

**EXHIBIT 1**

**ABBREVIATIONS AND DEFINITIONS**

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### ABBREVIATIONS AND DEFINITIONS

Unless otherwise specified, wherever the following abbreviations or terms are used in the Agreement and the Technical Provisions, they shall have the meanings set forth below:

<b>AAP</b>	AASHTO Accreditation Program
<b>AASHTO</b>	American Association of State Highway and Transportation Officials
<b>ACHP</b>	Advisory Council on Historic Preservation
<b>ACI</b>	American Concrete Institute
<b>ACM/AVI</b>	Automatic Coin Machine / Automatic Vehicle Information
<b>ACORD</b>	Association for Cooperative Operations Research and Development
<b>ACT</b>	Antiquities Code of Texas
<b>ADAAG</b>	Americans with Disabilities Act Accessibility Guidelines
<b>ADT</b>	Average Daily Traffic
<b>AISC</b>	American Institute of Steel Construction, Inc
<b>AMRL</b>	AASHTO Materials Reference Laboratory
<b>ANSI</b>	American National Standards Institute
<b>AREMA</b>	American Railway Engineering and Maintenance of Way Association
<b>ASTM</b>	American Society of Testing and Materials
<b>ATC</b>	Alternative Technical Concept
<b>ATT/AVI</b>	Attendant / Automatic Vehicle Identification
<b>AUI</b>	Advanced Utility Installation
<b>AVI</b>	Automatic Vehicle Identification
<b>AWS</b>	American Welding Society
<b>BI</b>	Base Index
<b>BMP</b>	Best Management Practice
<b>BO</b>	Biological Opinion
<b>CADD</b>	Computer Aided Drafting and Design
<b>CCI</b>	Construction Cost Index
<b>CCTV</b>	Closed Circuit Television
<b>CDA</b>	Comprehensive Development Agreement
<b>CD-R</b>	Compact Disc Recordable
<b>CD ROM</b>	Compact Disc Read Only Memory
<b>CEPP</b>	Comprehensive Environmental Protection Program
<b>CERCLA</b>	Comprehensive Environmental Response Compensation and Liability Act
<b>CFR</b>	Code of Federal Regulations

<b>CMP</b>	Construction Monitoring Plan
<b>CO</b>	Carbon Monoxide
<b>CQAF</b>	(Independent) Construction Quality Acceptance Firm
<b>CQAM</b>	(Independent) Construction Quality Acceptance Manager
<b>CQP</b>	Construction Quality Program
<b>CRCP</b>	Continuous Reinforced Concrete Pavement
<b>CSJ</b>	Control Section Job
<b>CSTM</b>	Materials and Pavements Section of TxDOT Construction Division
<b>CWA</b>	Clean Water Act
<b>CZP</b>	Contributing Zone Plan
<b>DBE</b>	Disadvantaged Business Enterprise
<b>DSS</b>	Decent Safe and Sanitary (dwelling)
<b>DWC</b>	Deferred Work Component
<b>ECI</b>	Environmental Compliance Inspector
<b>ECM</b>	Environmental Compliance Manager
<b>ECMP</b>	Environmental Compliance and Mitigation Plan
<b>EDMS</b>	Electronic Data Management System
<b>EMR</b>	Environmental Monitoring Report
<b>EMS</b>	Environmental Management System
<b>EP</b>	Extraction Procedure (toxicity)
<b>EPD</b>	Escrowed Proposal Documents
<b>EPIC</b>	Environmental Permits Issues and Commitments
<b>EPTP</b>	Environmental Protection Training Plan
<b>ESA</b>	Endangered Species Act of 1973, as amended
<b>ESAL</b>	Equivalent Single-Axle Load
<b>ET</b>	Environmental Team
<b>ETCS</b>	Electronic Toll Collection System
<b>FAPG</b>	Federal-Aid Policy Guide
<b>FEIS</b>	Final Environmental Impact Statement
<b>FEMA</b>	Federal Emergency Management Agency
<b>FHWA</b>	Federal Highway Administration
<b>FM</b>	Farm to Market Road
<b>FOB</b>	Field Operation Building
<b>FONSI</b>	Finding of No Significant Impact
<b>FTP</b>	File Transfer Protocol
<b>GAAP</b>	Generally Accepted Accounting Principles
<b>GIS</b>	Geographical Information System
<b>HEC</b>	Hydraulic Engineering Circular

<b>HVAC</b>	Heating Ventilation and Air Conditioning
<b>ID</b>	Identification
<b>IH</b>	Interstate Highway
<b>IRI</b>	International Roughness Index
<b>ISDN</b>	Integrated Services Digital Network
<b>ISI</b>	Initial Serviceability Index
<b>ISO</b>	International Standards Organization
<b>ITP</b>	Instructions to Proposers
<b>ITS</b>	Intelligent Traffic Sub-system
<b>IWP</b>	Investigative Work Plan
<b>JSA</b>	Job Safety Analysis
<b>LRFD</b>	Load and Resistance Factor Design
<b>LSLS</b>	Licensed State Land Surveyor
<b>MOU</b>	Memorandum of Understanding
<b>MPH</b>	Miles Per Hour
<b>MPO</b>	Metropolitan Planning Organization
<b>MS4</b>	Municipal Separate Storm Sewer System
<b>MSE</b>	Mechanically Stabilized Earth
<b>MUAA</b>	Master Utility Adjustment Agreement
<b>NAVD</b>	North American Vertical Datum
<b>NBIS</b>	National Bridge Inspection Standards
<b>NCHRP</b>	National Cooperative Highway Research Program
<b>NCR</b>	Non-Conformance Report
<b>NEPA</b>	National Environmental Policy Act
<b>NFIP</b>	National Flood Insurance Program
<b>NHPA</b>	National Historical Preservation Act
<b>NICET</b>	National Institute for Certified Engineering Technicians
<b>NOI</b>	Notice of Intent
<b>NPDES</b>	National Pollutant Discharge Elimination System
<b>NRCS</b>	Natural Resource Conservation Service
<b>NTP</b>	Notice to Proceed
<b>OSHA</b>	Occupational Safety and Health Administration
<b>PA</b>	Programmatic Agreement
<b>PCO</b>	Potential Change Order
<b>PCS</b>	Pavement Condition Survey
<b>PH</b>	Percent Hydrogen
<b>PI</b>	Plasticity Index
<b>PrI</b>	Principle Investigator

<b>PIAP</b>	Project Independent Acceptance Program
<b>PM</b>	Project Manager
<b>PMP</b>	Project Management Plan
<b>PSQCM</b>	Professional Services Quality Control Manager
<b>PUA</b>	Possession and Use Agreement
<b>PVC</b>	Polyvinyl Chloride
<b>QC / QRP</b>	Quality Control / Quality Review Program
<b>QMP</b>	Quality Management Plan
<b>RFI</b>	Request For Information
<b>QS</b>	Qualifications Submittal
<b>RCP</b>	Reinforced Concrete Pipe
<b>RFP</b>	Request for Proposals
<b>RFQ</b>	Request for Qualifications
<b>RHA</b>	Rivers and Harbors Act
<b>ROE</b>	Right of Entry
<b>ROW</b>	Right of Way
<b>ROWIS</b>	Right of Way Information System
<b>ROW AM</b>	Right of Way Acquisition Manager
<b>RPLS</b>	Registered Professional Land Surveyor
<b>RTP</b>	Ramp Toll Plazas
<b>SDPP</b>	Special Deposit and Possession Procedure
<b>SEC</b>	Securities and Exchange Commission
<b>SF</b>	Square Foot
<b>SH</b>	State Highway
<b>SHPO</b>	State Historic Preservation Officer
<b>SI</b>	System Integrator
<b>SIR</b>	Site Investigation Report
<b>SSCB</b>	Single Slope Concrete Barrier
<b>SSTR</b>	Single Slope Traffic Railing
<b>SUE</b>	Subsurface Utility Engineering
<b>SW3P</b>	Storm Water Pollution Prevention Plan
<b>TAS</b>	Texas Accessibility Standards
<b>TAC</b>	Texas Administrative Code
<b>TCEQ</b>	Texas Commission on Environmental Quality
<b>TCLP</b>	Toxicity Characteristic Leaching Procedure
<b>THC</b>	Texas Historical Commission
<b>TIM/OS</b>	Turnpikes Intelligent Management / Operation System
<b>TL</b>	Testing Level

<b>TMUTCD</b>	Texas Manual on Uniform Traffic Control Devices
<b>TP</b>	Technical Provisions
<b>TPDES</b>	Texas Pollutant Discharge Elimination System
<b>TSI</b>	Terminal Serviceability Index
<b>TxDOT</b>	Texas Department of Transportation
<b>UAAA</b>	Utility Adjustment Agreement Amendment
<b>UAP</b>	TxDOT Utility Accommodation Policy
<b>UAR</b>	TxDOT Utility Accommodation Rules
<b>UAdR</b>	Utility Adjustment Report
<b>UCS</b>	Utility Coordination Specialist
<b>UDC</b>	Utility Design Coordinator
<b>UM</b>	Utility Manager
<b>UPA</b>	Utility and Personnel Access-way
<b>UPS</b>	Uninterruptible Power Supply
<b>US</b>	United States Highway
<b>USACE</b>	United States Army Corps of Engineers
<b>USDOT</b>	United States Department of Transportation
<b>USEPA</b>	United States Environmental Protection Agency
<b>USFWS</b>	United States Fish and Wildlife Service
<b>USGS</b>	United States Geological Survey
<b>USPAP</b>	Uniform Standard of Professional Appraisal Practices
<b>UST</b>	Underground Storage Tank
<b>VE</b>	Value Engineering
<b>VMS</b>	Variable Message Sign
<b>WBS</b>	Work Breakdown Structure

**AASHTO Guidelines** shall mean the standards for design and construction of roadways and related facilities promulgated by American Association of State Highway and Transportation Officials.

**Abbreviated Utility Assembly** shall mean the collection of plans and other information and materials which Developer is required to submit to TxDOT in connection with each Utility proposed to remain at its original location within the Project ROW, as more particularly described in Section 6.3.4.5 of the Technical Provisions; a single Abbreviated Utility Assembly may address more than one such Utility.

**Acceleration Costs** shall mean those fully documented increased costs reasonably incurred by Developer (that is, costs over and above what Developer would otherwise have incurred) which are directly and solely attributable to increasing the rate at which the Work is performed in an attempt to complete necessary elements of the Work earlier than otherwise anticipated, such as for additional equipment, additional

crews, lost productivity, overtime and shift premiums, increased supervision and any unexpected material, equipment or crew movement necessary for re-sequencing in connection with acceleration efforts and/or a Recovery Schedule.

**Acquisition Packages** shall mean the packages of documentation and information for the acquisition of parcels for the Project ROW described in Section 7.3.6 of the Technical Provisions.

**Act** shall have the meaning set forth in Recital A of the Agreement.

**Additional Properties** shall mean any real property (which term is inclusive of all permanent estates and interests in real property), improvements and fixtures outside of the Schematic ROW, that will be acquired in connection with the Project, including (a) rest area sites, (b) the Developer-Designated ROW, and (c) any additional real property outside of the Schematic ROW that must be acquired due to a TxDOT-Directed Change, including any air space, surface rights and subsurface rights within such additional real property area that TxDOT directs Developer to acquire for the Project. The term specifically excludes: (i) Replacement Utility Property Interests and (ii) any temporary easements or other real property interests that Developer may deem necessary or advisable to acquire, at its own cost and expense, for work space, contractor lay-down areas, material storage areas, borrow sites, or other convenience of Developer.

**Adjacent Work** shall mean any project, work, improvement or development to be planned, designed or constructed which could or does impact the Project and/or is adjacent to the Project. Examples of Adjacent Work include proposed subdivisions, other roads constructed by Governmental Entities, site grading and drainage and other development improvement plans and Utility projects.

**Adjust** shall mean to perform a Utility Adjustment.

**Adjustment Permits** shall mean all Governmental Approvals and any private approvals, including the consent of a property owner, necessary for any Utility Adjustment. The term specifically excludes Utility Joint Use Agreements.

**Adjustment Standards** means the standard specifications, standards of practice, and construction methods that a Utility Owner customarily applies to facilities (comparable to those being Adjusted on account of the Project) constructed by the Utility Owner (or for the Utility Owner by its contractors), at its own expense. Unless the context requires otherwise, references in the CDA Documents to a Utility Owner's "applicable Adjustment Standards" refer to those that are applicable pursuant to Section 6.8.3.5 of the Agreement.

**Advanced Utility Installation** shall mean an installation of a Utility granted, and any additional cost for accommodations for the roadway may be paid for by TxDOT allowing the said Utility to be installed to accommodate the construction of the highway features set forth by Developer. This procedure is typically utilized when the Utility has acquired an easement prior to the Department acquiring land for the Project. Developer

under contract with TxDOT must participate in such installation by providing the most current plans for the installation and signing off that the Utility will not be in conflict with any of the roadway design features.

**Administrative Settlement Committee** shall mean a committee appointed by the District Engineer or his designee consisting of the ROW Administrator or his designee and two or more members who will analyze pertinent information and reach consensus on whether an administrative settlement should or should not be recommended.

**Aesthetic Committee** shall mean a committee comprised of TxDOT representatives that will review and approve the overall landscape and aesthetic layouts prepared by Developer in conformance with the Landscape Aesthetic Guidelines found in Attachment 15-1 to the Technical Provisions.

**Affidavit of Property Interest** shall mean the document describing an Existing Utility Property Interest claimed by a Utility Owner, as more particularly described in Section 6.2.4.1 of the Technical Provisions.

**Affiliate** shall mean:

- (a) any shareholder, member, partner or joint venture member of Developer,
- (b) any Person which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, Developer or any of its shareholders, members, partners or joint venture members; and
- (c) any Person for which ten percent or more of the equity interest in such Person is held directly or indirectly, beneficially or of record by (i) Developer, (ii) any of the shareholders, members, partners or joint venture members of Developer, or (iii) any Affiliate of Developer under clause (b) of this definition.

For purposes of this definition the term "control" shall mean the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, by contract, family relationship or otherwise. "**Affiliated**" shall mean having the status of an Affiliate.

**Agreement** shall mean that certain Comprehensive Development Agreement, to which this Exhibit 1 is attached, executed by TxDOT and Developer, including any and all amendments thereto.

