owing to any Disputes Board member at the time required for payment, then, unless the non-paying Party has promptly disputed the amount due, (a) the other Party may make payment in lieu of the non-paying Party and (b) the paying Party will be entitled to recover (or offset) the amount paid on behalf of the refusing Party, with interest at a floating rate equal to the LIBOR in effect from time to time until the date the amount due is paid, no matter which Party is the prevailing Party.

9.4 Retention of Cost Records and Accounts. Disputes Board members shall keep available for inspection by representatives of TxDOT and Developer, for a period of five years after final payment, the cost records and accounts pertaining to this Disputes Board Agreement and the performance of work and rendition of services as a member of the Disputes Board. If any claim arising out of the Disputes Board member's services or compensation under this Disputes Board Agreement is initiated before the expiration of the five year period, the Disputes Board member shall retain the cost records and accounts until such claim is completed.

9.5 Parties to Bear Own Costs. Each Party shall bear its own costs arising out of or in connection with the Dispute Resolution Procedures. The Party producing a witness shall bear the fees, costs and expenses of such witness, except that the Parties shall split the expenses for any expert witness retained by the Disputes Board to advise them regarding a Dispute.

#### **Section 10. Nonassignability.**

Disputes Board members shall not assign or delegate any of the work or services to be rendered in connection with the Dispute Resolution Procedures without the prior written consent of both TxDOT and Developer.

#### **Section 11. Legal Relations.**

11.1 Disputes Board Member as Independent Contractor. The Parties mutually understand and agree that any Disputes Board member, in the performance of duties as a Disputes Board member on the Disputes Board, is acting in the capacity of an independent contractor and not as an employee or agent of TxDOT or Developer. No Disputes Board member will be entitled to any employee benefits from either Party.

11.2 No Effect on Potential Liabilities. Except for the payment, offset and reimbursement obligations agreed to by the Parties as set forth herein, nothing in this Disputes Board Agreement alters the potential liabilities of either Party.

11.3 Damages Waiver. Neither TxDOT nor Developer will hold any Disputes Board member responsible for claims, damages, losses and expenses, including, but not limited to attorneys' fees and expenses, arising out of or resulting from the actions and recommendations of the Disputes Board, and the Parties expressly waive any right to the foregoing, except as a result of fraud, willful misconduct or criminal actions of the applicable Disputes Board member.

**Section 12. Applicable Law.**

The Disputes for resolution by the Disputes Board shall be governed by and resolved under the Laws of the State of Texas, without regard to conflicts of law principles that would refer one to the Laws of another State.

**Section 13. Amendment in Writing.**

This Disputes Board Agreement may be altered, amended or revoked only by an instrument in writing signed by each Party. No verbal agreement or implied covenant or agreement shall be held to vary the terms hereof, any statute, law or custom to the contrary notwithstanding.

**Section 14. Complementary Provisions; Order of Priority.**

The Parties intend for the procedures established in Section 17.8.4 of the Agreement and the terms and conditions of this Disputes Board Agreement to be complementary. In the event of any conflict between this Disputes Board Agreement and Section 17.8.4 of the Agreement, the Agreement shall control.

**Section 15. Notices.**


Notices hereunder shall be sent as provided in Section 24.12 of the Agreement. The address for each Disputes Board member shall be set forth on the signature page of each Disputes Board Member Joinder Agreement.

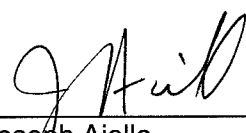
[Signature Page Immediately Follows]

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Disputes Board Agreement as of the Effective Date.

**Developer:**

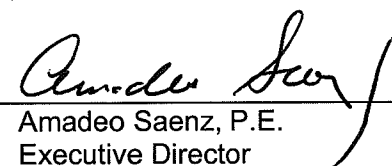
**LBJ INFRASTRUCTURE GROUP LLC,**  
a limited liability company

By:   
Name: Carlos Ugarte  
Title: Authorized Representative

By:   
Name: Joseph Aiello  
Title: Authorized Representative

**TxDOT:**

**TEXAS DEPARTMENT OF  
TRANSPORTATION**

By:   
Amadeo Saenz, P.E.  
Executive Director



## ATTACHMENT 1 TO DISPUTES BOARD AGREEMENT

### DISPUTES BOARD MEMBER JOINDER AGREEMENT

This DISPUTES BOARD MEMBER JOINDER AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by and between \_\_\_\_\_ [Specify TxDOT or Developer] (the "Appointing Party"), and \_\_\_\_\_, an individual (the "Disputes Board Member").

#### RECITALS

A. TxDOT and Developer are parties to that certain Comprehensive Development Agreement, IH 635 Managed Lanes Project, dated as of the Effective Date (the "Agreement").

B. Section 17.8.4 of the Agreement provides for the establishment and operation of a Disputes Board) to resolve Disputes.

C. The Appointing Party desires to appoint the Disputes Board Member to the Disputes Board to resolve such a dispute and the Disputes Board Member desires to accept such appointment, each on the terms and conditions set forth in Section 17.8.4, the Disputes Board Agreement and this Disputes Board Member Joinder Agreement.

NOW THEREFORE, in consideration of the terms, conditions, covenants and agreements contained herein and in the Disputes Board Agreement, the receipt and sufficiency of which the parties hereto hereby acknowledge, the parties hereto hereby agree as follows:

#### **Section 1. Definitions and References.**

1.1 Definitions. All capitalized terms used in this Disputes Board Member Joinder Agreement and not defined or modified herein shall have the respective meanings set forth in the Agreement and, if not defined therein, in the Disputes Board Agreement.

1.2 Reference to Disputes Board Agreement and Section 17.8.4 of Agreement. The Disputes Board Agreement and Section 17.8.4 of the Agreement, which, among other things, discusses the Disputes Board's role in resolving Disputes, are incorporated herein by reference.

#### **Section 2. Appointment.**

2.1 Appointment. The Appointing Party appoints the Disputes Board Member to the Disputes Board to serve thereupon and resolve the applicable Dispute, and the Disputes Board Member accepts such appointment and agrees to perform such service,

in accordance with the terms and conditions of Section 17.8.4 of the Agreement, the Disputes Board Agreement and this Disputes Board Member Joinder Agreement.

2.2 Term of Service. The Disputes Board Member shall serve on the Disputes Board through issuance of a final, non-appealable order concerning the applicable Dispute, except that (a) unless he or she is the Disputes Board Chair, he or she may be earlier dismissed from service pursuant to Section 5.5.3(b) of the Disputes Board Agreement because the dispute to be resolved is a Small Claim; (b) the Disputes Board Member may resign for health considerations or other reasons of disability; or (c) the Disputes Board Member shall resign if he or she discovers facts or circumstances that would, in such member's good faith judgment, (i) prevent such member from discharging his or her duties in the impartial and objective manner required under the Disputes Board Agreement or (ii) result in a Party terminating such member's appointment For Cause. The Disputes Board Member shall endeavor to give 30 days' notice prior to the effective date of his or her resignation

### **Section 3. Representations, Warranties and Covenants.**

3.1 Representations and Warranties. The Disputes Board Member hereby represents and warrants to TxDOT and Developer that such Disputes Board Member satisfies the Disputes Board Member Qualifications.

3.2 Covenants. The Disputes Board Member covenants to TxDOT and Developer that he or she:

(a) Shall be bound by and perform such member's obligations with respect to the Dispute Resolution Procedures in accordance with Section 17.8.4 of the Agreement;

(b) Shall not engage in any conduct that would be or result in a Disputes Board Member Conflict of Interest or Disputes Board Member Misconduct; and

(c) Shall preserve, maintain and protect the confidentiality of Confidential Materials in accordance with Section 17.8.9 of the Agreement.

### **Section 4. Compensation.**

4.1 Invoicing and Payment. The Disputes Board Member's hourly billing rate and costs and expenses for service on the Disputes Board or means for calculating the same are attached hereto as Annex 1. Invoicing and payment of fees, costs and expenses shall take place in accordance with Sections 9.1, 9.2 and 9.3 of the Disputes Board Agreement.

4.2 No Compensation After Termination. If the Disputes Board Member's appointment to the Disputes Board is terminated, whether For Cause or otherwise, the Disputes Board Member will not be entitled to receive payment for any services rendered or costs and expenses incurred after the date of termination of such appointment.

### **Section 5. General Provisions.**

5.1 Third Party Beneficiary. Whichever of TxDOT or Developer that is not the Appointing Party is an express third party beneficiary of this Disputes Board Member Joinder Agreement entitled to enforce the terms and conditions hereof against the Disputes Board Member.

5.2 Nonassignability. The Disputes Board Member shall not assign or delegate any of the work or services to be rendered in connection with the Dispute Resolution Procedures without the prior written consent of both TxDOT and Developer.

5.3 Disputes Board Member as Independent Contractor. The Disputes Board Member is acting in the capacity of an independent contractor and not as an employee or agent of TxDOT or Developer. The Disputes Board Member is not entitled to any employee benefits from either Party.

5.4 Consequential Damages Waiver. In no event shall TxDOT or Developer have any liability to the Disputes Board Member other than for payment of the Disputes Board Member's fees, costs and expenses hereunder. Neither TxDOT nor Developer shall be liable to the Disputes Board Member for any special, consequential, indirect, enhanced, punitive, or similar damages (including lost profits that are not direct damages), including but not limited to attorneys' fees and expenses, arising under or in connection with this Disputes Board Member Joinder Agreement, and the Disputes Board Member expressly waives any right to the foregoing.

5.5 Governing Law. This Disputes Board Member Joinder Agreement shall be governed by and construed in accordance with the Laws of the State of Texas, without regard to conflicts of law principles that would refer one to the Laws of another State.

5.6 Entire Agreement. This Disputes Board Member Joinder Agreement, and the documents referenced herein, contain the entire understanding of the parties hereto with respect to the subject matter hereof and supersede all prior agreements, understandings, statements, representations and negotiations between the parties hereto with respect to its subject matter.

5.7 Amendment in Writing. This Disputes Board Member Joinder Agreement may be altered, amended or revoked only by an instrument in writing signed by each Party. No verbal agreement or implied covenant or agreement shall be held to vary the terms hereof, any statute, law or custom to the contrary notwithstanding.

5.8 Survival. This Disputes Board Member Joinder Agreement shall automatically terminate upon expiration or termination of the Disputes Board Member's service hereunder, except that the provisions of Section 4.2 and this Section 5 shall survive termination of this Disputes Board Member Joinder Agreement.

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

[Signature Page Immediately Follows]

IN WITNESS WHERE, the parties hereto, intending to be legally bound, have executed this Disputes Board Member Joinder Agreement as of the day and year first set forth above.

**Appointing Party:**

[TxDOT or Developer]

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

**Disputes Board Member:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

**Annex 1**  
**to**  
**Disputes Board Member Joinder Agreement**

**Fees, Costs and Expenses**

*[to be attached]*

## ATTACHMENT 2 TO DISPUTES BOARD AGREEMENT COMMERCIAL RULES

### R-1. Agreement of The Parties

(a) The "Expedited Procedures" means the rules set forth in Sections E-1 through E-6 below. Unless the Parties determine otherwise, the Expedited Procedures shall apply to Fast-Track Disputes in addition to any other portion of these rules that is not in conflict with the Expedited Procedures.

(b) The "Procedures for Large, Complex Commercial Disputes" means the rules set forth in Sections L-1 through L-3 below. Unless the Parties agree otherwise, such Procedures shall apply to all cases in which the Dispute is valued at \$500,000 or more, exclusive of claimed interest, fees and costs provided, however, that the amount of \$500,000 shall be adjusted on every fifth anniversary of the Effective Date by the percentage increase (if any) in the CPI between the date the CPI was most recently published before the Effective Date and the date most recently published before the date of adjustment. The Parties may also agree to use such Procedures in cases involving non-monetary Disputes. Such Procedures shall be applied in addition to any other portion of these rules that is not in conflict with the Procedures for Large, Complex Commercial Disputes.

(c) All other cases shall be administered in accordance with Sections R-2 through R-43 of these rules.

(d) If there is any inconsistency between these Commercial Rules and Section 17.8.4 of the Agreement or the Disputes Board Agreement, Section 17.8.4 of the Agreement and the Disputes Board Agreement shall control.

### R-2. Disputes Board

The term "Disputes Board" in these Commercial Rules refers to the three member Disputes Board, constituted for a particular case, or to the Disputes Board Chair, as the context requires.

### R-3. Assumed Objection

Unless the responding Party states otherwise in its response to the claiming Party's notice of referral of a Dispute to the Disputes Board, all aspects of the Dispute will be deemed denied by the other Party (other than any objection to the Disputes Board's authority to resolve the Dispute, which must be affirmatively asserted).

### R-4. Changes of Claim

After notice of referral of a Dispute to the Disputes Board is given or received, if either Party desires to make any amended, new or different claim or counterclaim, it shall be made in

writing and filed with the Disputes Board. The Party asserting such an amended, new or different claim or counterclaim shall provide a copy to the other Party, who shall have 15 days from the date of such transmission within which to file an answering statement with the Disputes Board.

#### **R-5. Jurisdiction**

(a) The Disputes Board shall have the power to rule on its own jurisdiction, i.e., to determine if the Disputes Board is barred from considering and resolving an alleged Dispute pursuant to Section 17.8.1.5 of the Agreement.

(b) The Disputes Board shall rule on jurisdictional objections as a preliminary matter prior to proceeding with proceedings to resolve the underlying Dispute.

#### **R-6. Administrative Conference**

At the request of either Party or upon the Disputes Board's own initiative, the Disputes Board may conduct an administrative conference, in person or by telephone, with the Parties and/or their representatives. The conference may address such issues as the replacement of one or more Disputes Board members, potential mediation of the Dispute, potential exchange of information, a timetable for hearings and any other administrative matters.

#### **R-7. Appointment**

Because the Disputes Board Agreement between the Parties specifies a method of appointing a Disputes Board, that designation or method shall be followed.

#### **R-8. Disclosure**

(a) Any person appointed or to be appointed as a Disputes Board member shall disclose to the Parties any circumstance likely to give rise to justifiable doubt as to such Disputes Board member's impartiality or independence, including any bias or any financial or personal interest in the resolution of the Dispute or any past or present relationship with the Parties or their representatives. Such obligation shall remain in effect throughout the period of such member's service on the Disputes Board.

(b) In order to encourage disclosure by Disputes Board Members and candidates, disclosure of information pursuant to this R-8 is not to be construed as an indication that the disclosing individual considers that the disclosed circumstance is likely to affect impartiality or independence.

#### **R-9. Disqualification of Disputes Board Member**

Each Disputes Board member shall be impartial and independent and shall perform his or her duties with diligence and in good faith, and shall be subject to disqualification for:

(a) inability or refusal to perform his or her duties with diligence and in good faith, and

(b) any grounds for disqualification provided by applicable law, the Disputes Board Agreement or the Agreement.

#### **R-10. No *Ex Parte* Communication with Disputes Board Members**

(a) During the period that any Disputes Board member is then serving on a Disputes Board, (i) neither Party, including the members of its Conflicts Group and its counsel or designated representatives, shall communicate *ex parte* with such Disputes Board member and (ii) no Disputes Board member shall communicate *ex parte* with any Person (other than other Disputes Board members), including but not limited to, either Party, its counsel or designated representatives, regarding any aspect of the applicable Dispute.

(b) Each Party may communicate in writing or by e-mail with individuals listed on its respective Disputes Board Member Candidates' List for the purposes of (i) ascertaining their availability to serve on a particular Disputes Board and/or (ii) reconfirming such individuals' qualifications under the Disputes Board Member Qualifications and the absence of Conflicts of Interest and Misconduct, provided that the communicating Party simultaneously furnishes copies of all such written correspondence with such individuals to the other Party. *Ex parte* communication regarding the substance of any Dispute between a Party and individuals listed on its respective Disputes Board Member Candidates' List is prohibited.

#### **R-11. Hearings After Filling of Vacancies**

In the event of the appointment of a substitute Disputes Board member, the panel of Disputes Board members shall determine in its sole discretion whether it is necessary to repeat all or part of any prior hearings.

#### **R-12. Preliminary Hearing**

(a) At the request of either Party or at the discretion of the Disputes Board, the Disputes Board may schedule as soon as practicable a preliminary hearing with the Parties and/or their representatives. The preliminary hearing may be conducted by telephone at the Disputes Board's discretion.

(b) During the preliminary hearing, the Parties and the Disputes Board should discuss the future conduct of the case, including clarification of the nature of the Dispute, a schedule for the hearings and any other preliminary matters.

#### **R-13. Exchange of Information; Discovery**

(a) At least five Business Days prior to the hearing, the Parties shall exchange (i) copies of all exhibits they intend to submit at the hearing and (ii) lists of witnesses anticipated to be called at the hearing, in each case except for witnesses or exhibits to be offered for the purpose of impeachment or rebuttal.



(b) The Disputes Board Chair is authorized to resolve any disputes concerning the exchange of information or the Parties' discovery.

**R-14. Date, Time, and Place of Hearing**

The Disputes Board Chair shall set the date, time, and place for each hearing at a neutral and reasonably cost-efficient location in Travis County, Texas that is reasonably convenient for the Parties. The Parties shall respond to requests for hearing dates in a timely manner, be cooperative in scheduling the earliest practicable date, and adhere to the established hearing schedule. The Disputes Board shall send a notice of hearing to the Parties at least five Business Days in advance of the hearing date, unless otherwise agreed by the Parties.

**R-15. Attendance of Witnesses**

Except for each Party's counsel and other authorized representative, upon the request of either Party or its own initiative, the Disputes Board shall have the power to require the exclusion of any witness or potential witness during the testimony of any other witness.

**R-16. Representation**

Counsel or other authorized representative may represent each Party. A Party intending to be so represented shall notify the other Party and the Disputes Board of the name and address of the representative at least three days prior to the date set for the hearing at which that person is first to appear. When such a representative initiates or responds for a Party in the course of the Dispute Resolution Procedures, notice is deemed to have been given by the Party represented by such representative.

**R-17. Dispute Board Members' Certifications; Witness Oaths**

Before proceeding with the first hearing, each Disputes Board member shall have entered into a Disputes Member Joinder Agreement with a Party in which he or she certifies as to his or her meeting the Disputes Board Member Qualifications and the absence of Disputes Board Member Conflicts of Interest and Disputes Board Member Misconduct (and a covenant to not engage in Disputes Board Member Misconduct). The Disputes Board shall require witnesses to testify under oath.

**R-18. Stenographic Record**

Any Party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other Party of these arrangements at least three days in advance of the hearing. The requesting Party shall pay the cost of the record. If the transcript is agreed by the Parties, or determined by the Disputes Board to be the official record of the proceeding, it must be provided to the Disputes Board and made available to the other Party for inspection, at a date, time, and place determined by the Disputes Board.

#### **R-19. Interpreters**

Any Party wishing an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of the service.

#### **R-20. Postponements**

The Disputes Board may postpone any hearing upon agreement of the Parties, upon request of a Party for good cause shown, or upon the Disputes Board's own initiative for good cause shown.

#### **R-21. Proceedings in the Absence of a Party or Representative**

The Dispute Board's proceedings may proceed in the absence of either Party or representative who, after due notice, fails to be present or fails to obtain a postponement. A Disputes Board Decision shall not be made solely on the default of a Party. The Disputes Board shall require the Party who is present to submit such evidence as the Disputes Board may require for the making of a Disputes Board Decision.

#### **R-22. Conduct of Proceedings**

(a) The claiming Party shall present evidence to support its claim. The responding Party shall then present evidence to support its defense. Witnesses for each Party shall also submit to questions from the Disputes Board and the adverse Party. The Disputes Board has the discretion to vary this procedure, provided that the Parties are treated with equality and that each Party has the right to be heard and is given a fair opportunity to present its case.

(b) The Disputes Board, exercising its discretion, shall conduct the proceedings with a view to expediting the resolution of the Dispute and may direct the order of proof, bifurcate proceedings and direct the Parties to focus their presentations on issues the decision of which could dispose of all or part of the case.

(c) The Parties may agree to waive oral hearings in any case.

#### **R-23. Evidence**

(a) The Parties may offer such evidence as is relevant and material to the Dispute and shall produce such evidence as they or the Disputes Board deems relevant and necessary to an understanding and determination of the Dispute. Conformity to the Texas Rules of Evidence shall be required, except where these Commercial Rules contain a contrary rule. All evidence shall be taken in the presence of all of the Disputes Board members and both of the Parties, except where a Party fails to attend the hearing or has waived the right to be present.

(b) Subject to the Texas Rules of Evidence, the Disputes Board shall determine the admissibility, relevance, and materiality of the evidence offered and may exclude evidence deemed by the Disputes Board to be cumulative or irrelevant.

(c) The Disputes Board shall take into account applicable principles of legal privilege, such as those involving the confidentiality of communications between a lawyer and client.

(d) Special discovery and evidentiary rules:

(i) The Disputes Board Chair shall, at the request of either Party, issue subpoenas for the attendance of witnesses or the production of books, records, documents or other evidence, whether for deposition or for hearing, in the manner provided by Law for issuance of a subpoena in a civil action pending in a State district court. All provisions of the Texas Rules of Civil Procedure for service and response to subpoenas in a civil action pending in State district court shall apply to subpoenas issued pursuant hereto.

(ii) Each Party shall be entitled to take depositions of witnesses and to propound written discovery in the manner, and to the extent, provided by Law for discovery in a civil action pending in a State district court, consistent with Rule 190.3 of the Texas Rules of Civil Procedure. The Disputes Board Chair shall, at the request of either Party, or may, on his or her own initiative, adopt a discovery control plan as contemplated by Rule 190.4 of the Texas Rules of Civil Procedure.

(iii) The disclosure of expert witness information and the depositions of designated expert witnesses shall be conducted as provided by the Texas Rules of Civil Procedure for cases in state district court.