**Alternate Procedure** shall mean the alternate procedure for processing Utility Adjustments for FHWA approval pursuant to 23 CFR Section 645.119, which was approved by the FHWA for TxDOT by letter dated October 16, 1973.



**Alternate Procedure List** shall mean the list of Utilities to be Adjusted (and related information) which TxDOT will submit to the FHWA, as the same may be amended from time to time.

**Alternative Technical Concept** shall have the meaning set forth in Section 3.1 of the ITP.

**Appeal Period** has the meaning set forth in Section 19.3.5.1(a) of the Agreement.

**Archaeologist** shall mean a member of the Project Environmental Team responsible for assessment of cultural resources potentially impacted by the Work as more particularly described in Section 4.4 of the Technical Provisions.

**Authorized Representative** shall have the meaning set forth in Section 24.6.1 of the Agreement.

**BAFO** means Best and Final Offer, as described in ITP Section 9.0.

**BAFO Due Date** means the deadline (date and time) for submission of BAFOs identified in ITP Section 1.6.

**Basic Configuration** shall mean, for each configuration of the Project, as applicable, the following elements defining the Project as set forth in the Schematic Design plans:

- (a) the Schematic ROW and control of access as shown in the Schematic Design plans;
- (b) the number of lanes for the Schematic Design;
- (c) the approximate location of the Tolling Zones;
- (d) the approximate location of ramps, and
- (e) the approximate location of interchanges and the type of interchanges.

**Basic Costs** shall mean the costs for the following, whether incurred by Developer directly or reimbursed by Developer to a Utility Owner: (i) Professional Services associated with, and construction, of a Utility Adjustment, plus (ii) acquisition of New Utility Property Interests or compensation to the Utility Owner for relinquishment of Existing Utility Property Interests within the Final ROW required for a Utility Adjustment.

**Best Management Practices** shall have the meaning set forth in *Storm Water Management For Construction Activities: Developing Pollution Prevention Plans and Best Management Practices* (EPA Document 832 R 92-005).

**Betterment** has, with respect to a given Utility being Adjusted, the meaning (if any) set forth in the applicable Utility Agreement(s); in all other cases, "Betterment" shall mean any upgrading of such facility in the course of such Utility Adjustment that is not attributable to the construction of the Project and is made solely for the benefit of and at the election of the Utility Owner, including an increase in the capacity, capability, efficiency or function of an Adjusted Utility over that which was provided by the existing Utility; provided, however, that the following shall not be considered Betterments:

- (a) any upgrading which is required by the Project;
- (b) replacement devices or materials that are of equivalent standards although not identical;
- (c) replacement of devices or materials no longer regularly manufactured with an equivalent or next higher grade or size;
- (d) any upgrading required by applicable Law;
- (e) replacement devices or materials that are used for reasons of economy (e.g., non-stocked items may be uneconomical to purchase);
- (f) any upgrading required by the Utility Owner's written "standards" meeting the requirements described in Section 6.1.2.2 of the Technical Provisions; or
- (g) any discretionary decision by a Utility Owner that is contemplated within a particular standard described in clause (f) above.

For fiber optic Utilities, extension of a Utility Adjustment to the nearest splice boxes shall not be considered a Betterment if required by the Utility Owner in order to maintain its written telephony standards.

**Book 1** shall mean the Agreement, all exhibits thereto, and the executed originals of Exhibits that are contracts (if any).

**Book 2** means the project-specific technical provisions entitled "Design-Build Technical Provisions for Comprehensive Development Agreement Book 2."

**Book 3** means TxDOT's standard technical provisions for CDA's entitled "Programmatic Design-Build Technical Provisions for Comprehensive Development Agreement – Book 3".

**Business Day** shall mean days on which TxDOT is officially open for business.

**Capital Maintenance Agreement** or **CMA** shall mean that certain Capital Maintenance Agreement executed by TxDOT and Maintenance Contractor for Maintenance Contractor to perform, at TxDOT's sole option, certain maintenance for the Project.

**CDA Documents** has the meaning set forth in Section 1.2.1 of the Agreement.

**Certificate of Final Acceptance** shall mean the certificate issued by TxDOT indicating that the Project has achieved the conditions for Final Acceptance.

**Certificate of Substantial Completion** shall mean the certificate issued by TxDOT indicating that the Project has achieved the conditions for Substantial Completion.

**Change in Law** shall mean: (a) the adoption of any Law after the Proposal Due Date, or (b) any change in any Law or in the interpretation or application thereof by any Governmental Entity after the Proposal Due Date, in each case that is materially inconsistent with Laws in effect on the Proposal Due Date; excluding, however, any such Change in or new Law that also constitutes or causes a change in or new Adjustment Standards, as well as any change in or new Law passed or adopted but not yet effective as of the Proposal Due Date. The term "**Change in Law**" also excludes any change in or new Law relating to Developer's general business operations, including licensing and registration fees, income taxes, gross receipts taxes, social security, medicare, unemployment and other payroll-related taxes.

**Change of Control** means any assignment, sale, financing, grant of security interest, transfer of interest or other transaction of any type or description, including by or through voting securities, asset transfer, contract, merger, acquisition, succession, dissolution, liquidation or otherwise, that results, directly or indirectly, in a change in possession of the power to direct or control or cause the direction or control of the management of Developer or a material aspect of its business. A Change of Control of a shareholder, member, partner or joint venture member of Developer may constitute a Change of Control of Developer if such shareholder, member, partner or joint venture member possesses the power to direct or control or cause the direction or control of the management of Developer. Notwithstanding the foregoing, the following shall not constitute a Change of Control:

- (a) A change in possession of the power to direct or control the management of Developer or a material aspect of its business due solely to a bona fide transaction involving beneficial interests in the ultimate parent organization of a shareholder, member, partner or joint venture member of Developer, (but not if the shareholder, member, partner or joint venture member is the ultimate parent organization), unless the transferee in such transaction is at the time of the transaction suspended or debarred or subject to a proceeding to suspend or debar from bidding, proposing or contracting with any federal or State department or agency;
- (b) An upstream reorganization or transfer of direct or indirect interests in Developer so long as there occurs no change in the entity with ultimate power to direct or control or cause the direction or control of the management of Developer;

- (c) A transfer of interests between managed funds that are under common ownership or control other than a change in the management or control of a fund that manages or controls Developer; or
- (d) The exercise of minority veto or voting rights (whether provided by applicable Law, by Developer's organizational documents or by related member or shareholder agreements or similar agreements) over major business decisions of Developer, provided that if such minority veto or voting rights are provided by shareholder or similar agreements, TxDOT has received copies of such agreements.

**Change Order** shall mean a written order issued by TxDOT to Developer delineating changes in the Work within the general scope of the CDA Documents or in the terms and conditions of the CDA Documents in accordance with Section 13 of the Agreement and establishing, if appropriate, an adjustment to the Price or a Completion Deadline.

**Claim** shall mean: (a) a demand by Developer, which is or potentially could be disputed by TxDOT, for a time extension under the CDA Documents or payment of money or damages from TxDOT to Developer or (b) a demand by TxDOT, which is or potentially could be disputed by Developer, for payment of money or damages from Developer to TxDOT.

**CMA Documents** shall mean the documents identified in Sections 1.2.1 and 1.2.2 of the Capital Maintenance Agreement.

**Code** shall mean the Texas Transportation Code.

**Commercial Rules** has the meaning set forth in the Disputes Board Agreement.

**Commission** shall mean the Texas Transportation Commission.

**Competent Person** shall mean an individual who, by way of training and/or experience, is knowledgeable of applicable health and safety standards, is capable of identifying workplace hazards, is designated, and has authority to take appropriate actions as referred to in OSHA standards and documents.

**Comprehensive Environmental Protection Program** shall mean the document obligating Developer to protect the environment and document the measures taken during the performance of the Work to avoid and minimize impacts on the environment as further described in Section 4 of the Technical Provisions.

**Completion Deadline** shall mean the Substantial Completion Deadline and/or Final Acceptance Deadline, as the case may be.

**Configuration(s) 1, 2 or 3** mean the Project configuration(s), individually or collectively as applicable, described in Section 1.1 of Book 2.

**Conflict of Interest** means, with respect to any individual who is or is proposed to be a Disputes Board Member, any one or more of the following:

(a) Such individual is currently or was in the past employed by any member of the Conflicts Group, except that service as a member of other disputes review boards on other contracts or retention as an independent consultant on other contracts does not create a Conflict of Interest so as to preclude an individual from serving as a Disputes Board Member;

(b) Such individual has or is reasonably likely to have a pecuniary interest in the outcome of the applicable Dispute or such individual has any (i) ownership interest in any member of the Conflicts Group, except a remote interest or (ii) financial interest in any of the CDA Documents or any Contract (except that such individual's interest in receiving, and receipt of, payment for service on the Disputes Board shall not be considered a financial interest for purposes of this definition), in either case except for a remote interest. An ownership interest is remote only if it is less than 0.5% of the issued and outstanding shares or other legal or beneficial ownership interest, or less than 0.5% of the issued and outstanding indebtedness, of a member of the Conflicts Group. Mere use of the Facility shall not constitute a pecuniary, ownership or financial interest for purposes of this definition;

(c) Such individual shall not have had substantial prior involvement in any aspect of the FCA, a Contract or the Facility of a nature which could reasonably be expected to affect his or her ability to impartially resolve Disputes;

(d) Such individual shall not know of any reason, including but not limited to the existence of any of the Conflicts of Interest as described in this definition, why he or she cannot be impartial in resolving Disputes; and

(e) In addition to the Conflicts of Interest described above, any other circumstance arising out of such individual's existing or past activities, business interests and/or contractual relationships with any member of the Conflicts Group such that such individual is or is reasonably likely to be unable to render a Disputes Board Decision impartially or such individual's objectivity in performing his or her role on the Disputes Board is or is reasonably likely to be impaired.

**Conflicts Group** means a Party, a Party's Affiliates and its and their agents, contractors, subcontractors or suppliers and any other Person that is a party to a Contract.

**Construction Documents** shall mean all shop drawings, working drawings, fabrication plans, material and hardware descriptions, specifications, construction quality control reports, construction quality assurance reports and samples necessary or desirable for construction of the Project and/or the Utility Adjustments in accordance with the CDA Documents.

**Construction General Permit** shall mean a permit under the TPDES program for the management of storm water discharges from construction sites as more particularly described in Section 4.3.2 of the Technical Provisions.

**Construction Monitoring Plan (CMP)** shall mean the plan indicating times, locations, and other conditions under which monitoring of construction activities are to be performed to maintain and ensure compliance with Environmental Laws and the CDA Documents as more particularly described in Section 4.3.7 of the Technical Provisions.

**Construction Quality Acceptance Firm (CQAF)** shall mean the independent firm identified in the Proposal (or such other firm approved by TxDOT in its sole discretion) responsible for performing independent quality assurance material testing, inspection, and audits of the CQP. The initial approved CQAF is PSI.

**Construction Quality Acceptance Manager (CQAM)** shall mean the person appointed by the CQAF who is responsible for management and quality acceptance functions, as more particularly described in Section 2.2.8.1.3 of the Technical Provisions.

**Construction Quality Management Plan (CQMP)** shall mean the plan that establishes quality control and quality acceptance procedures for the Work as more particularly described in Section 2.2.8 of the Technical Provisions.

**Construction Work** means all Work to build or construct, make, form, manufacture, furnish, install, supply, deliver or equip the Project and/or the Utility Adjustments. Construction Work includes landscaping.

**Contract** means any agreement, and any supplement or amendment thereto, by Developer with any other Person, Contractor or Supplier to perform any part of the Work or provide any materials, equipment or supplies for any part of the Work, or any such agreement, supplement or amendment at a lower tier, between a Contractor and its lower tier Contractor or a Supplier and its lower tier Supplier, at all tiers. The term "Contract" excludes Utility Agreements.

**Corridor Structure Type Study and Report** shall mean a preliminary bridge type study report to evaluate potential superstructure and substructure configurations which may be suitable for the proposed bridges based on span lengths, deck widths, soil parameters, hydraulic and scour issues, environmental issues, wetland impacts, safety and maintenance of traffic, highway alignments, constructability, aesthetic requirements, future widening, construction schedule and costs. The Corridor Structure Type Study Report recommends configurations for the proposed bridges based on the above analysis and also provides the rationale for recommending the proposed alternatives as more particularly described in Section 13 of the Technical Provisions.

**Cost and Schedule Proposal** shall mean Developer's proposal furnished to TxDOT pursuant to a Request for Change Proposal in accordance with Section 13.2.1.3 of the Agreement.

**Cost to Cure** shall mean an appraisal method applied to estimate a proper adjustment for damages to a property that can be physically and economically corrected, as described in further detail in the TxDOT Appraisal and Review Manual.

**Critical Path** shall mean each critical path on the Project Schedule, which ends on the Substantial Completion Deadline or the Final Acceptance Deadline, as applicable (i.e. the term shall apply only following consumption of all available Float in the schedule for Substantial Completion or Final Acceptance, as applicable). The lower case term "critical path" shall mean the activities and durations associated with the longest chain(s) of logically connected activities through the Project Schedule with the least amount of positive slack or the greatest amount of negative slack.

**Customer Groups** shall mean groups, Persons and entities having a perceived stake or interest in the Project, including: the media, elected officials, Governmental Entities, general public residing or working within the general vicinity of the Project or traveling within or across the limits of the Project, business owners within or adjacent to the Project, Utility Owners, operating railroads, community groups, local groups (neighborhood associations, business groups, chambers of commerce, convention and visitors bureaus, contractors, etc.) and other Persons or entities affected by the Project, including those identified in Section 3.2.4 of the Technical Provisions.

**Day** or **day** shall mean calendar days unless otherwise expressly specified.

**DBE Performance Plan** shall mean Developer's plan for meeting the DBE participation goals set forth in Section 7.1 of the Agreement.

**DBE Special Provisions** shall mean TxDOT's special provisions for the TxDOT Disadvantaged Business Enterprise Program adopted pursuant to 49 CFR Part 26, which special provisions are set forth in Exhibit 6 to the Agreement.

**Decent, Safe and Sanitary (DSS) Dwelling** shall mean the condition of a dwelling such that it meets applicable housing and occupancy codes as defined in 49 CFR Part 24.

**Deferred Work Component(s)** shall mean each of the items described in Attachment 1-7 to Book 2.

**Deferred Work Component Notice to Proceed** shall mean a notice to proceed with one or more of the Deferred Work Components, pursuant to Section 4.1.6.

**Deferred Work Component (DWC) Prices** shall mean the individual prices associated with each Deferred Work Component, as set forth in Section 12.1.6.

**Deliverable** shall mean an end product or other item/element/submission requiring TxDOT concurrence and/or acceptance.

**Design Documents** shall mean all drawings (including plans, profiles, cross-sections, notes, elevations, sections, details and diagrams), specifications, reports,

studies, calculations, electronic files, records and submittals necessary for, or related to, the design of the Project and/or the Utility Adjustments in accordance with the CDA Documents, the Governmental Approvals and applicable Law.

**Design Exception** shall mean a deviation from one or more of the twelve controlling criteria found in Chapter 1, Section 2, of the TxDOT Roadway Design Manual. The procedures for requesting a Design Exception are found in the TxDOT Project Development Policy Manual.

**Design Firm** shall mean the qualified Registered Professional Engineer's firm responsible for the design of the Project.

**Design Quality Management Plan (DQMP)** shall mean the plan prepared by Developer setting forth the internal quality control & quality assurance procedures to be followed during performance of Professional Services, as more particularly described in Section 2.2.7 of the Technical Provisions.

**Design Speed** means the speed used to determine the various geometric design features of the roadway.

**Design Waiver** shall mean a deviation from the minimum requirements in a non-controlling category as identified in the TxDOT Roadway Design Manual.

**Design Work** means all Work of design, engineering or architecture for the Project, Project ROW acquisition or Utility Adjustments.

**Developer** shall mean NorthGate Constructors, J.V., a Texas joint venture, together with its successors and assigns.

**Developer Default** has the meaning set forth in Section 16.1.1 of the Agreement.

**Developer-Designated ROW** shall mean any permanent interest in real property (which term is inclusive of all estates and interests in real property), improvements and fixtures outside of the Schematic ROW that Developer determines is necessary or advisable to be acquired for the Project and which acquisition is approved by TxDOT to be acquired at Developer's cost and expense. The term specifically includes any easements required for drainage for the Project and any air space, surface rights and subsurface rights within the Developer-Designated ROW. The term specifically excludes the Replacement Utility Property Interests, any temporary easements or other temporary real property interests that Developer may deem necessary or advisable to acquire, at its own cost and expense, for excessive work space, contractor lay-down areas, material storage areas, or other convenience of Developer.

**Developer-Initiated VE** shall have the meaning set forth in Section 22.1 of the Agreement.



**Developer-Related Entities** shall mean: (a) Developer, (b) Developer's shareholders, partners, joint venturers and/or members, (c) Subcontractors (including Suppliers), (d) any other Persons performing any of the Work, (e) any other Persons for whom Developer may be legally or contractually responsible, and (f) the employees, agents, officers, directors, shareholders, representatives, consultants, successors, assigns and invitees of any of the foregoing.

**Developer Release(s) of Hazardous Materials** means (a) Release(s) of Hazardous Material, or the exacerbation of any such release(s), attributable to the culpable actions, culpable omissions, negligence, intentional misconduct, or breach of applicable Law or contract by any Developer-Related Entity; (b) Release(s) of Hazardous Materials arranged to be brought onto the Site or elsewhere by any Developer-Related Entity; regardless of cause, or (c) use, containment, storage, management, handling, transport and disposal of any Hazardous Materials by any Developer-Related Entity in violation of the requirements of the CDA Documents or any applicable Law or Governmental Approval.

**Developer's Utility Tracking Report** shall mean an electronic report regarding Utilities likely to be impacted by the Project which Developer shall maintain on a current basis and shall submit quarterly to TxDOT, as more particularly described in Section 6.5.2 of the Technical Provisions.

**Deviations** shall mean: (a) any proposed or actual change, deviation, modification, alteration or exception from the Technical Provisions, or (b) a change in the Work or other requirements of the CDA Documents issued under Section 13.13 of the Agreement. "**Deviation**" includes a deviation from one or more of the twelve controlling criteria found in Chapter 1, Section 2, of the TxDOT Roadway Design Manual.

**DFW-Airport Parcels** shall mean the parcels identified in Section 7.5 of the Technical Provisions, which are labeled as "Fort Worth, City of (Airport)" in the ROW ownership map.

**Differing Site Condition** shall mean: (a) subsurface or latent conditions encountered at the actual boring holes identified in the geotechnical reports included in the Reference Information Documents listed in Exhibit 19, which differ materially from those conditions indicated in the geotechnical reports for such boring holes; or (b) subsurface or surface physical conditions of an unusual nature, differing materially from those ordinarily encountered in the area and generally recognized as inherent in the type of work provided for in the Agreement. The term shall specifically exclude all such conditions of which Developer had actual or constructive knowledge as of the Proposal Due Date. The foregoing definition specifically excludes: (i) changes in surface topography; (ii) variations in subsurface moisture content; (iii) Utility facilities; (iv) Hazardous Materials, including contaminated groundwater; (v) acquisition of real property for drainage purposes; and (vi) any conditions which constitute or are caused by a Force Majeure Event.

**Directive Letter** shall have the meaning set forth in Section 13.1.1.2 of the Agreement.

**Disadvantaged Business Enterprise** or **DBE** shall have the meaning set forth in Exhibit 6 to the Agreement.

**Dispute** means any Claim, dispute, disagreement or controversy between TxDOT and Developer concerning their respective rights and obligations under the CDA Documents including concerning any alleged breach or failure to perform and remedies.

**Dispute Resolution Procedures** means collectively, the procedures established under Sections 19.3.4 and 19.3.5 of the Agreement and in Section 5 of the Disputes Board Agreement and the applicable portions of Section 201.112 of the Code and the DRP Rules. None of the Informal Resolution Procedures are included in the Dispute Resolution Procedures.

**Disputes Board** has the meaning set forth in the Disputes Board Agreement.

**Disputes Board Agreement** means the agreement in the form attached to the Agreement as Exhibit 20.

**Disputes Board Chair** has the meaning set forth in the Disputes Board Agreement.

**Disputes Board Decision** has the meaning set forth in the Disputes Board Agreement.

**Disputes Board Error** has the meaning set forth in Section 19.3.5.2 of the Agreement.

**Disputes Board Member** means an individual serving as one of the three members of the Disputes Board.

**Disputes Board Member Candidate Evaluation Period** has the meaning set forth in the Disputes Board Agreement.

**Disputes Board Member Candidates' List** has the meaning set forth in the Disputes Board Agreement.

**Disputes Board Member Joinder Agreement** has the meaning set forth in the Disputes Board Agreement.

**Disputes Board Member Qualifications** has the meaning set forth in the Disputes Board Agreement.

**Draw Request** shall mean a Draw Request and Certificate in the form of Exhibit 15 to the Agreement or Exhibit 11 to the Capital Maintenance Agreement.

**DRP Rules** means, as of the Effective Date, the administrative rules promulgated in accordance with Section 201.112(a) of the Code, adopted by TxDOT in accordance with the Texas Administrative Procedure Act and effective under Rule §9.6 of Subchapter A, Chapter 9, Part 1, Title 43 of the Texas Administrative Code on or before the Effective Date regarding dispute resolution procedures applicable to the resolution of all claims and disputes of every kind or character arising under comprehensive development agreements such as and including the CDA Documents.

**Early Start of Construction** shall mean the initiation of construction before the Final Design Plans have been approved by TxDOT, as more particularly described in Section 2.2.7.9 of the Technical Provisions.

**Effective Date** shall mean the date of the Agreement or such other date as shall be mutually agreed upon in writing by TxDOT and Developer.

**Electronic Data Management System** shall mean the secure data management system provided by Developer containing all of the data Developer is required to submit to TxDOT in connection with the Work and compatible with data systems, standards and procedures employed by TxDOT, as more particularly described in Section 2.1.2.2 of the Technical Provisions.

**Electronic Toll Collection System** shall mean the toll collection system to be provided by the Systems Integrator, in connection with which Developer provides support and coordination, as more particularly described in Section 21 of the Technical Provisions.

**Element** means an individual component, system or subsystem of the Project or of a Utility Adjustment included in the Construction Work, and shall include at a minimum a breakdown into the items described in the Performance and Measurement Table Baseline, further subdivided by Auditable Section where appropriate.

**Emergency** means any unplanned event within the Project Right of Way that (a) presents an immediate or imminent threat to the long term integrity of any part of the infrastructure of the Project, to the Environment, to property adjacent to the Project or to the Safety of Users or the public; or (c) is recognized by the Texas Department of Public Safety as an emergency.

**Emergency Services** shall mean law enforcement, ambulance service and other similar services from agencies with whom Developer establishes protocols for incident response, safety and security procedures, as set forth in the Emergency Management Plan.

**Engineer in Responsible Charge** shall mean the professional engineer accountable for direction, control and supervision to assure that the Work has been critically examined and evaluated for compliance with appropriate professional standards and the requirements of the CDA Documents and the CMA Documents, as applicable.

**ENR Construction Cost Index** shall mean the 12-month "Construction Cost Index" published by Engineering News-Record, Two Penn Plaza, 9th Floor, New York, NY 10121.

**Environmental Approvals** shall mean all Governmental Approvals arising from or required by any Environmental Law in connection with development of the Project, including New Environmental Approvals, approvals and permits required under NEPA and those approvals identified in Section 4 of the Technical Provisions.

**Environmental Commitment** (also **Environmental Permits, Issues and Commitments**) shall mean an environmental requirement that must be fulfilled before, during or after construction. Environmental Commitments include commitments to avoid impacts in specified areas, complete environmental investigations before construction impacts, or to perform specified actions after completion of construction.

**Environmental Commitments Document** shall mean the draft document describing anticipated environmental commitments released to Proposers on May 9, 2008, including any updates provided to Proposers prior to December 3, 2008.

**Environmental Compliance and Mitigation Plan** shall mean the Developer's plan, to be prepared under the CEPP described in the Project Management Plan, for performing all environmental mitigation measures set forth in the Environmental Approvals, and for complying with all other conditions and requirements of the Environmental Approvals, as more particularly described in Section 4.3.2 of the Technical Provisions.

**Environmental Compliance Inspectors (ECIs)** shall mean the person(s) retained or employed by Developer who provide on-site monitoring of the Project and the Work under direction of the Environmental Compliance Manager as more particularly described in Section 4.4.2 of the Technical Provisions.

**Environmental Compliance Manager (ECM)** shall mean the person retained or employed by Developer who has the authority and responsibility for monitoring, documenting, and reporting environmental compliance for the Work as more particularly described in Section 4.4.1 of the Technical Provisions.

**Environmental Law** shall mean any Law applicable to the Project or the Work regulating or imposing liability or standards of conduct that pertains to the environment, Hazardous Materials, contamination of any type whatsoever, or environmental health and safety matters, and any lawful requirements and standards that pertain to the environment, Hazardous Materials, contamination of any type whatsoever, or environmental health and safety matters, set forth in any permits, licenses, approvals, plans, rules, regulations or ordinances adopted, or other criteria and guidelines promulgated, pursuant to Laws applicable to the Project or the Work, as such have been or are amended, modified, or supplemented from time to time (including any

present and future amendments thereto and reauthorizations thereof) including those relating to:

- (a) The manufacture, processing, use, distribution, existence, treatment, storage, disposal, generation, and transportation of Hazardous Materials;
- (b) Air, soil, surface and subsurface strata, stream sediments, surface water, and groundwater;
- (c) Releases of Hazardous Materials;
- (d) Protection of wildlife, Threatened or Endangered Species, sensitive species, wetlands, water courses and water bodies, historical, archeological, and paleontological resources, and natural resources;
- (e) The operation and closure of underground storage tanks;
- (f) and safety of employees and other persons; and
- (g) Notification, documentation, and record keeping requirements relating to the foregoing.

Without limiting the above, the term "Environmental Laws" shall also include the following:

- (i) The National Environmental Policy Act (42 U.S.C. §§ 4321 *et seq.*), as amended;
- (ii) The Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 *et seq.*), as amended;
- (iii) The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq.*);
- (iv) The Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. §§ 11001 *et seq.*), as amended;
- (v) The Clean Air Act (42 U.S.C. §§ 7401 *et seq.*), as amended;
- (vi) The Federal Water Pollution Control Act, as amended by the Clean Water Act (33 U.S.C. §§ 1251 *et seq.*);
- (vii) The Resource Conservation and Recovery Act (42 U.S.C. §§ 6901, *et seq.*), as amended;
- (viii) The Toxic Substances Control Act (15 U.S.C. §§ 2601 *et seq.*), as amended;

- (ix) The Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 *et seq.*), as amended;
- (x) The Oil Pollution Act (33 U.S.C. §§ 2701, *et. seq.*), as amended;
- (xi) The Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§ 136 *et seq.*), as amended;
- (xii) The Federal Safe Drinking Water Act (42 U.S.C. §§ 300 *et seq.*), as amended;
- (xiii) The Federal Radon and Indoor Air Quality Research Act (42 U.S.C. §§ 7401 *et seq.*), as amended;
- (xiv) The Occupational Safety and Health Act (29 U.S.C. §§ 651 *et seq.*);
- (xv) The Endangered Species Act (16 U.S.C. §§ 1531 *et seq.*), as amended;
- (xvi) The Fish and Wildlife Coordination Act (16 U.S.C. §§ 661 *et seq.*), as amended;
- (xvii) The National Historic Preservation Act (16 U.S.C. §§ 470 *et seq.*), as amended;
- (xviii) The Coastal Zone Management Act (33 U.S.C. §§ 1451 *et seq.*), as amended;
- (xix) The Texas Health and Safety Code, including Chapter 382 (the Clean Air Act), Chapter 383 (the Clean Air Financing Act), Chapter 361 (the Texas Solid Waste Disposal Act), Chapter 362 (the Solid Waste Resource Recovery Financing Act), Chapter 363 (the Municipal Solid Waste Act), Chapter 364 (the County Solid Waste Control Act), Chapter 370 (the Texas Toxic Chemical Release Reporting Act), Chapter 371 (the Texas Used Oil Collection, Management, and Recycling Act), Chapter 401 (the Texas Radioactive Materials and Other Sources of Radiation Act), Chapter 402 (the Texas Low-Level Radioactive Waste Disposal Authority Act), Chapter 502 (the Texas Hazard Communication Act), Chapter 505 (the Texas Manufacturing Project Community Right-To-Know-Act), Chapter 506 (the Texas Public Employer Community Right-To-Know-Act), and Chapter 507 (the Texas Non-manufacturing Facilities Community Right-To-Know-Act);
- (xx) The Texas Natural Resources Code, including Chapter 40 (the Texas Oil Spill Prevention and Response Act of 1991);
- (xxi) The Texas Water Code;
- (xxii) The Texas Parks and Wildlife Code;

- (xxiii) The Texas Agriculture Code, including Chapter 76 (Pesticide and Herbicide Regulation) and Chapter 125 (the Agricultural Hazard Communication Act);
- (xxiv) The Texas Asbestos Health Protection Act (Chapter 1954, Texas Occupations Code); and
- (xxv) The Surface Coal Mining and Reclamation Act (Chapter 134, Texas Natural Resources Act).