(iv) At the hearing, each Party shall have the right to be heard, to present evidence, including expert witness testimony, and to cross-examine witnesses, including the Independent Engineer.

#### **R-24. No Evidence by Affidavit; Post-hearing Filing of Documents or Other Evidence**

(a) The Disputes Board may not receive and consider the evidence of witnesses by declaration or affidavit.

(b) If the Parties agree or the Disputes Board directs that documents or other evidence be submitted to the Disputes Board after the hearing, the documents or other evidence shall be transmitted to each Disputes Board member. Both Parties shall be afforded an opportunity to examine and respond to such documents or other evidence.

#### **R-25. Inspection or Investigation**

The Disputes Board may find it necessary to make an inspection or investigation in connection with its proceedings and, if so, shall so advise the Parties. The Disputes Board shall set the date and time of such inspection or investigation and notify the

Parties thereof. Any Party who so desires may be present at such an inspection or investigation. In the event that one or both of the Parties are not present at the inspection or investigation, the Disputes Board shall make an oral or written report to the Parties on the result or findings from such inspection or investigation and afford them an opportunity to comment.

#### **R-26. Interim Measures**

(a) The Disputes Board may take whatever interim measures it deems necessary, including measures for the protection or conservation of property and disposition of perishable goods.

(b) Such interim measures may take the form of an interim Disputes Board Decision.

#### **R-27. Closing of Hearing**

The Disputes Board shall specifically inquire of both Parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies or if satisfied that the record is complete, the Disputes Board shall declare the hearing closed. If posthearing briefs are to be filed, the hearing shall be declared closed as of the final date set by the Disputes Board for the receipt of such briefs. If documents are to be filed as provided in R-24 and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the closing date of the hearing. The time limit within which the Disputes Board is required to make the Disputes Board Decision shall commence, in the absence of other agreements by the Parties, upon the closing of the hearing.

#### **R-28. Reopening of Hearing**

The hearing may be reopened only upon application of a Party for good cause shown, as determined in the discretion of the Disputes Board, at any time before the Disputes Board Decision is issued. The Disputes Board may reopen the hearing and shall have 30 days from the closing of the reopened hearing within which to issue its decision.

#### **R-29. Waiver of Rules**

Any Party who proceeds with the Disputes Board proceedings after knowledge that any provision or requirement of these rules has not been complied with and who fails to state an objection in writing to the other Party and the Disputes Board shall be deemed to have waived the right to object.

#### **R-30. Extensions of Time**

The Parties may modify any period of time in these rules by mutual agreement. The Disputes Board may for good cause extend any period of time established by these

rules, except the time for issuance of the Disputes Board Decision. The Disputes Board shall notify the Parties of any extension.

**R-31. Serving of Notice**

(a) Any papers, notices, or process necessary or proper for the initiation or continuation of Disputes Board proceedings under these rules, for any court action in connection therewith, or for the entry of any Disputes Board Decision made under these rules shall be given in accordance with Section 24.12 of the Agreement.

(b) Unless otherwise instructed by the Disputes Board, any documents submitted by either Party to the Disputes Board shall simultaneously be provided to the other Party.

**R-32. Majority Decision**

When the panel consists of more than one Disputes Board, a majority of the Disputes Board members must make all decisions.

**R-33. Time of Issuance of the Disputes Board Decision**

The Disputes Board Decision shall be issued promptly by the Disputes Board and no later than 30 days from the date of closing the hearing, or, if oral hearings have been waived, from the date of the Parties' transmittal of the final statements and proofs to the Disputes Board.

**R-34. Form of Disputes Board Decision**

(a) Any Disputes Board Decision shall be in writing and signed by a majority of the Disputes Board members.

(b) The Disputes Board shall also issue written findings of fact and conclusions of Law as part of the Disputes Board Decision.

**R-35. Scope of Disputes Board Decision**

(a) The Disputes Board may determine the occurrence of any event that is a prerequisite to a Party's claim for any remedy or relief in the Dispute, and grant any remedy or relief to resolve the Dispute that the Disputes Board determines is available under the Agreement and applicable Law and within the scope of the agreement of the Parties under Section 17.8.4 of the Agreement.

(b) In the final Disputes Board Decision, the Disputes Board shall assess compensation and damage amounts, where applicable.

**R-36. Disputes Board Decision upon Settlement**

If the Parties settle the Dispute during the course of the Disputes Board proceedings and if the Parties so request, the Disputes Board may set forth the terms of the settlement in a consent Disputes Board Decision.

**R-37. Acceptance of Delivery of Disputes Board Decision**

The Disputes Board Chair shall give, and the Parties shall accept, notice of the written Disputes Board Decision, including the written findings of fact and conclusions of law, addressed and delivered to the Parties as provided in R-31.

**R-38. Correction of Errors in Disputes Board Decision**

Within five Business Days after the transmittal of a Disputes Board Decision, either Party, upon notice to the other Party, may request the Disputes Board, through the Disputes Board Chair, to correct any clerical, typographical, or computational errors in the Disputes Board Decision. The Disputes Board is not empowered under this R-38 to re-determine the merits of any Dispute already decided. The other Party shall be given five Business Days to object to the request on the ground that there is no clerical, typographical, or computational error in the Disputes Board Decision. The Disputes Board shall perform the requested correction of errors within ten Business Days after transmittal by the Disputes Board Chair of the request for correction of errors unless the other Party objects. Any unresolved disagreement between the Parties as to the existence of a clerical, typographical, or computational error in the Disputes Board Decision can be subsequently pursued, under R-28.

**R-39. Release of Documents for Subsequent Proceedings**

The Disputes Board shall, upon the written request of a Party, furnish to the Party, at the Party's expense, certified copies of any papers in the Disputes Board's possession that may be required in further administrative or judicial proceedings relating to resolution of the Dispute.

**R-40. Applications to Court and Exclusion of Liability**

(a) No judicial proceeding by a Party relating to a Dispute shall be deemed a waiver of the Party's right to have the Dispute resolved by Dispute Board proceedings.

(b) Neither any Disputes Board member nor the Disputes Board in a proceeding under these rules is a necessary or proper Party in judicial proceedings relating to a Dispute.

**R-41. Interpretation and Application of Rules**

The Disputes Board shall interpret and apply these rules insofar as they relate to the Disputes Board's powers and duties to resolve the particular Dispute for which such Disputes Board was empanelled.

## **R-42. No Suspension for Nonpayment**

If a Disputes Board member's compensation or administrative charges have not been paid in full, such Disputes Board member may so inform the Parties in order that one of them may advance the required payment. If such payments are not made, and the non-paying Party does not within 30 days after its receipt of the unpaid Disputes Board member's invoice provide notice to such member and the other Party as to such Party's dispute of such member's invoice, the Disputes Board may order the suspension or termination of the proceedings. If a Party disputes a Disputes Board member's invoice and provides such notice, no suspension or termination of the proceedings shall occur. *Ex parte* conversations to resolve a fee dispute between the Disputes Board member whose invoice is disputed and the disputed Party are prohibited during the Disputes Board's resolution of the Dispute, and any such conversations shall be deferred until the Disputes Board Decision is final.

## **EXPEDITED PROCEDURES FOR FAST-TRACK DISPUTES**

### **E-1. Serving of Notices**

In addition to notice provided pursuant to Section 24.12 of the Agreement, the Parties can agree in writing to also accept notice by telephone. If the Parties so agree and thereafter a Party fails to confirm in writing any such oral notice, the proceeding shall nevertheless be valid if notice has, in fact, been given by telephone.

### **E-2. Exchange of Exhibits**

At least two Business Days prior to the hearing, the Parties shall exchange copies of all exhibits they intend to submit at the hearing. The Disputes Board shall resolve disputes concerning the exchange of exhibits.

### **E-3. Proceedings on Documents**

Where no Party's claim exceeds \$10,000, exclusive of interest and dispute resolution costs, and other cases in which the Parties agree, the Dispute shall be resolved by submission of documents, unless either Party requests an oral hearing, or the Disputes Board determines that an oral hearing is necessary. The Disputes Board shall establish a fair and equitable procedure for the submission of documents.

### **E-4. Date, Time, and Place of Hearing**

In cases in which a hearing is to be held, the Disputes Board shall set the date, time, and place of the hearing, to be scheduled to take place within ten days after appointment of the Disputes Board Chair. The Disputes Board will notify the Parties in advance of the hearing date.

### **E-5. The Hearing**

(a) Each Party shall have equal opportunity to submit its proofs and complete its case.

(b) The Disputes Board shall determine the order of the hearing and schedule and control its duration consistent with the objective of expedited resolution of the Fast-Track Dispute, and may require further submission of documents within two days after the hearing. For good cause shown, the Disputes Board may schedule additional hearings within seven Business Days after the initial hearing.

(c) Any Party desiring a stenographic record may arrange for one pursuant to the provisions of R-18.

#### **E-6. Time of Award**

Unless otherwise agreed by the Parties, the Disputes Board Decision shall be rendered not later than 14 days from the date of the closing of the hearing or, if oral hearings have been waived, from the date of the Parties' transmittal of the final statements and proofs to the Disputes Board.

### **PROCEDURES FOR LARGE, COMPLEX COMMERCIAL DISPUTES**

#### **L-1. Administrative Conference**

Prior to commencing proceedings to resolve a Dispute, the Disputes Board shall, unless the Parties agree otherwise, conduct an administrative conference with the Parties and/or their attorneys or other representatives by conference call within seven days after the Disputes Board Chair is appointed. In the event the Parties are unable to agree on a mutually acceptable time for the administrative conference, the Dispute Board shall, upon three Business Days' advance notice, schedule the administrative conference for 9 a.m. (CST) on the fourth Business Day after the date of such notice, and such administrative conference shall take place at such date and time. Such administrative conference shall be conducted for the purpose of obtaining additional information about the nature and magnitude of the Dispute, the anticipated length of hearing, and scheduling, and for such additional purposes as the Parties or the Disputes Board may deem appropriate.

#### **L-2. Preliminary Hearing**

As promptly as practicable after the appointment of the Disputes Board, a preliminary hearing shall be held among the Parties and/or their attorneys or other representatives and the Disputes Board. If the Parties agree, the preliminary hearing will be conducted by telephone conference call rather than in person. At the preliminary hearing the matters to be considered shall include, without limitation:

(a) Service of a detailed statement of the Dispute, including damages and defenses, a statement of the issues asserted by each Party and positions with respect



thereto, and any legal authorities the Parties may wish to bring to the attention of the Disputes Board;

- (b) Stipulations to uncontested facts;
- (c) The extent to which discovery shall be conducted, in light of the special discovery and evidentiary rules set forth above in R-23(d);
- (d) Exchange and pre-marking of those documents which each Party believes may be offered at the hearing;
- (e) The identification and availability of witnesses, including experts, and such matters with respect to witnesses including their biographies and expected testimony as may be appropriate;
- (f) Whether, and the extent to which, any sworn statements and/or depositions may be introduced;
- (g) The extent to which hearings will proceed on consecutive days;
- (h) Whether a stenographic or other official record of the proceedings shall be maintained;
- (i) The possibility of utilizing mediation or other non-adjudicative methods of dispute resolution; and
- (j) The procedure for the issuance of subpoenas.