**Environmental Management System** shall mean the system and program that the Environmental Compliance Manager supervises. The system and program includes monitoring field activities for environmental compliance by environmental inspectors, producing weekly reports, providing an environmental training program including a training staff, and developing an environmental team as more particularly described in Section 4.3.1 of the Technical Provisions.

**Environmental Protection Training Program (EPTP)** shall mean that program to be initiated by Developer and overseen by TxDOT personnel to ensure the Work is conducted in accordance with the environmental commitments and requirements set forth in all Environmental Laws and Environmental Approvals applicable to the Project as more particularly described in Section 4.3.3 of the Technical Provisions.

**Environmental Team (ET)** shall mean the personnel team appointed by Developer, and led by the ECM, to ensure compliance with all Environmental Laws and Environmental Approvals applicable to the Project as more particularly described in Section 4.4 of the Technical Provisions.

**Environmental Training Staff** shall mean Project personnel with experience as set forth in the Technical Provisions and appointed by the ECM to develop and implement an Environmental Protection Training Program as more particularly described in Section 4.4 of the Technical Provisions.

**Error** shall mean an error, omission, inconsistency, inaccuracy, deficiency or other defect.

**Escrowed Proposal Documents or EPDs** shall have the meaning set forth in Section 21.1 of the Agreement.

**Evaluating Party** has the meaning set forth in the Disputes Board Agreement.

**Event of Default** shall have the meaning set forth in Section 16.1.3 of the Agreement.

**Existing Utility Property Interest** shall mean any right, title or interest in real property (e.g., a fee or an easement) claimed by a Utility Owner as the source of its right to maintain an existing Utility in such real property, which is compensable in eminent domain.

**Expendable Materials** shall mean: (a) tangible personal property that loses its distinct and separate identity when incorporated into real property (examples include framing lumber, bricks, steel, re-bar, concrete) and (b) consumable items, defined as nondurable tangible personal property that is used to improve real property and that, after being used once for its intended purpose, is completely used or destroyed so that it has no salvage value (examples include non-reusable concrete forms, non-reusable drop cloths, barricade tape, natural gas, and electricity).

**Federal Requirements** shall mean the provisions required to be part of federal-aid construction contracts, including the provisions set forth in Exhibit 3 to the Agreement.

**Final Acceptance** shall mean the occurrence of all of the events and satisfaction of all of the conditions set forth in Section 20.3.2 of the Agreement, as and when confirmed by TxDOT's issuance of a Certificate of Final Acceptance.

**Final Acceptance Deadline** shall mean the deadline set forth in Section 4.2.2 of the Agreement, as such deadline may be adjusted by Change Order pursuant to the Agreement.

**Final Design** shall mean, depending on the context: (a) the Final Design Documents, (b) the design concepts set forth in the Final Design Documents or (c) the process of development of the Final Design Documents.

**Final Design Documents** shall mean the complete final construction drawings (including plans, profiles, cross-sections, notes, elevations, sections, details and diagrams), specifications, reports, studies, calculations, electronic files, records, and submittals necessary or related to the construction of the Project and any Utility Adjustments, and satisfying the requirements presented in Section 2.2.7.7 of the Technical Provisions.

**Final Design Submittal** shall mean the submittal by Developer for review and comment by TxDOT of Design Documents certified by the PSQCM demonstrating compliance with the CDA Documents and incorporating all Intermediate Design Submittal review comments, as more particularly described in Section 2.2.7.5 of the Technical Provisions.

**Final Draw Request** shall mean the written request for Final Payment under the Agreement as described in Section 12.4 of the Agreement.

**Final Order** means the order issued by the Executive Director pursuant to Section 19.3.5.1 or 19.3.5.4 of the Agreement.

**Final Order Implementing Decision** has the meaning set forth in Section 19.3.5.1(b) and 19.3.5.4(a)(ii) of the Agreement.

**Final Order Vacating Decision** has the meaning set forth in Section 19.3.5.4(a)(i) of the Agreement.



**Final Payment** shall mean payment by TxDOT of the final installment of the Price.

**Final Reconciliation** means the process described in Section 12.4 for determining the undisputed amount owed to Developer after Final Acceptance, and a schedule for payment of such amount.

**Fiscal Year** shall mean the calendar year or any other consecutive 12-month period selected by Developer and approved by TxDOT.

**Float** shall mean the amount of time that any given activity or logically connected sequence of activities shown on the Project Schedule may be delayed before it will affect the Substantial Completion Deadline or Final Acceptance Deadline, as applicable. Such Float is generally identified as the difference between the early completion date and late completion date for activities as shown on the Project Schedule.

**Force Majeure Event** shall mean any of the events listed in clauses (a) through (j) below, subject to the exclusions listed in clauses (i) through (viii) below, which materially and adversely affects Developer's obligations, provided such events are beyond the control of the Developer-Related Entities and are not due to an act, omission, negligence, recklessness, intentional misconduct, breach of contract or Law of any of the Developer-Related Entities, and further provided that such events (or the effects of such events) could not have been avoided by the exercise of caution, due diligence, or reasonable efforts by Developer:

- (a) Any earthquake, tornado, hurricane or other natural disaster that causes direct physical damage to the Project;
- (b) Any epidemic in the Dallas-Fort Worth area;
- (c) Any blockade, rebellion, war, riot, act of sabotage or civil commotion that causes direct physical damage to the Project;
- (d) The discovery at, near or on the Project ROW (excluding Developer-Designated ROW) of any archaeological, paleontological or cultural resources provided that the existence of such resources or substances was not disclosed in, or ascertainable from, the RFP Documents, was not otherwise known to Developer prior to the Proposal Due Date and would not have become known to Developer by undertaking reasonable investigation prior to the Proposal Due Date;
- (e) The discovery at, near or on the Project ROW (excluding Developer-Designated ROW) of any species listed of any Threatened or Endangered Species (regardless of whether the species is listed as threatened or endangered as of the Proposal Due Date), provided that the presence of such species was not disclosed in, or ascertainable from, the RFP Documents, was not otherwise known to Developer prior to the Proposal

Due Date and would not have become known to Developer by undertaking reasonable investigation prior to the Proposal Due Date;

- (f) Any Change in Law, which (1) requires a material modification of the Project design, (2) requires Developer to obtain a new major State or federal environmental approval not previously required for the Project, (3) results in an increase in Developer's costs directly attributable to the Change in Law of at least \$250,000, (4) results in imposition of additional mitigation requirements on the Project due to impacts on archaeological, paleontological, biological or cultural resources, or (5) specifically targets the Project or Developer;
- (g) Any spill of Hazardous Material by a third party who is not acting in a capacity of a Developer-Related Entity which: (1) occurs after the Proposal Due Date, (2) is required to be reported to a Governmental Entity and (3) renders use of the roadway or construction area unsafe or potentially unsafe absent assessment, containment and/or remediation;
- (h) Issuance of a temporary restraining order or other form of injunction by a court that prohibits prosecution of a material portion of the Work;
- (i) The suspension, termination, interruption, denial or failure to obtain or non-renewal of any TxDOT-Provided Approval, except to the extent that such suspension, termination, interruption, denial or failure to obtain or non-renewal arises from failure by any Developer-Related Entity to locate or design the Project or carry out the work in accordance with the TxDOT-Provided Approvals or other Governmental Approval; and
- (j) The addition of any new condition or requirement in the NEPA Approval or the final USACE Nationwide Permit based on the Schematic Design and the Schematic ROW, subject to the limitations and conditions described in Section 6.10.1 of the Agreement.

The term "**Force Majeure Event**" shall be limited to the matters listed above and specifically excludes from its definition the following matters which might otherwise be considered a force majeure event:

- (i) any fire or other physical destruction or damage, or delays to the Project which occur by action of the elements, including lightning, explosion, drought, rain, flood, snow, storm, except as specified in clause (a) above;
- (ii) except as provided in clause (b) above, malicious or other acts intended to cause loss or damage or other similar occurrence, including vandalism or theft;
- (iii) any strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence;

- (iv) the suspension, termination, interruption, denial, failure to obtain, non-renewal or change in any requirements of any Governmental Approval, except for any such matter falling within the scope of clause (e), (h), (i) or (j) above;
- (v) any increased costs or delays related to any Utility Adjustment Work or failure to obtain any approval, work or other action from a Utility Owner, except to the extent directly due to any of the matters listed in clauses (a) through (j) above;
- (vi) the presence at, near or on the Site, as of the Effective Date, of any Hazardous Material, including substances disclosed in the Reference Information Documents as well as any substances contained in any structure required to be demolished in whole or in part or relocated as part of the Work;
- (vii) any Change in Law which has the effect of modifying a Utility Owner's required specifications, standards of practice and/or construction methods for the Utility Adjustment Work to be furnished or performed by Developer (or reimbursed by Developer), which occurs after the Proposal Due Date but prior to the date on which the applicable Utility Agreement is signed by the Utility Owner; and
- (viii) any matters not caused by TxDOT or beyond the control of TxDOT and not listed in clauses (a) through (j) above.

**Generally Accepted Accounting Principles** shall mean such accepted accounting practice as, in the opinion of the accountant, conforms at the time to a body of generally accepted accounting principles.

**Geotechnical Engineering Reports** shall mean the reports documenting the assumptions, conditions and results of geotechnical investigations and analysis, as more particularly described in Section 8.4 of the Technical Provisions.

**Good Industry Practice** shall mean the exercise of the degree of skill, diligence, prudence, and foresight which would reasonably and ordinarily be expected from time to time from a skilled and experienced designer, engineer, constructor or maintenance contractor seeking in good faith to comply with its contractual obligations, complying with all applicable Laws and engaged in the same type of undertaking under circumstances and conditions similar to those within the same geographic area as the Project.

**Governmental Approval** shall mean any permit, license, consent, concession, grant, franchise, authorization, waiver, variance or other approval, guidance, protocol, mitigation agreement, or memoranda of agreement/understanding, and any amendment or modification of any of them provided by Governmental Entities, including State, local, or federal regulatory agencies, agents, or employees, which authorize or pertain to the

Work or the Project, but excluding any such approvals given by or required from any Governmental Entity in its capacity as a Utility Owner.

**Governmental Entity** shall mean any federal, State or local government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity other than TxDOT.

**Guarantor** shall mean each of the entities which provided a guaranty in the form of Exhibit 13 of some or all of the obligations of Developer under the CDA Documents.

**Guaranteed Obligations** shall have the meaning set forth in the Guaranty.

**Guaranty** shall mean each guaranty executed by a Guarantor guaranteeing some or all of the obligations of Developer under the CDA Documents.

**Hazardous Materials** shall mean any element, chemical, compound, material or substance, whether solid, liquid or gaseous, which at any time is defined, listed, classified or otherwise regulated in any way under any Environmental Laws, or any other such substances or conditions (including mold and other mycotoxins or fungi) which may create any unsafe or hazardous condition or pose any threat to human health and safety. The term "**Hazardous Materials**" includes the following:

- (a) Hazardous wastes, hazardous material, hazardous substances, hazardous constituents, and toxic substances or related materials, whether solid, liquid, or gas, including substances defined as or included in the definition of "hazardous substance", "hazardous waste", "hazardous material", "extremely hazardous waste", "acutely hazardous waste", "radioactive waste", "radioactive materials", "bio-hazardous waste", "pollutant", "toxic pollutant", "contaminant", "restricted hazardous waste", "infectious waste", "toxic substance", "toxic waste", "toxic material", or any other term or expression intended to define, list or classify substances by reason of properties harmful to health, safety or the indoor or outdoor environment (including harmful properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, "TCLP" toxicity" or "EP toxicity" or words of similar import under any applicable Environmental Laws);
- (b) Any petroleum, including crude oil and any fraction thereof, and including any refined petroleum product or any additive thereto or fraction thereof or other petroleum derived substance; and any waste oil or waste petroleum byproduct or fraction thereof or additive thereto;
- (c) Any drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources;
- (d) Any flammable substances or explosives;

- (e) Any radioactive materials;
- (f) Any asbestos or asbestos-containing materials;
- (g) Any lead and lead-based paint;
- (h) Any radon or radon gas;
- (i) Any methane gas or similar gaseous materials;
- (j) Any urea formaldehyde foam insulation;
- (k) Electrical equipment which contains any oil or dielectric fluid containing regulated levels of polychlorinated biphenyls;
- (l) Pesticides;
- (m) Any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Entity or which may or could pose a hazard to the health and safety of the owners, operators, users or any Persons in the vicinity of the Project or to the indoor or outdoor environment; and
- (n) Soil, or surface water or ground water, contaminated with Hazardous Materials as defined above.

**Hazardous Materials Management** shall mean procedures, practices and activities to address and comply with Environmental Laws and Environmental Approvals with respect to Hazardous Materials encountered, impacted, caused by or occurring in connection with the Work, as well as investigation and remediation of such Hazardous Materials. Hazardous Materials Management may include sampling, stock-piling, storage, backfilling in place, asphalt batching, recycling, treatment, clean-up, remediation, transportation and/or off-site disposal of Hazardous Materials, whichever is the most cost-effective approach authorized under applicable Law.

**Hazardous Materials Management Plan** shall mean the plan prepared by Developer for the safe handling, storage, treatment and/or disposal of Hazardous Materials both within and outside the Project ROW, as more particularly described in Section 4.3.5 of the Technical Provisions.

**Hazardous Materials Manager** shall mean the person designated by the Environmental Compliance Manager to provide expertise in the safe handling of Hazardous Materials, as more particularly described in Section 4.4.7 of the Technical Provisions.

**Identified Utility** shall mean any Utility impacted by the Project to which any one or more of the following applies:

- (a) The Utility line is shown on the Utility Strip Map (irrespective of whether correct ownership is shown).
- (b) The Utility type (e.g., gas, water, communication, electric) is shown on the Utility Strip Map (differences in material, e.g., clay vs. plastic, shall not be considered a difference in type).
- (c) The Utility is an overhead Utility existing as of the Proposal Date or which commenced installation prior to the Proposal Date.
- (d) The Utility is an extension of an Identified Utility (including a Service Line extending from an Identified Utility).
- (e) The Utility is located in the same trench as an Identified Utility (e.g. communication duct bank and joint communication cable facilities).

Any appurtenance, including manholes, pedestals, handholes, fire hydrants, and Fxboxes, not shown on the Utility Strip Map that is a component or extension of an Identified Utility is considered a part of the Identified Utility.

If a Utility falls within any of the categories listed above, then it is an Identified Utility regardless of any discrepancy between (i) the information provided on the Utility Strip Map, and (ii) the actual characteristics of that Utility with respect to its size, its horizontal or vertical location, its ownership, its type (e.g., gas, water, communication, electric), or any other characteristic. Without limiting the generality of the foregoing, if a Utility is shown on the Utility Strip Map as being on public right of way, and it is in fact located on private right of way, or vice versa, that discrepancy is of no relevance in determining whether or not that Utility is an Identified Utility.

**Incident** shall mean a localized disruption to the free flow of traffic on or safety of users of the Project.

**Incidental Utility Adjustment Work** shall mean all of the following work that Developer is responsible for performing, or causing to be performed, at its own expense and that is necessary or determined by Developer to be required for the construction and/or accommodation of the Project:

- (a) Service Line Adjustments including appurtenances (excluding any Service Line Adjustment for which the owner of the affected real property has been compensated pursuant to Section 6 - Right of Way, and provided that Developer shall obtain all temporary rights of entry needed for such Adjustments in accordance with Section 6 - Right of Way);
- (b) Temporary Utility Adjustments;
- (c) Utility Appurtenance Adjustments;
- (d) Temporary Protections in Place; and

- (e) Resurfacing and re-striping of streets (including sidewalks) and reconstruction of curb, gutter, sidewalks and landscaping where necessary due to Utility Adjustment Work, whether performed by the Utility Owner or by Developer.

**Indemnified Parties** shall mean TXDOT, the State, the Texas Transportation Commission, FHWA, the Program Manager and their respective successors, assigns, officeholders, officers, directors, agents, representatives, consultants and employees.

**Informal Resolution Procedures** has the meaning set forth in Section 19.3.2 of the Agreement.

**Instructions to Proposers (ITP)** shall mean the Instructions to Proposers issued by TxDOT on February 22, 2008 as part of the RFP with respect to the Project, including all exhibits, forms and attachments thereto and any subsequent addenda.

**Intellectual Property** means all current and future legal and/or equitable rights and interests in know-how, patents (including applications), copyrights (including moral rights), trade marks (registered and unregistered), service marks, trade secrets, designs (registered and unregistered), utility models, circuit layouts, plant varieties, business and domain names, inventions, solutions embodied in technology, and other intellectual activity, and applications of or for any of the foregoing, subsisting in or relating to the Project, Project design data or Project traffic data. Intellectual Property includes toll-setting and traffic management algorithms, and software used in connection with the Project (including but not limited to software used for management of traffic on the Project), and software source code. Intellectual Property is distinguished from physical construction and equipment itself and from drawings, plans, specifications, layouts, depictions, manuals and other documentation that disclose Intellectual Property.

**Intelligent Transportation System (ITS)** shall mean the system to monitor traffic flow, detect traffic and traffic operational conditions and communicate relevant traffic information to users of the Project as more particularly described in Section 17 of the Technical Provisions.

**Investigative Work Plan (IWP)** shall mean a plan prepared by Developer addressing the methods, techniques, and analytical testing requirements to adequately characterize the extent of impacts by Hazardous Materials to an area of concern.

**Job Training and Small Business Mentoring Plan** shall mean the plan set forth in Exhibit 8 to the Agreement.

**Key Personnel** shall mean the following positions:

(1) Project Director; (2) Deputy Project Director – Design; (3) Deputy Project Director – Construction; (4) Public Relations Manager; (5) Right of Way Manager; (6) Utility Manager; (7) Design Manager; (8) Construction Manager; (9) Professional Services Quality Control Manager; (10) Construction Quality Control Manager; (11)

Environmental Compliance Manager; (12) Independent Construction Quality Acceptance Manager; (13) Maintenance Manager; and (14) Maintenance QC Manager.

**Lane Closure** shall mean full or partial closure of any traffic lane in any portion of the Project and for any duration, including main lanes, ramps, direct connectors, frontage roads and cross roads.

**Lane Rental Charges** shall mean the liquidated damages described in Exhibit 17 to the Agreement.

**Law** or **Laws** means (a) any statute, law, code, regulation, ordinance, rule or common law, (b) any binding judgment (other than regarding a Claim or Dispute), (c) any binding judicial or administrative order or decree (other than regarding a Claim or Dispute), (d) any written directive, guideline, policy requirement or other governmental restriction (including those resulting from the initiative or referendum process, but excluding those by TxDOT within the scope of its administration of the CDA Documents) or (e) any similar form of decision of or determination by, or any written interpretation or administration of any of the foregoing by, any Governmental Entity, in each case which is applicable to or has an impact on the Project or the Work, whether taking effect before or after the Effective Date, including Environmental Laws. "Laws", however, excludes Governmental Approvals.

**Lien** shall mean any pledge, lien, security interest, mortgage, deed of trust or other charge or encumbrance of any kind, or any other type of preferential arrangement (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any lease in the nature of a security instrument and the filing of or agreement to file any financing statement under the Uniform Commercial Code of any jurisdiction).

**Liquidated Damages** shall have the meaning set forth in Section 17.1.1 of the Agreement.

**Losses** shall mean any loss, damage, injury, liability, obligation, cost, response cost, expense (including attorneys', accountants' and expert witnesses' fees and expenses (including those incurred in connection with the enforcement of any indemnity or other provision of the Agreement)), fee, charge, judgment, penalty, fine or Third Party Claims. Losses include injury to or death of persons, damage or loss of property, and harm or damage to natural resources.

**Maintaining Agency** shall mean the agency responsible for the maintenance of traffic signals along crossing streets or roads.

**Maintenance Contractor** shall mean NorthGate Constructors, J.V..

**Maintenance NTP1** shall have the meaning set forth in Exhibit 1 of the Capital Maintenance Agreement.



**Maintenance Services** shall have the meaning set forth in Exhibit 1 of the Capital Maintenance Agreement.

**Maintenance Term** shall have the meaning set forth in Exhibit 1 of the Capital Maintenance Agreement.

**Major Culvert** shall mean a culvert that provides an opening of more than 35 square feet in a single or multiple installations. A major culvert may consist of a single round pipe, pipe arch, open or closed-bottom box, bottomless arch, or multiple installations of these structures placed adjacent or contiguous as a unit. Certain major culverts are classified as bridges when they provide an opening of more than 20 feet, measured parallel to the roadway; such culverts may be included in the bridge inventory.

**Major River Crossing** shall mean a crossing with a 100-year storm event flow in excess of 10,000 cubic feet per second (cfs).

**Major Subcontracts** shall mean a Subcontract in excess of \$3,000,000.

**Major Subcontractor** shall mean a Subcontractor who has entered into a Major Subcontract with Developer.

**Management Plans** shall mean all of the management plans listed in Section 2 of the Technical Provisions.

**Master Utility Adjustment Agreement (MUAA)** shall mean an agreement between Developer and a Utility Owner which sets forth terms and conditions for one or more Utility Adjustments, as the same may be amended or supplemented from time to time and as more particularly described in Section 6.1.4.1 of the Technical Provisions. A document is a "Master Utility Adjustment Agreement" if it meets the foregoing definition, without regard to the title of the document.

- (a) **Master Utility Adjustment Agreement (Developer-Managed)** shall mean a Master Utility Adjustment Agreement providing for design and construction by Developer of the Utility Adjustment(s) addressed therein.
- (b) **Master Utility Adjustment Agreement (Owner-Managed)** shall mean a Master Utility Adjustment Agreement providing for design and construction by the Utility Owner of the Utility Adjustment(s) addressed therein.

**Maximum Payment Schedule** shall mean the curve described in Section 4.3.3 of the Agreement which constitutes a cap on the aggregate amount of payments which may be made to Developer hereunder at any specified time.

**Minor Culvert** shall mean any culvert that is not classified as a major culvert.

**Misconduct** means, with respect to any individual who is a Disputes Board Member, any one or more of the following:

(a) Any *ex parte* communication or discussion between any Disputes Board Member and either Party (or a member of the Conflicts Group on behalf of either Party) or other *ex parte* communication prohibited under R-10 of the Commercial Rules;

(b) Any offer, solicitation, discussion, agreement or understanding between any Disputes Board Member and any Party or any other Person regarding (i) remuneration conditioned upon the nature or result of a certain Disputes Board Decision or (ii) employment of the Disputes Board Member by any member of the Conflicts Group following termination of such member's services on the Disputes Board, except for employment as a member of a subsequent Disputes Board or similar disputes board for a project other than the Facility;

(c) The rendition of advice or consultative services to either Party or member of the Conflicts Group; or

(d) A material lack of the requisite experience under Section 4.1 of the Disputes Board Agreement that was not and could not reasonably have been discovered by the Nominating Party or the Evaluating Party at the time such individual was proposed and approved for inclusion on the Nominating Party's Disputes Board Member Candidates' List, including, by way of example and not limitation, a situation where such individual has materially misrepresented his or her experience to the Parties.

**Municipal Separate Storm Sewer System** shall mean the classification of a storm water sewer system of communities that exceed population thresholds established under the TPDES program as more particularly described in Section 4.3.2 of the Technical Provisions.

**National Flood Insurance Program** shall mean the insurance program managed by the Federal Emergency Management Agency which provides flood insurance to property owners located in participating communities.

**Nationwide Permit Program** shall have the meaning set forth in 33 CFR Part 330.

**Natural Resource Biologist** shall mean the team member designated by the Environmental Compliance Manager to provide expertise on monitoring impacts on wildlife and the natural environment due to construction activities related to the Work as more particularly described in Section 4.4.5 of the Technical Provisions.

**Necessary Basic Configuration Change** shall mean a change in the Basic Configuration which is necessary to meet the requirements of the CDA Documents as the result of an Error in the Schematic Design (with the understanding that a change shall be deemed "necessary" only if the Error creates a problem in which Developer is unable to meet the requirements of the CDA Documents without a material change in the Basic Configuration).

**NEPA Approval** shall mean the Finding of No Significant Impact issued by FHWA and FAA on April 23, 2009,, and all approved supplements and reevaluations pertaining to the Project as of the Effective Date.

**New Environmental Approval** shall mean: (a) any Environmental Approval required for the Project, other than TxDOT-Provided Approvals, and (b) any revision, modification, or amendment to any TxDOT-Provided Approval, including any such approval, revision, modification, or amendment required for the drainage easements described in Section 6.2.2 of the Agreement.

**New Utility** shall mean a Utility installed within the Schematic ROW after the Proposal Due Date, not contained in the Utility Strip Map, and not otherwise known to Developer prior to the Proposal Due Date.

**Nominating Party** has the meaning set forth in the Disputes Board Agreement.

**Nonconforming Work** shall mean Work that does not conform to the requirements of the CDA Documents, the Governmental Approvals, applicable Law or the Design Documents.

**Notice of Intent** shall mean the notice of intent prepared and submitted by Developer to the TCEQ under the Construction General Permit for storm water discharges from construction sites as more particularly described in Section 4.3.2 of the Technical Provisions.

**Notice of Partial Termination for Convenience** shall mean written notice issued by TxDOT to Developer terminating part of the Work of Developer for convenience under Section 15.1 of the Agreement.

**Notice of Termination for Convenience** shall mean written notice issued by TxDOT to Developer terminating the Work of Developer for convenience under Section 15.1 of the Agreement.

**NTP1** means a written notice issued by TxDOT to Developer authorizing Developer to proceed with the portion of the Work described in Section 4.1.3 of the Agreement.

**NTP2** means a written notice issued by TxDOT to Developer pursuant to Section 4.1.4 of the Agreement authorizing Developer to proceed with the remaining Work and other activities pertaining to Configuration 1, Configuration 2 or Configuration 3, as applicable.

**Off-Peak Times** shall mean all times not defined as Peak Times.

**Open Book Basis** shall mean providing TxDOT all underlying assumptions and data associated with pricing or compensation (whether of Developer or TxDOT) or adjustments thereto, including assumptions as to costs of the Work, schedule, composition of equipment spreads, equipment rates, labor rates, productivity, estimating

factors, design and productivity allowance, contingency and indirect costs, risk pricing, discount rates, interest rates, and other items reasonably required by TxDOT to satisfy itself as to the reasonableness of the amount.

**Option(s)** shall mean the options held by TxDOT for performance of the Configuration 2 and Configuration 3 Work.

**Option Notice to Proceed** shall mean the notice to be issued by TxDOT in order to exercise an Option pursuant to Section 4.1.5.

**Option Price** means the Proposer's Price for Configuration 2 or Configuration 3, reflected in Form N-1.b or N-1.c, as applicable, with ATC adjustments reflected in Form N-1.2.b or N-1.2.c, as applicable, and Maintenance Price reflected in Form O.b or O.c, as applicable.

**Outstanding Natural Resource Waters** shall have the meaning set forth in Section 4 of the Technical Provisions.

**Party** shall mean Developer or TxDOT, as the context may require, and "**Parties**" shall mean Developer and TxDOT, collectively.

**Payment Bond** shall mean the NTP1 Payment Bond described in Section 8.1.2 and/or NTP2 Payment Bond described in Section 8.1.4, as applicable.