By agreement of the Parties and/or order of the Disputes Board Chair, the pre-hearing activities and the hearing procedures that will govern the Disputes Board's proceedings will be memorialized in a scheduling and procedure order. Nothing in any scheduling and procedure order shall conflict with the procedures established under Section 17.8.4 of the Agreement or Section 5 of the Disputes Board Agreement.

### **L-3. Management of Proceedings**

- (a) The Disputes Board shall take such steps as they may deem necessary or desirable to avoid delay and to achieve a just, speedy and cost-effective resolution of Large, Complex Commercial Cases, provided, however, that no action by the Disputes Board under this L-3 shall conflict with the procedures established under Section 17.8.4 of the Agreement or Section 5 of the Disputes Board Agreement.
- (b) The Parties shall cooperate in the exchange of documents, exhibits and information within such Party's control.
- (c) The Parties may conduct discovery, subject to any limitations deemed appropriate and set forth in the discovery control plan and/or the scheduling and procedure order. If the Parties cannot agree on production of documents and other

information, the Disputes Board, consistent with the Parties' intent to resolve Disputes expeditiously, may establish the extent of the discovery.

(d) The Parties shall exchange copies of all exhibits they intend to submit at the hearing ten Business Days prior to the hearing unless the Disputes Board Chair determines otherwise.

(e) The exchange of information pursuant to this rule, as agreed by the Parties and/or directed by the Disputes Board Chair, shall be included within the scheduling and procedure order.

(f) The Disputes Board is authorized to resolve any disputes concerning the exchange of information.

(g) Generally hearings will be scheduled on consecutive days or in blocks of consecutive days in order to maximize efficiency and minimize costs.

## EXHIBIT 23

### TERMS FOR TERMINATION COMPENSATION

#### A. Definitions

For the purpose of this Exhibit 23, the following terms have the following meanings:

1. "Adjusted Equity IRR" means 23%, calculated over the same period as Equity IRR.
2. "Borrowed Cash and Credit Balances" means proceeds of Project Debt included in the Senior Debt Termination Amount that are held on the Early Termination Date as cash and credit balances in accounts held by or on behalf of Developer, including in Lender accounts and reserve accounts, but excluding the Handback Requirements Reserve (if any).
3. "Cash and Credit Balances" means proceeds of Project Debt and Contributed Unreturned Equity, as well as Toll Revenues and interest earnings, that are held on the Early Termination Date as cash and credit balances in accounts held by or on behalf of Developer, including in Lender accounts and reserve accounts, but excluding the Handback Requirements Reserve (if any).
4. "Equity IRR" means a blended nominal Post-Tax rate of return on Contributed Unreturned Equity and Subordinate Debt over the full Term (excluding potential extensions of the Term) equal to that projected in the Base Case Financial Model, which rate of return will be confirmed in writing by the Parties promptly after the applicable date or dates under clause (a) or (b) below takes effect, calculated from the first to occur of the following dates through the end of the Term (excluding potential extensions of the Term):
  - (a) The date or dates on or after the Effective Date that actual funding to Developer occurs; or
  - (b) The date on or after the Effective Date that both the following exist or occur:
    - (i) Developer receives a binding, written, unconditional commitment of equity and/or, if applicable, Subordinate Debt, available on demand; and
    - (ii) The committed equity amount and/or, if applicable, Subordinate Debt amount, are set aside in a separate account specifically identified for the Project, or a letter of credit, parent guaranty or other good security in like amount is delivered to Developer to assure and secure full funding of the binding commitment.
5. "Net present value" means the aggregate of the discounted values, calculated as of the Valuation Date, of each of the relevant projected Distributions, in each case discounted using the Equity IRR.

B. Compensation on Termination for Convenience, for TxDOT Default, for TxDOT Suspension of Work or for Certain Delayed Notices to Proceed

1. In the event of termination of the Agreement and Lease under Section 19.1 (Termination for Convenience) or Section 19.4 (Termination for TxDOT Default or Suspension of Work) of the Agreement, the Termination Compensation shall equal the smaller of the amounts determined as set forth in Sections B.3 and B.4 below, and shall be payable by TxDOT as and when set forth in Section G.1(a) or G.3(a), as applicable, below.

2. In the event of termination of the Agreement and Lease under Section 19.4.3 (delay in issuing NTP1 or NTP2), if as of the date notice of termination is delivered there does not exist any event or circumstance which entitles either Party to terminate, or with the giving of notice or passage of time, or both, would entitle either Party to terminate, for Force Majeure Event under Section 19.2 of the Agreement, by reason of Termination by Court Ruling under Section 19.12 of the Agreement, or due to lack of occurrence of the NEPA Finality Date under Section 19.13 of the Agreement, then the Termination Compensation shall equal the smaller of the amounts determined as set forth in Sections B.3 and B.4 below, and shall be payable by TxDOT as and when set forth in Section G.5 below.

3. The amount of the Termination Compensation under this Section B.3 shall equal the following:

(a) The greater of (i) the Fair Market Value, if any, of the Developer's Interest as of the Valuation Date determined according to the procedures set forth in Section B.5 below, or (ii) the Senior Debt Termination Amount; plus

(b) The amount necessary to reimburse reasonable and documented out-of-pocket costs of third party and Affiliate Contractors to demobilize and terminate under Contracts between Developer and third parties or Affiliates for performance of Work, excluding Developer's non-contractual liabilities and indemnity liabilities (contractual or non-contractual) to third parties or Affiliates; plus

(c) If termination occurs prior to Substantial Completion of all Project Segments, Developer's own reasonable and documented out-of-pocket costs to demobilize; plus

(d) The incremental increase, if any, in the costs Developer incurs under Section 19.5.11 of the Agreement over the present value of such costs under the Base Case Financial Model, but without double counting of the amounts under clauses (a), (b) and (c) above; minus

(e) Only where the Senior Debt Termination Amount is applicable, all Borrowed Cash and Credit Balances, except to the extent such balances are already deducted in determining the Senior Debt Termination Amount; minus

(f) Only where the Senior Debt Termination Amount is applicable, the cost of Renewal Work that Developer was required to but did not perform prior to the Early Termination Date, as well as the amount of funds that would have been required to be funded into the Handback Requirements Reserve and delivered to TxDOT at the end of the Term as if the Handback Requirements and Handback Requirements Reserve provisions had been in effect prior to the Early Termination Date; minus

(g) Only where the Senior Debt Termination Amount is applicable, the portion of any Compensation Amounts previously paid to Developer that (i) compensated Developer for cost and revenue impacts attributable to the period after the Early Termination Date and (ii) were not previously used to reduce Project Debt within the definition of Senior Debt Termination Amount; minus

(h) Only where Fair Market Value is applicable, the amount of all Distributions, and all payments to Affiliates in excess of reasonable compensation for necessary services or that are advance payments in violation of Section 10.5.3 of the Agreement, between the Valuation Date and the Early Termination Date; minus

(i) Only where Fair Market Value is applicable, all amounts received by the Lenders in relation to the Project Debt (including all interest, capital and Breakage Costs) between the Valuation Date and the Early Termination Date; plus

(j) Only where Fair Market Value is applicable, (i) in the case of Termination for Convenience, a return on the outstanding balance of the Fair Market Value amount between the Valuation Date and the Early Termination Date equal to Developer's weighted average cost of capital as of the Valuation Date (determined according to the procedures set forth in Section B.5 below) or (ii) in the case of termination for TxDOT Default or TxDOT suspension of Work, a return on the outstanding balance of the Fair Market Value amount between the Valuation Date and the date the Fair Market Value is paid in full equal to Developer's weighted average cost of capital as of the Valuation Date (determined according to the procedures set forth in Section B.5 below); plus

(k) Only where Fair Market Value is applicable, the incremental tax liability, if any, described in Section B.6 below.

4. The amount of Termination Compensation under this Section B.4 shall equal the following:

(a) (i) If any Refinancing fully and specifically identified and taken into account in the Base Case Financial Model was scheduled therein to occur prior to the Valuation Date, then the Senior Debt Termination Amount determined as if such Refinancing occurred in the amount and on the terms assumed in the Base Case Financial Model, or (ii) if otherwise, then the Initial Senior Debt Termination Amount; plus

(b) The greater of zero or the amount computed using the formula  $A+B$ , where:

(i) A is the Net present value of the Distributions to be made between the Valuation Date and the date the original Term expires (but without taking into account the effect of the termination) as projected under the Base Case Financial Model; and

(ii) B is an incremental adjustment in the form of one or more special Distributions that, when added to A, would be required to increase the Equity IRR to a blended, nominal Post-Tax rate of return on equity equal to the Adjusted Equity IRR. For these purposes, B is capped at a maximum equal to the present value of three times the Toll Revenues between the Valuation Date and the date the original Term expires (but without taking into account the effect of the termination) as projected under the Base Case Financial Model. The present value of future Toll Revenues shall be determined using the Equity IRR as the discount factor; plus

(c) The amount that will put Developer in the same Post-Tax position as it would have been had the payment under clause (b) above not been subject to federal income tax liability of Developer (or, if it is a pass-through entity for federal income tax purposes, its members or partners) and State margin tax liability of Developer as a lump sum payment; plus

(d) The amount necessary to reimburse reasonable and documented out-of-pocket costs of third party and Affiliate Contractors to demobilize and terminate under Contracts between Developer and third parties or Affiliates for performance of Work, excluding Developer's non-contractual liabilities and indemnity liabilities (contractual or non-contractual) to third parties or Affiliates; plus

(e) If termination occurs prior to Substantial Completion of all Project Segments, Developer's own reasonable and documented out-of-pocket costs to demobilize; plus

(f) The incremental increase, if any, in the costs Developer incurs under Section 19.5.11 of the Agreement over the present value of such costs under the Base Case Financial Model, but without double counting of the amounts under clauses (a), (b) and (c) above; minus

(g) All Cash and Credit Balances, except to the extent such balances are already deducted in determining amounts under clauses (a), (b) and (c) above; minus

(h) The portion of any Compensation Amounts previously paid to Developer that (i) compensated Developer for cost and revenue impacts attributable to the period after the Early Termination Date and (ii) were not previously used to reduce Project Debt within the definition of Senior Debt Termination Amount; minus

(i) To the extent Equity IRR is determined under clause (b) of the definition of Equity IRR, an amount equal to the earnings on the committed funds set aside in the separate account specifically identified for the Project, or, if a letter of credit, parent guaranty or other security is provided instead of funding of such separate account, an amount equal to the imputed earnings on the committed funds determined by applying to the committed funds from and including the Effective Date to each date of actual funding (or termination, if sooner) a variable rate equal to LIBOR in effect from time to time.

5. Fair Market Value of the Developer's Interest as of the Valuation Date shall be determined according to the following procedures.

(a) Within 30 Days after a Party requests the appointment thereof, TxDOT and Developer shall confer in good faith to mutually appoint an independent third-party appraiser to determine the Fair Market Value by written appraisal. This appraiser must be nationally recognized and experienced in appraising similar assets.

(b) If for any reason the Parties are unable or fail to agree upon such a single appraiser within such 30-Day period, then within ten Days thereafter TxDOT and Developer shall each appoint an independent third-party appraiser and both such appraisers shall be instructed jointly to select, within 15 Days after they are appointed, a third independent third-party appraiser who is nationally recognized and experienced in appraising similar assets to make the appraisal referred to above.

(c) If for any reason the Parties are unable or fail to appoint an independent third party appraiser under subsection (b) above within 30 Days after the time period under subsection (a) above expires, then either Party may petition the Travis County District Court to appoint an independent third party appraiser having such reputation and experience to make the appraisal referred to above.

(d) Each Party shall pay the costs of its own appraiser. TxDOT and Developer shall pay in equal shares the reasonable costs and expenses of the independent appraiser.

(e) Once appointed, the independent appraiser shall conduct an appraisal of the Fair Market Value of the Developer's Interest as of the Valuation Date, as well as determine Developer's weighted average cost of capital as of the Valuation Date, and deliver to both Parties a draft appraisal report and draft valuation. The appraiser shall appraise Fair Market Value on the basis of the assumptions contained in the definition of Fair Market Value and by taking into account (i) the terms of the CDA Documents, including the terms of Exhibit 4 to the Agreement, (ii) the condition of the Elements of the Project, (iii) prior financial performance of the Project, (iv) Developer's record regarding the Targets in the Performance and Measurement Table and of compliance with the CDA Documents, including record of compliance with Renewal Work requirements, but only for the purpose of evaluating and taking into account the effect of such record on the condition and viability of the Project, (v) projected revenues and costs of the Project (excluding costs that reduce the Fair Market Value pursuant to clause (c) of the definition of Fair Market Value, which shall be determined separately by the appraiser) for the remainder of the Term had the Agreement not be terminated, as determined by the appraiser, and (vi) such other factors as the appraiser considers relevant. In determining Developer's weighted average cost of capital as of the Valuation Date, no consideration shall be given to any default rate of interest on Project Debt.

(f) For the purpose of the appraiser's valuation using a projected net cash flow methodology, the appraiser shall use the Financial Model Formulas most recently approved by TxDOT and Developer; provided that if there are known mathematical errors in the Financial Model Formulas the Parties shall provide corrected Financial Model Formulas to the appraiser. The appraiser will determine the data inputs and data values.

(g) The appraiser also shall evaluate and include in the appraisal a calculation of the Base Tax Liability that would be incurred over the remaining Term absent early termination. The appraiser shall make such evaluation in accordance with the definition of Base Tax Liability.

(h) Developer shall promptly deliver to TxDOT and the appraiser all information, documents and data that either may reasonably request relevant to the determination of Developer's weighted average cost of capital as of the Valuation Date, and the Base Tax Liability. In conducting the appraisal, and before issuing a draft appraisal report, the independent appraiser shall afford reasonable and comparable opportunity to each Party to provide the appraiser with information, data, analysis and reasons supporting each Party's view on the Fair Market Value, Developer's weighted average cost of capital as of the Valuation Date, and the Base Tax Liability. The Parties shall have 15 days after receipt of the draft appraisal report to comment thereon.

(i) Not later than 15 days after the opportunity to comment has expired, the independent appraiser shall consider and evaluate all comments, prepare a final appraisal report stating the Fair Market Value, Developer's weighted average cost of capital as of the Valuation Date, and the Base Tax Liability, and deliver the final appraisal report to both Parties.

(j) The independent appraiser's determination of Fair Market Value, Developer's weighted average cost of capital as of the Valuation Date and the Base Tax Liability shall be subject to challenge by either Party by initiating a Dispute within 30 days after receipt of such determination and such Dispute shall be resolved according to the Dispute Resolution Procedures. Failure of a Party to initiate such a challenge by delivering written notice thereof to the other Party within such 30-day period shall be deemed to be an acceptance of the appraiser's determinations for all purposes by the Party who failed to timely challenge such determinations. In any dispute resolution the independent appraiser's determination shall be given substantial weight in the evidence, absent failure to properly apply the terms of the CDA Documents or applicable Laws.

6. If the Termination Compensation is based on Fair Market Value, TxDOT also shall be liable for the amount necessary to cover the incremental increase, if any, in the federal income tax liability of Developer (or, if it is a pass-through entity for federal income tax purposes, its members or partners) and in the State margin tax liability of Developer due to payment of the Termination Compensation (other than this element of the Termination Compensation) over the Base Tax Liability. TxDOT shall pay such amount within 30 days after Developer delivers to TxDOT proof of the actual tax liability incurred and the amount by which it exceeds the Base Tax Liability.

#### C. Compensation on Termination for Force Majeure Event

1. In the event of termination of the Agreement and Lease under Section 19.2 of the Agreement (Termination for Force Majeure Event), the Termination Compensation, determined as set forth in Section C.2 or C.3 below, shall be payable by TxDOT as and when set forth in Section G.2 below.

2. If Developer elected to terminate under Section 19.2 of the Agreement, the Termination Compensation for the Force Majeure Event shall be an amount equal to the following:

(a) The Senior Debt Termination Amount; plus

(b) The amount necessary to reimburse reasonable and documented out-of-pocket costs of third party and Affiliate Contractors to demobilize and terminate under Contracts between Developer and third parties or Affiliates for performance of Work, excluding Developer's non-contractual liabilities and indemnity liabilities (contractual or non-contractual) to third parties or Affiliates; plus

(c) The incremental increase, if any, in the costs Developer incurs under Section 19.5.11 of the Agreement over the present value of such costs under the Base Case Financial Model, but without double counting of the amounts under clauses (a) and (b) above; minus

(d) All Borrowed Cash and Credit Balances (if any); minus

(e) The amount of all Distributions, and all payments to Affiliates in excess of reasonable compensation for necessary services or that are advance payments in violation of Section 10.5.3 of the Agreement, between the date notice of conditional election to terminate is delivered and the Early Termination Date; minus



(f) The portion of any Compensation Amounts previously paid to Developer that (i) compensated Developer for cost and revenue impacts attributable to the period after the Early Termination Date and (ii) were not previously used to reduce Project Debt within the definition of Senior Debt Termination Amount.

3. If TxDOT elected to terminate under Section 19.2 of the Agreement, the Termination Compensation for the Force Majeure Event shall be the amount determined under clause 2 above plus the Contributed Unreturned Equity.

#### D. Compensation on Termination for Developer Default

1. Developer shall not be entitled to receive any compensation in each of the following circumstances:

(a) Developer's termination of the Agreement and Lease on grounds or in circumstances beyond Developer's termination rights specifically set forth in the Agreement;

(b) A Default Termination Event where the Developer Default that is the basis thereof is under Section 17.1.1.14 or 17.1.1.15 of the Agreement;

(c) A Default Termination Event under Section 19.3.4 of the Agreement; or

(d) The Collateral Agent has requested and entered into New Agreements pursuant to Section 20.4.8 of the Agreement due to its inability to obtain possession of the Project within the 180-day period set forth in Section 20.4.6 of the Agreement.

2. Upon a Default Termination Event other than one described in Section D.1 above where the Developer Default that is the basis thereof occurs, and is the subject of a Warning Notice delivered, prior to the last Service Commencement Date, subject to Section D.5 below, Developer shall be entitled to receive Termination Compensation in an amount equal to the lowest of:

(a) 80% of the Senior Debt Termination Amount minus (i) 80% of all Borrowed Cash and Credit Balances (if any), minus (ii) 80% of the portion of any Compensation Amounts previously paid to Developer that (A) compensated Developer for cost and revenue impacts attributable to the period after the Early Termination Date and (B) were not previously used to reduce Project Debt within the definition of Senior Debt Termination Amount;

(b) 80% of the Initial Senior Debt Termination Amount, plus (i) 80% of any increase in the Initial Senior Debt Termination Amount directly attributable to a Refinancing of the Initial Base Case Senior Project Debt that (A) was fully and specifically identified and taken into account in the Base Case Financial Model and calculation of the Concession Payment and (B) occurs prior to the date notice of termination is delivered, minus (ii) 80% of all Borrowed Cash and Credit Balances (if any), minus (iii) 80% of the portion of any Compensation Amounts previously paid to Developer that (A) compensated Developer for cost and revenue impacts attributable to the period after the Early Termination Date and (B) were not previously used to reduce Project Debt within the definition of Senior Debt Termination Amount; or

(c) \$2,076,083,589 plus, if TxDOT issues NTP3, \$74,688,989 minus (i) TxDOT's estimated cost to complete the Project, minus (ii) the amount of the Public Funds Amount paid.

3. Upon a Default Termination Event other than one described in Sections D.1 and D.2 above, subject to Sections D.4, D.5 and D.6 below, Developer shall be entitled to receive Termination Compensation in an amount equal to the lowest of:

(a) 80% of the Senior Debt Termination Amount minus (i) 80% of all Borrowed Cash and Credit Balances (if any), minus (ii) 80% of the portion of any Compensation Amounts previously paid to Developer that (A) compensated Developer for cost and revenue impacts attributable to the period after the Early Termination Date and (B) were not previously used to reduce Project Debt within the definition of Senior Debt Termination Amount;

(b) 80% of the Initial Senior Debt Termination Amount, plus (i) 80% of any increase in the Initial Senior Debt Termination Amount directly attributable to a Refinancing of the Initial Base Case Senior Project Debt that (A) was fully and specifically identified and taken into account in the Base Case Financial Model and calculation of the Concession Payment and (B) occurs prior to the date notice of termination is delivered, minus (ii) 80% of all Borrowed Cash and Credit Balances (if any), minus (iii) 80% of the portion of any Compensation Amounts previously paid to Developer that (A) compensated Developer for cost and revenue impacts attributable to the period after the Early Termination Date and (B) were not previously used to reduce Project Debt within the definition of Senior Debt Termination Amount; or

(c) The Fair Market Value, if any, of the Developer's Interest as of the Valuation Date; minus (i) the amount of any damages due to TxDOT resulting from the Developer Default, including TxDOT's reasonable costs to terminate and take over the Project, but without double counting where such costs are part of the determination of Fair Market Value (if applicable), minus (ii) the amount of all Distributions, and all payments to Affiliates in excess of reasonable compensation for necessary services or that are advance payments in violation of Section 10.5.3 of the Agreement, between the Valuation Date and the Early Termination Date, minus (iii) all amounts received by the Lenders in relation to the Project Debt (including all interest, capital and Breakage Costs) between the Valuation Date and the Early Termination Date, plus (iv) a return on the outstanding balance of the Fair Market Value amount between the Valuation Date and the Early Termination Date equal to Developer's weighted average cost of capital as of the Valuation Date (determined according to the procedures set forth in Section B.5 above).