**PCO Notice** shall have the meaning set forth in Section 13.3.2.3 of the Agreement.

**Peak Times** shall have the meaning set forth in Exhibit 17. .

**Performance Bond** shall mean the NTP1 Performance Bond described in Section 8.1.1 and/or NTP2 Performance Bond described in Section 8.1.3, as applicable.

**Person** shall mean any individual, corporation, joint venture, limited liability company, company, voluntary association, partnership, trust, unincorporated organization or Governmental Entity.

**Plans** means (only where capitalized) contract drawings, working drawings, supplemental drawings, detail sheets or exact reproductions thereof, which show the location, character, dimensions and details of the Construction Work to be done.

**Pre-existing Hazardous Materials** means Hazardous Materials that meet all of the following criteria:

- (a) The Hazardous Materials are in, on or under the Project ROW (excluding Developer-Designated ROW) as of the date TxDOT makes available to Developer the affected parcel; and

- (b) The Hazardous Materials are not required to be removed and disposed of due to a Developer Release of Hazardous Materials.

For purposes of this definition, "makes available" means the Effective Date, except for parcels not yet acquired as of the Effective Date.

**Preliminary Design Submittal** shall mean the submittal by Developer for review and comment by TxDOT of horizontal and vertical geometrics, bridge clearances and limits of Work as required under Section 2.2.7.5 of the Technical Provisions.

**Preliminary Bridge Layouts** shall mean the bridge layouts prepared subsequent to the Corridor Structure Type Study Report described in Section 13.1 of the Technical Provisions.

**Preliminary Project Baseline Schedule** shall mean the original Project Schedule submitted with the Proposal.

**Price Proposal** shall mean Forms BAFO N-1.a, BAFO N-1.b, BAFO N-1.c, BAFO N1.1a, BAFO N-1.1b, BAFO N-1.1c, BAFO N-1.2.a, BAFO N-1.2.b, BAFO N-1.2.c, BAFO O.a, BAFO O.b and BAFO O.c, and revised Forms N-1.a, N-1.1a, and N-1.2.a, as submitted with the Proposal.

**Price** shall mean the price set forth in Section 12.1 of the Agreement, as it may be modified from time to time in accordance with the express provisions of the Agreement.

**Professional Services** shall mean all Work performed under the Agreement other than Construction Work, including the following services and Work: (a) design and engineering; (b) right of way acquisition services; (c) surveying; (d) Utility Adjustment design; and (e) environmental permitting and compliance services.

**Professional Services Quality Control Manager (PSQCM)** shall mean the person assigned by Developer with responsibility to cause the methods and procedures contained in the approved PSQP to be implemented and followed by Developer's design staff in the performance of the Work, as more particularly described in Section 2.2.7.4 of the Technical Provisions.

**Program Manager** shall mean Carter & Burgess, Inc. or such other Person (including the entity, as well as its personnel) designated in writing by TxDOT as its Program Manager.

**Programmatic Agreement** shall mean the agreement between FHWA, the Advisory Council on Historic Preservation and the Texas Historical Commission.

**Project** shall have the meaning set forth in Recital B to the Agreement.

**Project Baseline Schedule** shall mean the schedule consistent with the Completion Deadlines, submitted by Developer as a condition of Notice to Proceed,

setting forth the approved schedule of Work against which any subsequent schedule amendments are tracked, as more particularly described in Section 2.1.1.2 of the Technical Provisions.

**Project Management Plan** shall mean the document complying with BS ENO ISO 9001 and BS EN ISO 14001, as appropriate, and approved by TxDOT, describing quality assurance and quality control activities necessary to manage the development, design, construction, operation and maintenance of the Project, containing the TxDOT-approved component parts, plans and documentation described in Section 2 and Attachment 2-1 to the Technical Provisions.

**Project Manager** shall mean the individual designated by Developer and approved in writing by TxDOT in the position to take full responsibility for the prosecution of the Work and will act as a single point of contact on all matters on behalf of Developer, pursuant to Section 2.2.2 of the Agreement.

**Project ROW** shall mean the Schematic ROW and the Additional Properties, but excluding therefrom any portion of the Schematic ROW eliminated from the Project by a Change Order.

**Project Schedule** shall mean one or more, as applicable, of the logic-based critical path schedules (the Project Baseline Schedule, the Project Status Schedule and the Project Recovery Schedule) for all Work leading up to and including Final Acceptance, and for tracking the performance of such Work, as the same may be revised and updated from time to time in accordance with Section 2.1.1.2 of the Technical Provisions.

**Project Specific Locations** shall mean areas in which Developer proposes Project-specific activities in connection with the Work not within the Project ROW boundaries identified in the NEPA Approval, such as construction work sites, field office locations, temporary work areas, staging areas, storage areas, and earth work material borrow sites.

**Project Status Schedule Update** shall mean the update of the Project Schedule to reflect the current status of the Project, as more particularly described in Section 2.1.1.2.2 of the Technical Provisions.

**Proposal** shall mean Developer's original Proposal submitted in response to the RFP, as modified by the BAFO in accordance with ITP Section 5.8.

**Proposal Due Date** shall mean July 15, 2008, the deadline for submission of the Proposal to TxDOT .

**Proposal Pavement Design** shall mean a pavement designs submitted as part of the Developer's Proposal.

**Proposer** shall mean each entity that was shortlisted based on TxDOT's evaluation of submissions in response to the Request for Qualifications for the Project issued on December 29, 2006, as amended.

**Proprietary Intellectual Property** shall mean Intellectual Property created, used, applied or reduced to practice in connection with the Project or the Work that derives commercial value from its protection as a trade secret under applicable Law or from its protection under patent law.

**Protection in Place** shall mean any action taken to avoid damaging a Utility which does not involve removing or relocating that Utility, including staking the location of a Utility, exposing the Utility, avoidance of a Utility's location by construction equipment, installing steel plating or concrete slabs, encasement in concrete, temporarily de-energizing power lines, and installing physical barriers. The term includes both temporary measures and permanent installations meeting the foregoing definition.

**Public Information Act** shall mean the Texas Government Code Chapter 552.001 *et seq.*, as amended from time to time.

**Public Information and Communications Plan (PICP)** shall mean the plan setting forth procedures by which Developer works with TxDOT to inform, coordinate with, educate and engage Customer Groups, as more particularly described in Section 3.2.1 of the Technical Provisions.

**Public Information Coordinator** shall mean the person designated by Developer to manage Developer's public information activities as more particularly described in Section 3.2.2 of the Technical Provisions.

**Punch List** shall mean the itemized list of the Work which remains to be completed after Substantial Completion has been achieved and before Final Acceptance, the existence, correction and completion of which will have no material or adverse effect on the normal and safe use and operation of the Project.

**Quality Management Plan (QMP)** shall mean the set of TxDOT-approved plans for quality management and control of the Project and Work, as described in Section 2.2 of the Technical Provisions.

**Quitclaim Deed** shall mean a quitclaim deed to be executed by a Utility Owner relinquishing its rights to maintain a Utility in a particular location, as more particularly described in Section 6.2.4.4 of the Technical Provisions.

**Recognized Environmental Condition** shall have the meaning set forth in ASTM E-1527-00.

**Record Drawings** means construction drawings and related documentation revised to show significant changes made during the construction process; usually

based on marked-up Final Design Documents furnished by Developer; also known as as-built plans.

**Recovery Schedule** shall mean the schedule Developer is required to provide under Section 4.5 of the Agreement.

**Reference Information Documents** shall mean those documents listed in Exhibit 19 to the Agreement. Except as expressly provided in the CDA Documents, the Reference Information Documents are not considered CDA Documents and were provided to Developer for informational purposes only and without representation or warranty by TxDOT.

**Registered Landscape Architect** shall mean a person who is duly licensed and registered by the State to engage in the practice of landscaping.

**Registered Professional Engineer** shall mean a person who is duly licensed and registered by the Texas Board of Professional Engineers to engage in the practice of engineering in the State.

**Registered Professional Land Surveyor** shall mean a person registered by the Texas Board of Professional Land Surveying to practice the profession of land, boundary, or property surveying or other similar professional practices.

**Reimbursable Hazardous Materials Costs** shall mean Developer's actual costs of performance of Hazardous Materials Management, determined in accordance with Section 13.9.4 of the Agreement, provided that the 25% and 145% mark-ups allowed under Section 13.7.1 of the Agreement shall be reduced to 12.5% and 130%, and the 15% mark-up allowed under Section 13.7.2 of the Agreement shall be reduced to 7.5%.

**Release of Hazardous Materials** means any spill, leak, emission, release, discharge, injection, escape, leaching, dumping or disposal of Hazardous Materials into the soil, air, water, groundwater or environment, including any exacerbation of an existing release or condition of Hazardous Materials contamination.

**Replacement Housing Calculation** shall mean the opportunity to provide the displaced person with the financial assistance to purchase or rent and occupy a comparable replacement dwelling without involuntarily incurring additional financial means due to the displacement.

**Replacement Utility Property Interest** shall mean any permanent right, title or interest in real property outside of the Project ROW (e.g., a fee or an easement) which is acquired for a Utility being reinstalled in a new location as a part of the Utility Adjustment Work. The term specifically excludes any statutory right of occupancy or permit granted by a Governmental Entity for occupancy of its real property by a Utility.

**Request for Best and Final Offer** or **Request for BAFO** means Addendum 7 to the RFP.



**Request for Change Order** shall mean a written notice issued by Developer to TxDOT under Section 13.3.2.5 of the Agreement, advising TxDOT that Developer seeks a Change Order.

**Request for Change Proposal** shall mean a written notice issued by TxDOT to Developer under Section 13.2.1 of the Agreement, advising Developer that TxDOT may issue a TxDOT-Directed Change or wishes to evaluate whether to initiate such a change pursuant to Section 13.2.1 of the Agreement.

**Request for Information** shall mean a written request prepared by Developer after Design Documents have been released for construction to initiate the process for potential design changes or clarifications.

**Request for Partnering** shall have the meaning set forth in Section 13.3.2.2 of the Agreement.

**Request for Proposals (RFP)** shall mean the Request for Proposals issued by TxDOT on March 28, 2008 with respect to the Project, including all exhibits, forms, and attachments thereto and any subsequent addenda.

**Reserved Rights** shall mean all of the following:

- (a) TxDOT's right to use, possess, develop and enjoy any real and personal property over, on, under or adjacent to the Project ROW for other transportation or related facilities, including tunnels, flyovers, frontage roads, local roads, interchanges and fixed guide-ways; and
- (b) all right to use, and use of:
  - (i) all electrical, fiber optic and wireless conduit, cable, capacity, towers, antennas and associated equipment or other telecommunications equipment, hardware and capacity existing over, on, under or adjacent to any Project ROW installed by anyone, whether before or after the Effective Date, and all software which executes such equipment and hardware and related documentation, to the extent not necessary and required for traffic management for the Project or for other project purposes;
  - (ii) any area or space over, on, under or adjacent to the Project ROW for development and operation of any office, commercial, industrial, residential, retail or mixed use real estate project, including revenue-generating service or rest areas;
  - (iii) any equipment, facilities or capabilities for ITS studies or applications installed by or on behalf of TxDOT and the right to install any such equipment, facilities or capabilities; and

- (iv) any area or space over, on, under or adjacent to the Project ROW for any other commercial or non-commercial development or use.

**RFP Documents** shall mean all of the information and materials supplied to Developer in connection with the issuance of the RFQ, the RFP, including Instructions to Proposers, the CDA Documents, the CMA Documents and the Reference Information Documents and any addenda issued in connection therewith.

**Right of Entry Agreement** shall mean a written agreement between the record title owner and Developer granting TxDOT, Developer or assignees permission to enter the applicable parcel that is to be acquired.

**ROW Acquisition Plan** shall mean the Developer's plan, approved by TxDOT in accordance with Section 7 of the Technical Provisions, for acquisition of real property for the Project.

**ROW Administrator** shall mean TxDOT's representative responsible for the management of all matters pertaining to real property for the Project.

**ROW Manager** shall mean Developer's representative responsible for the preparation and quality review of all documents required for the acquisition of the Project ROW.

**Rules** shall mean Sections 27.1-27.9 of Title 43, Texas Administrative Code..

**Safety and Health Plan** shall mean the plan describing Developer's policies, plans and controls to ensure the health and safety of personnel and the general public affected by the Project, as more particularly described in Section 2.5 of the Technical Provisions.

**Schematic Design** shall mean the roadway schematic plans attached as Appendix 3 to Exhibit 2.

**Schematic ROW** shall mean any real property (which term is inclusive of all estates and interests in real property), improvements and fixtures within the proposed ROW lines established by TxDOT to delineate the outside limits of the Schematic Design, as such limits may be adjusted from time to time in accordance with the CDA Documents. The term specifically includes all air space, surface rights, and subsurface rights within the limits of the ROW.

**Service Line** shall mean: (a) a Utility line, the function of which is to directly connect the improvements on an individual property to another Utility line located off such property, which other Utility line connects more than one such individual line to a larger system, or (b) any cable or conduit that supplies an active feed from a Utility Owner's facilities to activate or energize a local agency's lighting and electrical systems, traffic control systems, communications systems and/or irrigation systems.

**Site** shall mean Schematic ROW, Additional Properties, Replacement Utility Property Interests, and any temporary rights or interests that Developer may acquire at its own cost and expense in connection with the Project.

**Site Investigative Report (SIR)** shall mean the report summarizing the Developer's Hazardous Materials investigative work as required by Section 4.3.5 of the Technical Provisions.

**Small Bridge** shall mean a bridge that is not crossing a Major River Crossing.

**Source Code and Source Code Documentation** shall mean software written in programming languages, such as C and Fortran, including all comments and procedural code, such as job control language statements, in a form intelligible to trained programmers and capable of being translated into object or machine readable code for operation on computer equipment through assembly or compiling, and accompanied by documentation, including flow charts, schematics, statements of principles of operations, architectural standards, and commentary, explanations and instructions for compiling, describing the data flows, data structures, and control logic of the software in sufficient detail to enable a trained programmer through study of such documentation to maintain and/or modify the software without undue experimentation. Source Code and Source Code Documentation also include all modifications, additions, substitutions, updates, upgrades and corrections made to the foregoing items.

**Special Deposit and Possession** shall mean a declaration of taking in condemnation. This Special Deposit and Possession is a process of acquiring real property through a special condemnation procedure, to be approved by TxDOT and authorized by the Texas Transportation Commission.

**State** shall mean the State of Texas.

**State Highway** means a highway designated as part of the state highway system under Section 201.103, Texas Transportation Code.

**Subcontract** shall mean any agreement by Developer with any other Person, Subcontractor or Supplier to perform any part of the Work or provide any materials, equipment or supplies for any part of the Work, or any such agreement at a lower tier, between a Subcontractor and its lower tier Subcontractor or a Supplier and its lower tier Supplier, at all tiers.

**Subcontractor** shall mean any Person with whom Developer has entered into any Subcontract to perform any part of the Work or provide any materials, equipment or supplies for the Project on behalf of Developer and any other Person with whom any Subcontractor has further subcontracted any part of the Work, at all tiers.

**Subcontractor Dispute** shall have the meaning set forth in Section 19.4 of the Agreement.

**Submittal** shall mean any document, work product or other written or electronic end product or item required under the CDA Documents to be delivered or submitted to TxDOT.

**Substantial Completion** shall mean the occurrence of all of the events and satisfaction of all of the conditions set forth in Section 20.1.1.2 of the Agreement, as and when confirmed by TxDOT's issuance of a Certificate of Substantial Completion.

**Substantial Completion Deadline** shall mean the deadline set forth in Section 4.2.1 of the Agreement, as such deadline may be adjusted by Change Order pursuant to the Agreement.

**Supplemental Utility Assembly** shall mean the collection of agreements, plans and other information and materials which Developer is required to submit to TxDOT in connection with each Utility Adjustment being added to an existing MUAA by means of a UAAA, as more particularly described in Section 6 of the Technical Provisions.

**Supplier** shall mean any Person not performing work at or on the Site which supplies machinery, equipment, materials, hardware, software, systems or any other appurtenance to the Project to Developer or to any Subcontractor in connection with the performance of the Work. Persons who merely transport, pick up, deliver or carry materials, personnel, parts or equipment or any other items or persons to or from the Site shall not be deemed to be performing Work at the Site.

**Surety** shall mean each properly licensed surety company, insurance company or other Person approved by TxDOT, which has issued any Payment Bond, Performance Bond, or Warranty Bond.

**Systems Integrator** shall mean the contractor, under separate contract to TxDOT, that shall design, supply, install, test and commission the ETCS for the Project, including scanners, readers, loops, enforcement mechanisms and manual and automated cash collection systems.

**Tangible Net Worth** shall mean the difference between (the sum of paid-in capital stock plus preferred stock plus retained earnings) less (the sum of treasury stock plus minority interest plus intangible assets e.g., goodwill, patents, licenses), all determined in accordance with Generally Accepted Accounting Principles and as interpreted by the Securities and Exchange Commission in connection with financial statements filed pursuant to the Securities Exchange Act of 1934.

**Technical Provisions** means Book 2 and Book 3, as such documents may be revised or amended pursuant to the Agreement.

**Term** shall mean the period of time commencing upon issuance by TxDOT of NTP1 and continuing thereafter through Final Acceptance of the Project, unless terminated earlier in accordance with this Agreement.

**Termination for Convenience** shall mean a termination pursuant to Section 15.1 of the Agreement.

**Third Party Claims** shall mean any and all claims, disputes, disagreements, causes of action, demands, suits, actions, judgments, investigations or proceedings brought by a Person that is not a Party with respect to damages, injuries, liabilities, obligations, losses, costs, penalties, fines or expenses (including attorneys' fees and expenses) sustained or incurred by such Person.

**Threatened or Endangered Species** shall mean any species listed by the USFWS as threatened or endangered pursuant to the Endangered Species Act, as amended, 16 U.S.C. §§ 1531, *et seq.* or any species listed as threatened or endangered pursuant to the State endangered species act.

**Time and Materials Change Order** shall mean a Change Order issued in accordance with Section 13.7 of the Agreement.

**Tolling Zone** shall mean the zone within which a toll transaction takes place, in connection with which Developer shall provide coordination services with the Systems Integrator.

**Traffic Control Coordinator** shall mean the person designated by Developer to oversee the implementation of the traffic control plans, as more particularly described in Section 18 of the Technical Provisions.

**Traffic Management Plan** shall mean the plan prepared by Developer for the management of traffic during construction, as more particularly described in Section 18.2.1 of the Technical Provisions.

**TxDOT** shall mean the Texas Department of Transportation, and any entity succeeding to the powers, authorities and responsibilities of TxDOT invoked by or under the CDA Documents.

**TxDOT Administrative Settlement Committee** shall mean the committee established within TxDOT under the direction of the Right of Way Administrator.

**TxDOT-Caused Delays** shall mean unavoidable delays arising from the following matters and no others, but only to the extent that they (i) materially adversely affect a Critical Path, (ii) are not mitigated by or susceptible to handling by a work around or consumption of Project Float, and (iii) are not due to an act, omission, negligence, recklessness, intentional misconduct, breach of contract or violation of Law or a Governmental Approval of or by any of the Developer-Related Entities:

- (a) TxDOT-Directed Changes;
- (b) failure or inability of TxDOT to make Schematic ROW available within the time period set forth in Section 6.5.3 of the Agreement, and subject to the risk allocation contained therein;

- (c) failure or inability of TxDOT to make DFW-Airport Parcels available for the applicable Configuration prior to issuance of NTP2;
- (d) failure of TxDOT to provide responses to proposed schedules, plans, Design Documents, condemnation and acquisition packages, and other Submittals and matters for which response is required under the CDA Documents as an express prerequisite to Developer's right to proceed or act, within the time periods (if any) indicated in the CDA Documents, or if no time period is indicated, within a reasonable time, taking into consideration the nature, importance and complexity of the submittal or matter, following delivery of written notice from Developer requesting such action in accordance with the terms and requirements of the CDA Documents;
- (e) uncovering, removing and restoring Work pursuant to Section 5.4.3 of the Agreement, if such Work exposed or examined is in conformance with the requirements of the CDA Documents, the Governmental Approvals and applicable Law, unless such conforming Work was performed or materials used without adequate notice to and opportunity for prior inspection by TxDOT; and
- (f) failure or inability of TxDOT to obtain the USACE Nationwide Permit based on the Schematic Design and the Schematic ROW or a Section 401 Water Quality Certification for the Project by the later of NTP2 or July 30, 2009, provided, however that if the USACE Nationwide Permit is not obtained because individual permits are required, then the failure to obtain the USACE Nationwide Permit shall not be a TxDOT-Caused Delay.

Any suspension of Work arising from litigation shall not be considered a TxDOT-Caused Delay (although it may qualify as a Force Majeure Event under clause (g) of the definition of "**Force Majeure Event**") despite the fact that TxDOT may specifically direct Developer to suspend the Work.

**TxDOT-Directed Changes** shall mean any changes in the scope of the Work or terms and conditions of the CDA Documents (including changes in the standards applicable to the Work) that increase Developer's costs by more than \$5,000, which TxDOT has directed Developer to perform as described in Section 13.2 of the Agreement.

**TxDOT-Initiated VE** shall have the meaning set forth in Section 22.1 of the Agreement.

**TxDOT-Provided Approvals** shall mean the following:

(a) the Finding of No Significant Impact issued by FHWA and FAA on April 23, 2009; and

(b) USACE Nationwide Permit under Section 404 of the Clean Water Act based upon the Schematic Design and the Schematic ROW and certification that the actions permitted under the USACE Nationwide Permit are in compliance with State water quality requirements and other applicable State laws under Section 401 Water Quality Certification (33 U.S.C. §1341)(1986).

**TxDOT Release(s) of Hazardous Material** means, except as provided below, the introduction in, on or under the Project ROW of Hazardous Material directly by TxDOT, or by its contractors, subcontractors, agents or employees acting in such capacity (other than any Developer-Related Entity). TxDOT Release(s) of Hazardous Material excludes, however, (i) any Hazardous Materials so introduced that in or part of construction materials and equipment incorporated into the Project; and (ii) any Hazardous Materials so introduced that were in, on or under Developer-Designated ROW.

**TxDOT's Recoverable Costs** means:

- (a) The costs of any assistance, action, activity or Work undertaken by TxDOT which Developer is liable for or is to reimburse under the terms of the CDA Documents, including the charges of third party contractors and reasonably allocated wages, salaries, compensation and overhead of TxDOT staff and employees performing such action, activity or Work; plus
- (b) Third-party costs TxDOT incurs to publicly procure any such third party contractors; plus
- (c) Reasonable fees and costs of attorneys (including the reasonably allocable fees and costs of TxDOT's Office of General Counsel or the Texas Attorney General's Office), financial advisors, engineers, architects, insurance brokers and advisors, investigators, traffic and revenue consultants, risk management consultants, other consultants, and expert witnesses, as well as court costs and other litigation costs, in connection with any such assistance, action, activity or Work, including in connection with defending claims by and resolving disputes with third party contractors; plus
- (d) Interest on all the foregoing sums at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, commencing on the date due under the applicable terms of the CDA Documents and continuing until paid.

**TxDOT Standard Specifications** shall mean the Texas Department of Transportation Standard Specifications for Construction of Highways, Streets and Bridges, adopted by the Texas Department of Transportation including all revisions thereto applicable on the Effective Date.

**TxDOT Utility Manual** shall mean the Utility Manual issued by the Right of Way Division of TxDOT on November 5, 1990, as the same may be amended, supplemented or replaced from time to time.

**Unidentified Utility(ies)** shall mean any Utility impacted by the Project (other than a Service Line) which is neither an Identified Utility nor a New Utility, including any Utility which would be a New Utility but for the fact that it is an extension of an Identified Utility.

**Uniform Act** shall mean the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act, P.L. 91-646, as amended.

**User(s)** means the registered owner of a vehicle traveling on the Project or any portion thereof.

**USACE Nationwide Permit** shall mean the nationwide permit issued by the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act (33 U.S.C. §1344) for the placement of dredged and fill material into waters of the United States, based upon the Schematic Design and the Schematic ROW.

**Utility** or **utility** shall mean a public, private, cooperative, municipal and/or government line, facility or system used for the carriage, transmission and/or distribution of cable television, electric power, telephone, telegraph, water, gas, oil, petroleum products, steam, chemicals, hydrocarbons, telecommunications, sewage, storm water not connected with the drainage of the Project, and similar substances that directly or indirectly serve the public. The term "Utility" or "utility" specifically excludes: (a) storm water facilities providing drainage for the Project ROW, (b) street lights and traffic signals, and (c) ITS and IVHS facilities. The necessary appurtenances to each utility facility shall be considered part of such utility. Without limitation, any Service Line connecting directly to a utility shall be considered an appurtenance to that utility, regardless of the ownership of such Service Line.

**Utility Accommodation Rules (UAR)** shall mean the Utility Accommodation Rules issued by TxDOT, at 43 Tex. Admin. Code, Part 1, Chapter 21, Subchapter C, as the same may be amended, supplemented or replaced by TxDOT from time to time.

**Utility Adjustment** shall mean each relocation (temporary or permanent), abandonment, Protection in Place, removal (of previously abandoned Utilities as well as of newly abandoned Utilities), replacement, reinstallation, and/or modification of existing Utilities necessary to accommodate construction, operation, maintenance and/or use of the Project; provided, however, that the term "**Utility Adjustment**" shall not refer to any of the work associated with facilities owned by any railroad. For any Utility crossing the Project ROW, the Utility Adjustment Work for each crossing of the Project ROW by that Utility shall be considered a separate Utility Adjustment. For any Utility installed longitudinally within the Project ROW, the Utility Adjustment Work for each continuous segment of that Utility located within the Project ROW shall be considered a separate Utility Adjustment.



**Utility Adjustment Agreement Amendment (UAAA)** shall mean an agreement between Developer and the Utility Owner that amends a Master Utility Adjustment Agreement, as more particularly described in Section 6.1.4 of the Technical Provisions.

**Utility Adjustment Field Modifications** has the meaning set forth in Section 6.4.7 of the Technical Provisions.

**Utility Adjustment Concept Plan** shall mean a conceptual design document for Utility Adjustments for the entire Project, which shows all of the approximate existing locations, and Developer's recommendation for all of the Adjusted locations, of each Utility impacted by the Project, as more particularly described in Section 6.3.3 of the Technical Provisions.

**Utility Adjustment Work** shall mean all efforts and costs necessary to accomplish the required Utility Adjustments, including all coordination, design, design review, permitting, construction, inspection, maintenance of records, relinquishment of Existing Utility Property Interests, preparation of Utility Joint Use Acknowledgements, and acquisition of Replacement Utility Property Interests, whether provided by Developer or by the Utility Owners. The term also includes any reimbursement of Utility Owners which is Developer's responsibility pursuant to Section 6.8 of the Agreement. Any Utility Adjustment Work furnished or performed by Developer is part of the Work; any Utility Adjustment Work furnished or performed by a Utility Owner is not part of the Work.

**Utility Agreement** shall mean a MUAA and/or UAAA, as the context may require.

**Utility Appurtenance Adjustment** shall mean the adjustment of Utility appurtenances (e.g. manholes, valve boxes, and vaults) for line and grade upon completion of roadway work.

**Utility Assembly** shall mean the collection of agreements, plans and other information and materials which Developer is required to submit to TxDOT in connection with each Utility Adjustment (or group of Utility Adjustments subject to the same Master Utility Adjustment Agreement and any applicable Amendments), as more particularly described in Section 6.3.4.5 of the Technical Provisions. Depending on the context, the term also refers to Supplemental Utility Assemblies and Abbreviated Utility Assemblies.

**Utility Assembly Checklist** shall mean a checklist listing the required components of a Utility Assembly, as referenced in Section 6.3.4.5 of the Technical Provisions.

**Utility Assembly Number** or **Assembly Tracking Number** shall mean the unique number given by the Developer to each Utility Assembly using the form "YYY-U-XXXX." The "YYY" shall refer to the assigned number of the highway and "XXXX" shall refer to the 4-digit number assigned to each Utility Assembly (beginning with 0500 and numbered consecutively thereafter). The Utility Assembly Number shall be referenced on each corresponding Utility Agreement.