4. The amounts set forth in Sections D.3(a) and (b) above are subject to the condition that each Funding Agreement for senior Project Debt, and any intercreditor agreement between the Lenders of senior Project Debt and the Lenders of any first tier subordinate Project Debt within the definition of Senior Debt Termination Amount, shall expressly provide that upon termination of this Agreement for Developer Default the senior Lenders shall have no right to claim, receive or retain from the Termination Compensation (whether determined based on Fair Market Value, the Initial Senior Debt Termination Amount or the Senior Debt Termination Amount) an amount in excess of 80% of the Senior Debt Termination Amount minus 80% of all Borrowed Cash and Credit Balances (if any), such result multiplied by a fraction the numerator of which is the then outstanding principal balance of the senior Project Debt (including Breakage Costs) and the denominator of which is the then outstanding principal balance of the senior Project Debt (including Breakage Costs) plus first tier subordinate Project Debt (including Breakage Costs).

If the foregoing condition is not satisfied, then the amounts under Sections D.3(a) and (b) above shall not include any amounts for first tier subordinate Project Debt described in clause (a)(ii)(B) of the definition of Senior Debt Termination Amount or any Breakage Costs related to such first

tier subordinate Project Debt, and shall not be reduced by amounts described in clause (c) of such definitions related to such first tier subordinate Project Debt.

5. The amount of the Termination Compensation determined under this Section D is subject to damages and offset in accordance with Section 17.3.5 of the Agreement.

6. Fair Market Value of the Developer's Interest as of the Valuation Date shall be determined as set forth in Section B.4 above, except those provisions pertaining to Base Tax Liability.

7. TxDOT shall pay the Termination Compensation as and when set forth in Section G.4 below.

E. Compensation Upon Termination by Court Ruling, Due to Certain Delayed Notices to Proceed, Due to Lack of NEPA Finality or Due to Section 19.14 Events

1. Subject to Sections E.5 and E.6 below, in the event of Termination by Court Ruling or termination due to lack of occurrence of the NEPA Finality Date as provided in Section 19.13 of the Agreement, the Termination Compensation shall be an amount equal to the following:

(a) The lesser of (i) the sum of (A) Initial Senior Debt Termination Amount plus (B) any increase in the Initial Senior Debt Termination Amount directly attributable to a Refinancing of the Initial Base Case Senior Project Debt that (I) was fully and specifically identified and taken into account in the Base Case Financial Model and calculation of the Concession Payment and (II) occurs prior to the date notice of termination is delivered, plus (C) the portion of all Refinancing Gain previously paid to TxDOT, if any, or (ii) the Senior Debt Termination Amount; plus

(b) An amount which, when taken together with interest payments on Subordinate Debt, Distributions made prior to the Early Termination Date, and the cash and credit balances derived from Toll Revenues or interest earnings in accounts held by or on behalf of Developer on the Early Termination Date, including in Lender accounts and reserve accounts, will yield a nominal Post-Tax blended internal rate of return, on Subordinate Debt and Contributed Unreturned Equity equal to that projected in the Base Case Financial Model, which rate of return is 12.76%, between the date of funding of such Subordinate Debt and Contributed Unreturned Equity and the Early Termination; plus

(c) The incremental increase, if any, in the costs Developer incurs under Section 19.5.11 of the Agreement over the present value of such costs under the Base Case Financial Model, but without double counting of the foregoing debt and equity amounts; minus

(d) All payments to Affiliates in excess of reasonable compensation for necessary services prior to the Early Termination Date or that are advance payments in violation of Section 10.5.3 of the Agreement; minus

(e) All Cash and Credit Balances, except to the extent such balances are already deducted in determining amounts under clauses (a) and (b) above; minus

(f) The portion of any Compensation Amounts previously paid to Developer that (i) compensated Developer for cost and revenue impacts attributable to the period after the

Early Termination Date and (ii) were not previously used to reduce Project Debt within the definition of Senior Debt Termination Amount.

2. In the event of termination due to TxDOT's delay in issuing NTP1 or NTP2 as provided in Section 19.4.3 of the Agreement, if as of the date notice of termination is delivered there exists any event or circumstance which entitles either Party to terminate, or with the giving of notice or passage of time, or both, would entitle either Party to terminate, for Force Majeure Event under Section 19.2 of the Agreement, by reason of Termination by Court Ruling under Section 19.12 of the Agreement, or due to lack of occurrence of the NEPA Finality Date under Section 19.13 of the Agreement, then the Termination Compensation shall be an amount equal to the following:

(a) The lesser of (i) the sum of (A) the Initial Senior Debt Termination Amount plus (B) any increase in the Initial Senior Debt Termination Amount directly attributable to a Refinancing of the Initial Base Case Senior Project Debt that (I) was fully and specifically identified and taken into account in the Base Case Financial Model and calculation of the Concession Payment and (II) occurs prior to the date notice of termination is delivered, plus (C) the portion of all Refinancing Gain previously paid to TxDOT, if any, or (ii) the Senior Debt Termination Amount; plus

(b) An amount which, when taken together with interest payments on Subordinate Debt, Distributions made prior to the Early Termination Date, and the cash and credit balances derived from Toll Revenues or interest earnings in accounts held by or on behalf of Developer on the Early Termination Date, including in Lender accounts and reserve accounts, will yield a nominal Post-Tax blended internal rate of return on Subordinate Debt and Contributed Unreturned Equity equal to that projected in the Base Case Financial Model, which rate of return is 12.76% between the date of funding of such Subordinate Debt and Contributed Unreturned Equity and the Early Termination; plus

(c) The incremental increase, if any, in the costs Developer incurs under Section 19.5.11 of the Agreement over the present value of such costs under the Base Case Financial Model, but without double counting of the foregoing debt and equity amounts; minus

(d) All payments to Affiliates in excess of reasonable compensation for necessary services prior to the Early Termination Date or that are advance payments in violation of Section 10.5.3 of the Agreement; minus

(e) All Cash and Credit Balances, except to the extent such balances are already deducted in determining amounts under clauses (a) and (b) above; minus

(f) The portion of any Compensation Amounts previously paid to Developer that (i) compensated Developer for cost and revenue impacts attributable to the period after the Early Termination Date and (ii) were not previously used to reduce Project Debt within the definition of Senior Debt Termination Amount.

3. There shall not be included any increase in the Senior Debt Termination Amount, Subordinate Debt or Contributed Unreturned Equity as a consequence of any Refinancing:

(a) With respect to Termination by Court Ruling, that occurs on or after the date Developer knows, or reasonably should know, about the filing of any legal action seeking a

remedy that would be a Termination by Court Ruling or challenging a NEPA Approval within the definition of NEPA Finality Date;

(b) With respect to termination due to TxDOT delay in issuing NTP1 or NTP2, that occurs at any time; or

(c) With respect to termination due to lack of occurrence of the NEPA Finality Date, that occurs at any time after the court in any litigation challenging a NEPA Approval within the definition of NEPA Finality Date issues any temporary injunction prohibiting or restricting performance of any material portion of the Work.

4. In the event of any termination pursuant to Section 19.14 of the Agreement for which notice of termination is delivered prior to Financial Close, the Termination Compensation shall be an amount equal to the Nonrefundable Lender fees and premiums previously paid by Developer to secure the loan commitment for first priority Initial Project Debt described in Exhibit 5 to the Agreement, in any event not exceeding \$22.5 million and provided that TxDOT has first approved such fees and premiums in writing, which approval shall not to be unreasonably withheld and shall be subject to the time period provided in Section 6.3.2 of the Agreement, provided that a disapproval that Developer demonstrates would jeopardize its available opportunities to timely carry out its Project Plan of Finance shall be deemed unreasonable.

5. If (a) it is established pursuant to the Dispute Resolution Procedures that TxDOT requested or caused the filing, or by collusion with any other Person caused or abetted the filing, of the action that resulted in the issuance of the final court order that led to Termination by Court Ruling, or of an action challenging a NEPA Approval within the definition of NEPA Finality Date or (b) a Termination by Court Ruling results from or entails a breach by TxDOT of its warranties under Section 15.2 but not a corresponding breach by Developer of its warranties under Section 15.1, then Developer shall be compensated in the same manner as if TxDOT had effected a Termination for Convenience and Sections B and G.1 of this Exhibit 23 shall apply instead of Sections E.1 and G.5. This provision shall not apply to legal proceedings initiated by TxDOT challenging applicability of a Change in Law where the final outcome applies the Change in Law to TxDOT or Developer and leads to Termination by Court Ruling.

6. If (a) it is established pursuant to the Dispute Resolution Procedures that Developer requested or caused the filing, or by collusion with any other Person, caused or abetted the filing of the action that resulted in the issuance of the final court order that led to Termination by Court Ruling, or of an action challenging a NEPA Approval within the definition of NEPA Finality Date or (b) a Termination by Court Ruling results from or entails a breach by Developer of its warranties under Section 15.1 but not a corresponding breach by TxDOT of its warranties under Section 15.2, then the compensation shall be addressed in the same manner as if a Termination for Developer Default had occurred and Sections D and G.4 of this Exhibit 23 shall apply instead of Sections E.1 and G.5. This provision shall not apply to legal proceedings initiated by Developer challenging applicability of a Change in Law where the final outcome applies the Change in Law to TxDOT or Developer and leads to Termination by Court Ruling.

7. Subject to Sections E.5 and E.6 above, TxDOT shall pay the Termination Compensation as and when set forth in Section G.5 below.

## F. Claims; Handback Requirements Reserve

1. Subject to Section 19.8.1 of the Agreement and clause (e) of the definition of Fair Market Value, if any outstanding Claim that is independent of the event of termination and determination of Termination Compensation is resolved prior to payment of the Termination Compensation, the Parties shall adjust the Termination Compensation by the amount of the unpaid award, if any, on the Claim.

2. At TxDOT's sole election, it may hold back from payment of the Termination Compensation and transfer to the trustee under the Project Trust Agreement for deposit into the TxDOT Claims Account the amount of any Claim of TxDOT against Developer not resolved prior to payment. TxDOT shall provide written notice to Developer of any such election, the subject Claim and the amount deposited or to be deposited, prior to or concurrently with tendering payment of the Termination Compensation.

3. Refer to Section 8.11.4 of the Agreement for disposition of any funds actually in or required to be added to the Handback Requirements Reserve on the Early Termination Date.

## G. Timing of Payment

### 1. For Termination for Convenience

(a) For Termination for Convenience to be valid and effective, TxDOT must first pay, in immediately available funds, the full amount of the Termination Compensation set forth in Section B.1 above; provided that TxDOT may withhold an amount equal to TxDOT's reasonable estimate of the costs Developer will thereafter incur to perform and complete its post-termination obligations under Section 19.5 of the Agreement by depositing such amount with the trustee under the Project Trust Agreement for disbursement pursuant to Section G.1(b) below. In order for the Termination for Convenience to take effect, TxDOT must make such payment within one year after TxDOT receives the information required to calculate the amount owing. Such information shall consist of the written report from the independent appraiser of Fair Market Value as determined pursuant to Section B.5 above, the Collateral Agent's written statement of the Senior Debt Termination Amount, and Developer's written documentation and other evidence of the amounts of all Cash and Credit Balances, Borrowed Cash and Credit Balances and all other amounts that are part of the calculation of the Termination Compensation, together with Developer's written certification that the amounts shown are true, correct and complete. Developer shall provide its information and the Collateral Agent's written statement as expeditiously as possible and in any event within 90 days after TxDOT delivers the Notice of Termination for Convenience. If for any reason TxDOT does not receive any portion of such information within such 90-day period, then TxDOT shall have the right to make payment based on the appraiser's determination of Fair Market Value and TxDOT's good faith estimate of the other amounts that are components of the Termination Compensation. Upon such payment within such time period, termination shall automatically take effect, notwithstanding, and without prejudice to, any Claim or Dispute regarding whether the Termination Compensation as determined using such appraisal is correct.

(b) TxDOT shall instruct the trustee under the Project Trust Agreement to pay the withheld amount to Developer within ten days after Developer completes all its post-termination obligations under Section 19.5 of the Agreement.

(c) If TxDOT for any reason does not pay the amount under clause (a) above within such one-year period, TxDOT's Notice of Termination for Convenience shall automatically expire; and the Parties' respective rights and obligations under the CDA Documents shall continue without alteration, as if no Notice of Termination for Convenience had been given.

(d) If Developer timely challenges the independent appraiser's determination of Fair Market Value pursuant to Section B.5(i) above, then until the disputed portion of the Termination Compensation is finally determined and paid, the provisions of Section 19.10 of the Agreement shall apply and Developer shall continue to have a pledge of and security interest in and to the Post-Termination Revenue Account under the Project Trust Agreement.

(e) If it is determined by settlement or final judgment that the Termination Compensation due from TxDOT is less than the payment previously made by TxDOT, then within 30 Days after the date of settlement or final judgment Developer shall reimburse the excess payment, together with interest thereon, at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, from the date of overpayment until the date of reimbursement.

(f) If it is determined by settlement or final judgment that the Termination Compensation due from TxDOT is more than the payment previously made by TxDOT, then within 30 Days after the date of settlement or final judgment TxDOT shall pay Developer the additional amount, together with interest thereon, at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, from the date of underpayment until the date of payment of the additional amount.

## 2. For Termination Due to Force Majeure Event

(a) If the Agreement and Lease are terminated due to Developer's or TxDOT's valid exercise of its right to terminate under Section 19.2 of the Agreement and the other Party does not timely elect (or, if Section 19.2.3.4 of the Agreement applies, lacks the right) to continue the Agreement and Lease in effect pursuant to Section 19.2, then TxDOT shall pay the Termination Compensation within 60 days after all the following occur: (i) if applicable, the other Party's period of time to elect expires; (ii) TxDOT receives from the Collateral Agent a written statement of the Senior Debt Termination Amount; and (iii) TxDOT receives from Developer written documentation and other evidence of all Borrowed Cash and Credit Balances, together with Developer's written certification that the amount shown is true, correct and complete. TxDOT may withhold, however, an amount equal to TxDOT's reasonable estimate of the costs Developer will thereafter incur to perform and complete its post-termination obligations under Section 19.5 of the Agreement by depositing such amount with the trustee under the Project Trust Agreement for disbursement pursuant to Section G.2(b) below. If for any reason TxDOT does not receive such statement from the Collateral Agent or such written documentation, evidence and certification of all Borrowed Cash and Credit Balances within 30 days after the other Party's period of time to elect expires (or, if Developer exercises its right to terminate under Section 19.2.3.4 of the Agreement, within 30 days after such exercise), then TxDOT shall have the right to pay Termination Compensation based on its own good faith calculation of the Termination Compensation.

(b) TxDOT shall instruct the trustee under the Project Trust Agreement to pay the withheld amount to Developer within ten days after Developer completes all its post-termination obligations under Section 19.5 of the Agreement.

(c) If TxDOT exercises the right to terminate, then termination shall be valid and effective on the date TxDOT pays, in immediately available funds, the full amount determined pursuant to Section G.2(a) above. If Developer exercises the right to terminate, then termination shall be valid and effective on the date Developer delivers its notice of termination to TxDOT.

(d) If as of the date termination is valid and effective any portion of the Termination Compensation is not yet paid, then such portion shall bear interest from such date until paid at the blended non-default rate for the Project Debt that is the basis for the calculation of the Termination Compensation.

(e) In the event of any dispute over the Termination Compensation, TxDOT shall pay the disputed portion to Developer in immediately available funds within 30 Days after it is determined by settlement, final order or final judgment, together with interest thereon as stated above.

(f) From and after the Early Termination Date until the Termination Compensation is finally determined and paid, the provisions of Section 19.10 of the Agreement shall apply and Developer shall continue to have a pledge of and security interest in and to the Post-Termination Revenue Account under the Project Trust and Security Instruments.

3. For Termination Due to TxDOT Default, TxDOT Suspension of Work or Certain Delayed Notices to Proceed

(a) If the Agreement and Lease are terminated due to TxDOT Default or TxDOT suspension of work as provided in Section 19.4 of the Agreement, termination shall be valid and effective on the date notice of termination is delivered. If the Agreement and Lease are terminated due to TxDOT's delay in issuing NTP1 or NTP2 as provided in Section 19.4.3 of the Agreement and the measure of the Termination Compensation is under Section B above, termination shall be valid and effective on the date notice of termination is delivered. Subject to Sections 19.3.2 and 19.4.4, TxDOT shall deliver to Developer, in immediately available funds, within 60 Days after the Early Termination Date, the Termination Compensation that TxDOT determines in good faith is due, less a holdback amount equal to TxDOT's reasonable estimate of the costs Developer will thereafter incur to perform and complete its post-termination obligations under Section 19.5 of the Agreement by depositing such amount with the trustee under the Project Trust Agreement for disbursement pursuant to Section G.3(b) below.

(b) TxDOT shall instruct the trustee under the Project Trust Agreement to pay the holdback amount to Developer within ten days after Developer completes all its post-termination obligations under Section 19.5 of the Agreement.

(c) If as of the date TxDOT tenders payment under clause (a) above the Parties have not agreed upon the amount of Termination Compensation due, then:

(i) TxDOT shall proceed with such payment to Developer;

(ii) Within 30 days after receiving such payment Developer shall deliver to TxDOT written notice of the additional amount of Termination Compensation that Developer in good faith determines is still owing (the "disputed portion");



(iii) TxDOT shall pay the disputed portion of the Termination Compensation to Developer in immediately available funds within 30 Days after the disputed portion is determined by settlement, final order or final judgment, and also shall pay interest thereon, at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, commencing 30 Days after the Early Termination Date until paid; and

(iv) Failure by TxDOT to effect payment by such date shall not entitle Developer to reinstatement of the Developer's Interest or to rescission of the termination.

(d) From and after the Early Termination Date until the Termination Compensation is finally determined and paid, the provisions of Section 19.10 of the Agreement shall apply and Developer shall continue to have a pledge of and security interest in and to the Post-Termination Revenue Account under the Project Trust and Security Instruments.

(e) If it is determined by settlement or final judgment that the Termination Compensation due from TxDOT is less than the payment previously made by TxDOT, then within 30 Days after the date of settlement or final judgment Developer shall reimburse the excess payment, together with interest thereon at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, from the date of overpayment until the date of reimbursement.

#### 4. For Developer Default

(a) If the Agreement and Lease are terminated due to TxDOT's exercise of its right to terminate due to Developer Default, termination shall be valid and effective as and when set forth in Section 19.3.1 of the Agreement; and, subject to Sections 19.1.4 and 19.3.3, TxDOT shall deliver to Developer, within the later of (i) 30 Days after Developer completes its post-termination obligations under Section 19.5 of the Agreement or (ii) 60 Days after the Early Termination Date, immediately available funds equal to the Termination Compensation that TxDOT determines in good faith is due. If TxDOT does not pay such amount by the later of such dates, such amount shall bear interest at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, commencing on the later of such dates until paid.

(b) If as of the date TxDOT tenders payment under clause (a) above the Parties have not agreed upon the amount of Termination Compensation due, then:

(i) TxDOT shall proceed with such payment to Developer;

(ii) Within 30 days after receiving such payment Developer shall deliver to TxDOT written notice of the additional amount of Termination Compensation that Developer in good faith determines is still owing (the "disputed portion");

(iii) TxDOT shall pay the disputed portion of the Termination Compensation to Developer in immediately available funds within 30 Days after the disputed portion is determined by settlement, final order or final judgment, together with interest thereon at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, commencing on the later of the two dates set forth in clause (a) above until paid; and

(iv) Failure by TxDOT to effect payment by such date shall not entitle Developer to reinstatement of the Developer's Interest or to rescission of the termination.

(c) From and after the Early Termination Date until the Termination Compensation is finally determined and paid, the provisions of Section 19.10 of the Agreement shall apply and Developer shall continue to have a pledge of and security interest in and to the Post-Termination Revenue Account under the Project Trust Agreement.

(d) If it is determined by settlement or final judgment that the Termination Compensation due from TxDOT is less than the payment previously made by TxDOT, then within 30 Days after the date of settlement or final judgment Developer shall reimburse the excess payment, together with interest thereon at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, from the date of overpayment until the date of reimbursement.

5. For Termination by Court Ruling, Certain Delayed Notices to Proceed, Lack of NEPA Finality or Section 19.14 Events

(a) In the event of Termination by Court Ruling, termination shall be valid and effective on the entry of final judgment. If the Agreement and Lease are terminated due to TxDOT's delay in issuing NTP1 or NTP2 as provided in Section 19.4.3 of the Agreement and the measure of the Termination Compensation is under Section E above, due to lack of occurrence of the NEPA Finality Date as provided in Section 19.13 of the Agreement or due to either Party's election as provided in Section 19.14 of the Agreement, termination shall be valid and effective on the date notice of termination is delivered. In the event either Party elects to terminate as provided in Section 19.14, termination shall be valid and effective on the date notice of termination is delivered and the negotiating period under Section 19.14 expires without mutual agreement in writing to rescind the termination notice. TxDOT shall deliver to Developer, within 60 days after the later of (i) the Early Termination Date or (ii) the date TxDOT receives from the Collateral Agent a written statement of the Initial Senior Debt Termination Amount, increases in the Initial Senior Debt Termination Amount due to each Refinancing described in Section E.1(a) above, and the Senior Debt Termination Amount and from Developer written documentation and other evidence of the amounts of the Subordinate Debt, Contributed Unreturned Equity, and all Borrowed Cash and Credit Balances (or, in the case of termination governed by Section E.4 above, written documentation and other evidence of the amounts described therein), together with Developer's written certification that the amounts shown are true, correct and complete, immediately available funds equal to the Termination Compensation that TxDOT determines in good faith is due, less a holdback amount equal to TxDOT's reasonable estimate of the costs Developer will thereafter incur to perform and complete its post-termination obligations under Section 19.5 of the Agreement. TxDOT shall deposit such holdback amount with the trustee under the Project Trust Agreement for disbursement pursuant to Section G.5(b) below. If TxDOT does not pay such amount of Termination Compensation by the later of such dates, such amount shall bear interest at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, commencing on the later of such dates until paid.

(b) TxDOT shall instruct the trustee under the Project Trust Agreement to pay the holdback amount to Developer within ten days after Developer completes all its post-termination obligations under Section 19.5 of the Agreement.

(c) If as of the date TxDOT tenders payment under clause (a) above the Parties have not agreed upon the amount of Termination Compensation due, then:

(i) TxDOT shall proceed with such payment to Developer;

(ii) Within 30 days after receiving such payment Developer shall deliver to TxDOT written notice of the additional amount of Termination Compensation that Developer in good faith determines is still owing (the "disputed portion");

(iii) TxDOT shall pay the disputed portion of the Termination Compensation to Developer in immediately available funds within 30 Days after the disputed portion is determined by settlement, final order or final judgment, together with interest thereon at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, commencing on the later of the two dates set forth in clause (a) above until paid; and

(iv) Failure by TxDOT to effect payment by such date shall not entitle Developer to reinstatement of the Developer's Interest or to rescission of the termination.

(d) From and after the Early Termination Date until the Termination Compensation is finally determined and paid, the provisions of Section 19.10 of the Agreement shall apply and Developer shall continue to have a pledge of and security interest in and to the Post-Termination Revenue Account under the Project Trust and Security Instruments.

(e) If it is determined by settlement or final judgment that the Termination Compensation due from TxDOT is less than the payment previously made by TxDOT, then within 30 Days after the date of settlement or final judgment Developer shall reimburse the excess payment, together with interest thereon at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, from the date of overpayment until the date of reimbursement.

**EXHIBIT 24**

**OPTION CONSIDERATION FOR EXTENSION OF LONG STOP DATE**

The consideration for each of the Collateral Agent's options to extend the Long Stop Date as set forth in Section 20.4.9 of the Agreement shall equal \$4,500,000.

**EXHIBIT 25**

**INITIAL DESIGNATION OF AUTHORIZED REPRESENTATIVES**

**TxDOT's Authorized Representative:**

TxDOT hereby designates the persons from time to time serving as the Executive Director of TxDOT as its Authorized Representatives and such other persons as the Executive Director may from time to time designate by delivering written notice thereof to Developer. Any such designations by the Executive Director may be limited in scope and duration and may be revoked at any time by delivery of written notice thereof to Developer.

**Developer's Authorized Representative:**

Developer hereby designates the persons from time to time serving as the Chief Executive Officer of Developer as its Authorized Representatives and such other persons as the Chief Executive Officer may from time to time designate by delivering written notice thereof to TxDOT. Any such designations by the Chief Executive Officer may be limited in scope and duration and may be revoked at any time by delivery of written notice thereof to TxDOT.

**EXHIBIT 26**

**FORM OF JOINDER AGREEMENT**

This JOINDER AGREEMENT (this "Joinder Agreement") is made and entered into effective as of \_\_\_\_\_, 20\_\_ by and among the Texas Department of Transportation, a public agency of the State of Texas ("TxDOT"), LBJ Infrastructure Group LLC, a Delaware limited liability company ("Developer"), and The Bank of New York Trust Company, N.A. (the "Custodian").

WHEREAS, TxDOT and Developer have entered into the certain Comprehensive Development Agreement dated \_\_\_\_\_, 20\_\_ (the "CDA") pursuant to which Developer has agreed to construct and operate the IH 635 Managed Lanes Toll Project described therein (the "Project");

WHEREAS, TxDOT and the Custodian have entered into the certain Master Lockbox and Custodial Account Agreement dated as of November 9, 2007 (the "Master Lockbox and Custodial Account Agreement");

**NOW, THEREFORE**, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, TxDOT, Developer and the Custodian agree as follows:

1. Defined Terms. Capitalized terms not otherwise defined in this Joinder Agreement shall have the same meaning assigned to such terms in the Master Lockbox and Custodial Account Agreement. The following terms have the meaning set forth below:

"Project Trust Agreement" means the Project Trust Agreement dated as of \_\_\_\_\_, 20\_\_, by and between Developer and the Project Trustee, as it may be amended or modified from time to time and any replacement thereof that constitutes a Project Trust Agreement under the CDA.

"Project Trustee" means Wells Fargo Bank, N.A., as trustee under the Project Trust Agreement or any successor thereto in such capacity.

2. Designation of Developer as "Beneficiary". TxDOT hereby designates Developer as a "Beneficiary" under the Master Lockbox and Custodial Account Agreement with respect to the Project and toll revenues arising from the Project which are at any time held by the Custodian under the Master Lockbox and Custodial Account Agreement and which under the terms of Section 19.10.4 of the CDA TxDOT is obligated to direct to be paid to the Project Trustee, and the Custodian hereby acknowledges said designation, with the full rights, powers and benefits granted to a "Beneficiary" thereunder. On the date described in Section 19.10.11 of the CDA, Developer's rights as a Beneficiary shall cease and Developer shall deliver to the Custodian written notice of confirmation of termination of Developer's rights as a Beneficiary.

3. Agreements of TxDOT. TxDOT hereby covenants and agrees as follows:

(a) TxDOT will comply with the terms of the Master Lockbox and Custodial Account Agreement and perform the obligations of TxDOT specified in the Master Lockbox and Custodial Account Agreement, including but not limited to, the obligation of TxDOT to direct the Custodian to pay directly to the Project Trustee any amount that is in respect of toll transactions on the Project after the Termination Date under the CDA. TxDOT agrees that all funds that it instructs the Custodian to pay to the Project Trustee shall be designated by the Custodian in its transmittal to the Project Trustee as "Toll Revenues from Transponder Transactions or Video Transactions".

(b) TxDOT will enforce the Master Lockbox and Custodial Account Agreement in accordance with its terms and provisions and will not amend, modify or waive any of the terms and provisions thereof which would materially adversely affect the rights of Developer as a "Beneficiary" thereunder.

(c) TxDOT will not terminate or allow to expire in accordance with its terms the Master Lockbox and Custodial Account Agreement unless (i) TxDOT has executed a new Master Lockbox and Custodial Account Agreement with a replacement custodian on terms and conditions substantially similar to the Master Lockbox and Custodial Account Agreement, or (ii) the date described in Section 19.10.11 of the CDA has occurred.

(d) TxDOT shall deliver to Developer and the Collateral Agent a copy of all notices, certificates, and instructions delivered by or on behalf of TxDOT to the Custodian as and when delivered to the Custodian.

4. Agreements of Developer. Developer hereby covenants and agrees that it shall have no greater right or interest in and to the funds and accounts created pursuant to the Master Custodial Account Agreement than is provided in the CDA.

5. Agreements of Custodian. The Custodian hereby covenants and agrees as follows:

(a) The Custodian acknowledges that Developer is a "Beneficiary", as that term is used in the Master Lockbox and Custodial Account Agreement, entitled to the rights of a Beneficiary as provided thereunder, including Article VII thereof, and this Joinder Agreement constitutes a Joinder Agreement under the Master Lockbox and Custodial Account Agreement.

(b) The Custodian hereby acknowledges that Developer may from time to time enter into certain Financing Documents pursuant to which Developer has pledged its rights as a "Beneficiary" to secure its various obligations under or related to such Financing Documents. The Custodian acknowledges that the Secured Party acts as agent for various Persons in connection with the exercise of such Person's rights under the Financing Documents.

(c) The Custodian will transfer amounts required to be transferred to Developer as a Beneficiary under Section 2.03 of the Master Lockbox and Custodial Account

Agreement to the Project Trustee as follows or as otherwise from time to time instructed by the Project Trustee and shall designate such amounts at the time of each transfer as "Toll Revenues from Transponder Transactions or Video Transactions":

Name of Project Trustee: Wells Fargo Bank, N.A.  
ABA: 121-000-248  
Account: 000-1038377  
BNF: Clearing Account  
F/F/C: (Name of Transaction)  
Attn: Jose Gaytan  
Telephone: (512) 344-7306

6. Agreements as to Toll Revenues. Each of TxDOT, the Custodian and Developer hereby acknowledges and agrees as follows.

(a) The Master Lockbox and Custodial Account Agreement and arrangements thereunder are intended to ensure that (i) toll revenues from operation of the Project do not come into the possession of, or under the control of, TxDOT, the State of Texas, or any other governmental entity of the State of Texas, or become the assets or property of TxDOT, the State of Texas or any such other governmental entity that is subject to constraints imposed by principles of legislative or administrative appropriation, or to treatment as public funds, unless and until the portion of such toll revenues that TxDOT is entitled to receive pursuant to the terms of the CDA is actually distributed to TxDOT from funds deposited into the Master Custodial Accounts, and (ii) toll revenues from the operation of the Project do not become payments, project savings, refinancing dividends or any other revenue under a comprehensive development agreement received by TxDOT or the Texas Transportation Commission for any purposes by virtue of their deposit into any Master Lockbox Account or Master Custody Account or the custodial arrangements evidenced by the Master Lockbox and Custodial Account Agreement.

(b) All toll revenue that accrues from the use of the Project during the period this Joinder Agreement is in effect shall be subject to the respective rights and interests of TxDOT and Developer as set forth in the Project Trust Agreement.

(c) To the extent provided in the Master Lockbox and Custodial Account Agreement, the Custodian will have dominion and control of all toll revenues from operation of the Project for purposes of crediting and transferring such toll revenues from use of the Project to the Project Trustee for deposit as contemplated by the Project Trust Agreement.

(d) If for any reason TxDOT receives any payment for any use of the Project during the period this Joinder Agreement is in effect, all toll revenues that are part of such payment shall be deemed received by TxDOT merely as a bailee or agent for the Custodian and shall not constitute funds of TxDOT or the State of Texas or funds received by TxDOT or the Texas Transportation Commission as payments, project savings, refinancing dividends or any other revenue under a comprehensive development agreement, and TxDOT agrees to promptly remit such payments to the Custodian for handling in accordance with the terms of the Master Lockbox and Custodial Account Agreement.



(e) None of the Master Lockbox Accounts or Master Custody Accounts are accounts or subaccounts established pursuant to Section 228.012 of the Texas Transportation Code.

7. Governing Law. This Joinder Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

8. DRP Governed Agreement. TxDOT and Developer agree that all disputes between them arising under this Joinder Agreement shall be subject to the Dispute Resolution Procedures under the CDA.

IN WITNESS WHEREOF, the parties hereto have executed this Joinder Agreement by their officers thereunto duly authorized as of the day and year first written above.

**TxDOT**

**TEXAS DEPARTMENT OF TRANSPORTATION**

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

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

Title: \_\_\_\_\_

**Developer**

**LBJ INFRASTRUCTURE GROUP LLC,**  
a Delaware limited liability company

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

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

Title: \_\_\_\_\_

**Custodian**

**THE BANK OF NEW YORK TRUST COMPANY,  
N.A.**

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

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

Title: \_\_\_\_\_