**Utility Coordinator** shall mean the utility staff personnel designated by the Developer to coordinate the utility adjustments, the adjustment agreements, the adjustment costs, the Utility Assemblies, and coordinate all meetings held with either the Utility Owner and/or TxDOT and its consultants.

**Utility Design Coordinator (UDC)** shall mean the Registered Professional Engineer designated by the Developer to be responsible to coordinate the Utility Adjustment design with the overall highway design features during the Work, as more particularly described in Section 6.2.3 of the Technical Provisions.

**Utility Enhancement** shall mean a Betterment or a Utility Owner Project, as referenced in Section 6.8.2 of the Agreement.

**Utility Joint Use Agreement** or **Utility Joint Use Acknowledgment** shall mean an agreement between TxDOT and a Utility Owner that establishes the rights and obligations of TxDOT and the Utility Owner with respect to occupancy of the Project ROW by a Utility owned by such Utility Owner.

**Utility Manager (UM)** shall mean the senior staff utility administrator designated by Developer to be responsible for coordination and oversight of Utility operations during the Work, as more particularly described in Section 6.2.3 of the Technical Provisions.

**Utility Owner** shall mean the owner or operator of any Utility (including both privately held and publicly held entities, cooperative utilities, and municipalities and other governmental agencies).

**Utility Owner Delay** shall have the meaning set forth in Section 6.8.5.2 of the Agreement.

**Utility Owner Project** shall mean the design and construction by or at the direction of a Utility Owner (or by Developer pursuant to Section 6.8.2.3 of the Agreement) of a new Utility other than as part of a Utility Adjustment. Betterments are not Utility Owner Projects. Utility Owner Projects shall be entirely the financial obligation of the Utility Owner.

**Utility Strip Map** shall mean the map depicting existing Utilities identified by TxDOT which are included in the Reference Information Documents.

**Utility Tracking Report** shall mean Developer's Utility Tracking Report.

**Value Engineering (VEs)** shall have the meaning set forth in Section 22.1 of the Agreement.

**Warranty(ies)** shall have the meaning set forth in Section 11.1.1 of the Agreement.

**Warranty Bond** shall have the meaning set forth in Section 8.1.5 of the Agreement.

**Warranty Term** shall have the meaning set forth in Section 11.1.2 of the Agreement.

**Water Quality Specialist** shall mean the person designated by the Environmental Compliance Manager to provide expertise in water quality, as more particularly described in Section 4.4.6 of the Technical Provisions.

**Work** shall mean all of the work required under the CDA Documents, including all administrative, design, engineering, real property acquisition and occupant relocation, support services, Utility Adjustment Work to be furnished or provided by Developer, reimbursement of Utility Owners for Utility Adjustment Work furnished or provided by such Utility Owners or their contractors and consultants, procurement, professional, manufacturing, supply, installation, construction, supervision, management, testing, verification, labor, materials, equipment, maintenance, documentation and other duties and services to be furnished and provided by Developer as required by the CDA Documents, including all efforts necessary or appropriate to achieve Final Acceptance, except for those efforts which such CDA Documents expressly specify will be performed by Persons other than the Developer-Related Entities.

**[END OF DEFINITIONS]**

**EXHIBIT 2**

**DEVELOPER'S PROPOSAL COMMITMENTS, ATCS AND SCHEMATICS**

**Appendix 1:**            **Proposal Commitments**

**Appendix 2:**            **ATC's**

**Appendix 3:**            **Schematics**

## Appendix 1

### Proposal Commitments

Comment No.	Proposal Location	Proposal Commitment
1	BAFO p. 19 C.1.1.9	The allowable water surface elevation next to a culvert is the lower of either the existing 100-year water surface elevation at the upstream limits of the project ROW...
2	BAFO p. 19 C.1.1.9	Stormwater peak flow rate at the downstream edge of the project ROW is limited to the existing peak flow rate for the 100-year event.
3	BAFO p. 20 C.1.1.9	Backfill requirements for all drainage systems under roadways are CSB or flowable fill to 1 ft. above pipe. Backfill requirements for all pipe other than roadway are CSB or flowable fill.
4	C.1.1.5(b )	NG ROW Acquisition plan will be prepared, monitored, and audited as a part of ISO 9001:2000 certified quality plan.
5	D.2.12	NG will meet with all utilities within 30 days of NTP-1 to develop utility plans and utility agreements. "SMART START"
6	C.2 PMP Page 78	Produce public inquiry response system
7	C.2 PMP Page 78	Track outreach for project with begin/mid/end surveys
8	C.2 PMP Page 78	Coordinate with traffic ops/ITS to provide travel info using DMS, static signage, weekly e-mail notifications, weekly press releases, information hotline, detour maps, e-mail to cell phone messaging, dedicated radio-frequency to facilitate lane closure notifications.
9	C.2 PMP Page 79	Change schedules if necessary based on community/ stakeholder concerns as well as accommodate church and holiday traffic
10	C.2 PMP Page 80	Provide weekly construction schedule and closure press releases.
11	BAFO 1.1.13 Pg. 30	NG will work with local agencies and DFW Airport to address specific way-finding needs for airport traffic.
12	C.1.1.8 p. 25	use ISO-14001-compliant ECMP tools
13	C.1.1.8 p. 25	use low-sulphur diesel fuel, "no idle" policy, refuel at night, minimize trucking requirements

Comment No.	Proposal Location	Proposal Commitment
14	C.2.6 p. 81	Quarterly audits for compliance
15	C.1.1.14(a)	An Aesthetics and Landscape Task Force will meet within the first 30 days following award.
16	C.1.1.12(b)	Peak-hour Courtesy Patrol Service provided to assist disabled vehicles that impede the flow of traffic. Service will provide towing, gas, flat tire repair, and assistance to motorists stranded in work zone.
17	C.1.1.12(b)	Operators at the interim TMC will be aware of daily construction closures and routings to provide accurate guidance information to motorists. Alternate routing plans will be developed as part of the IMP and ready for deployment in the event of incident-caused congestion with extended clear times.
18	C.1.1.12(c)	Task force including TxDOT and local agency personnel will meet to discuss upcoming events that may affect traffic flow and share ideas to manage traffic conditions within the project limits and how it impacts local roadways.
19	C.1.1.13(a)	City of Southlake decorative signal poles at Northwest Hwy and Gateway Dr. will be relocated to the new intersection.
20	C.1.1.12, C.1.1.13(a)	A temporary TMC will be installed to monitor traffic operations. Upon project completion, the interim TMC systems can be efficiently transitioned to TxDOT.
21		Within the boundary of the Eagle Ford formation, Developer shall provide a 12" layer of crushed concrete meeting TxDOT Item 247 in lieu of 12 inches of lime treated stabilized subgrade. Outside the Eagle Ford formation, the top 12 inches of lime stabilized subgrade directly below the HMA layer shall achieve no less than 70 (with a desirable strength of 100 psi) unconfined compressive strength immediately following a 10-day capillary moisture conditioning conducted in a method similar to that used in TEX-121-E
22	C.1.1.13(a)	All permanent signals will be designed with new equipment and hardware
23	C.1.1.13(a)	In conjunction with permanent signal designs for the project, NorthGate will design a new communications link for each operating agency.
24	BAFO C.2.7.3	NG will provide aerial flights to establish 2D and 3D topo.
25	BAFO C.1(b)	On site Traffic Management Center will be provided and operable within three months of NTP1, two months before the "cone zone" start

Comment No.	Proposal Location	Proposal Commitment
26	BAFO C.1(b)	Refer to Figure C.1-2 - Advertise project impacts info at DFW Airport, rental car updates
27	BAFO C.1.1.1(b)	Will use concrete traffic barriers to provide separation between travel-way and work areas.
28	BAFO C.1.1.1(b)	Using TCP task force meetings to coordinate lane restrictions
29	BAFO C.1.1.1(b)	Using concrete traffic barriers with location markers
30	BAFO C.1.1.1(b)	Communicating with GPS providers to ensure traffic flow information is relayed into their system.
31	BAFO C.1.1.1(c)	Construct continuous blocks to minimize impacts to community and business related access and complete most of the frontage roads impacting business access within 18 months of NTP2.
32	C2.3	Use portable, automated wheel washers to prevent mud and dirt from entering the roadway
33	C2.3	Reduce "cone zone" to 1464 days overall which minimizes impact for completion of the business access frontage roads
34	C2.3(c)	Concrete and asphalt will be recycled into the new work, steel and aluminum will be recycled at local salvage companies, embankment spoils will be eliminated through adjustment of vertical and slope volume to balance earthwork
35	Volume D Appendices D.2.B 8.3, pg. 18	NorthGate will prepare and audit schedule and perform internal audits with regard to ISO elements and to determine adherence to the QMP. The audit results will be documented, reviewed and acted upon by top management. Follow-up audits will be required for deficient items following corrective action. Audit reports will be documented, submitted to TxDOT within 7-days and kept as quality records.
36	Volume D Appendices D.2.B 15.2, pg. 27	NorthGate top management and Customer's Team will be responsible for organizing and supporting a partnering program.

Comment No.	Proposal Location	Proposal Commitment
37	Volume D Appendices D.2.B 15.3, pg. 27-29	NorthGate will develop a monthly issues matrix. Matrix will be color-coded: Red = ongoing issues / Yellow = current issues / Green - good trends and steady performers
38	Volume A Executive Summary pg. 10	Commits to achieving ISO 9001 certification within 12 months of NTP1.
39	Volume 1 - Technical Proposal - BAFO - pgs. 50 and 56	NorthGate will use MICK (mobile information communication system) an electronic quality inspection, testing, and reporting system. The system improves access and analysis of both qualitative and quantitative quality data. A user can export quality data into charts, tables, etc. that can be exported directly to the project document control system as well as TxDOT's I2MS system.
40	BAFO Volume 1: Technical Proposal C.1.3, pg. 34 / and Form P, pg. 41	Reduce number of calendar days to achieve substantial completion: - configuration 1 complete in 1527 days (117 day reduction) - configuration 2 complete in 1702 days (32 day reduction) - configuration 3 complete in 1702 days (32 day reduction)
41	BAFO Volume 1: Technical Proposal C.1.3, pg. 34	Reduce duration of construction impacts to 1357 calendar days for configuration 1.  Reduce duration of construction impacts to 1526 calendar days for configurations 2 and 3.
42	C.2.4(b)	Schedule control methods including daily 3-week rolling, 90 day look ahead and updates to complement the project schedule
43	74	ProjectWise is the primary method for design collaboration and file management, enabling each team member, including TxDOT, to access the latest version of design data and documentation within a secure environment.
44	75	Use Primavera Version 6 software and will provide training to TxDOT employees



Comment No.	Proposal Location	Proposal Commitment
45	83	Use Smart Start to reduce duration of traffic and business access impacts
46	BAFO 43	Figure C2.1-1 List of Regularly Scheduled Project Meetings with Frequency listed
47	BAFO Vol C, Section C.1.1.1, Page 6	Traffic Management Strategy Reports (TMSRs) adapted from our innovative processes on I-25 T-REX improve traffic switch planning and implementation efficiency.
48	BAFO Vol C, Section C.1.1.1, Page 6	Pull-outs or "breakdown areas" are provided on controlled access lanes throughout sequencing to improve flow by reducing incident-related congestion and enhancing traffic safety.
49	BAFO Vol C, Section C.1.1.1, Page 6	The NorthGate Connections program will contact individual businesses and residential areas affected by upcoming construction activities directly, and provide them with necessary information.
50	BAFO Vol C, Section C.1.1.2, Page 10	Maximum boring spacing of 300 ft for bridges and , 200 ft for retaining walls (minimum 15 ft depth). Minimum pavement boring depth of 20 ft.
51	BAFO Vol C, Section C.1.1.3, Page 17	Committed to provide an 8-½-in. bridge deck for all structures.
52	BAFO Vol C, Section C.1.3, Page 36	Minimize impacts to the businesses and communities affected by frontage road reconstruction by acquiring or have possession-and-use agreements in place for ROW parcels; and complete utility relocations for a contiguous block of work before affecting traffic within that block
53	BAFO Vol C, Section C.2.1, Page 42	Committed to fill a position of Design-Build Coordination Manager that will coordinate construction, design and maintenance to verify compliance with CDA requirements for the Project's design.
54	BAFO Vol. C Section 1.1.10, p. 25	Developer assumes design and environmental reevaluation risk for change in Schematic and Control of Access at WB SH 114, exit to Main Street

**Appendix 2**  
**Developer's ATC's**

ATC #2 – Deep Foundation Design

ATC#3 – 11-ft Temporary Lane Widths

ATC#4 – Elevated Direct Connectors at SH 26

ATC #8 – Luminaire Poles for RVSD

**Appendix 3**  
**Schematics**

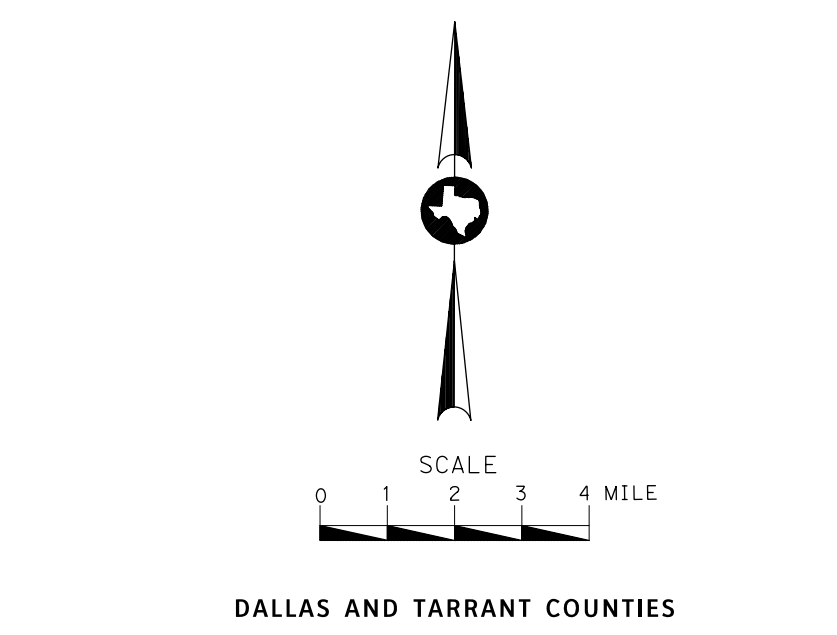
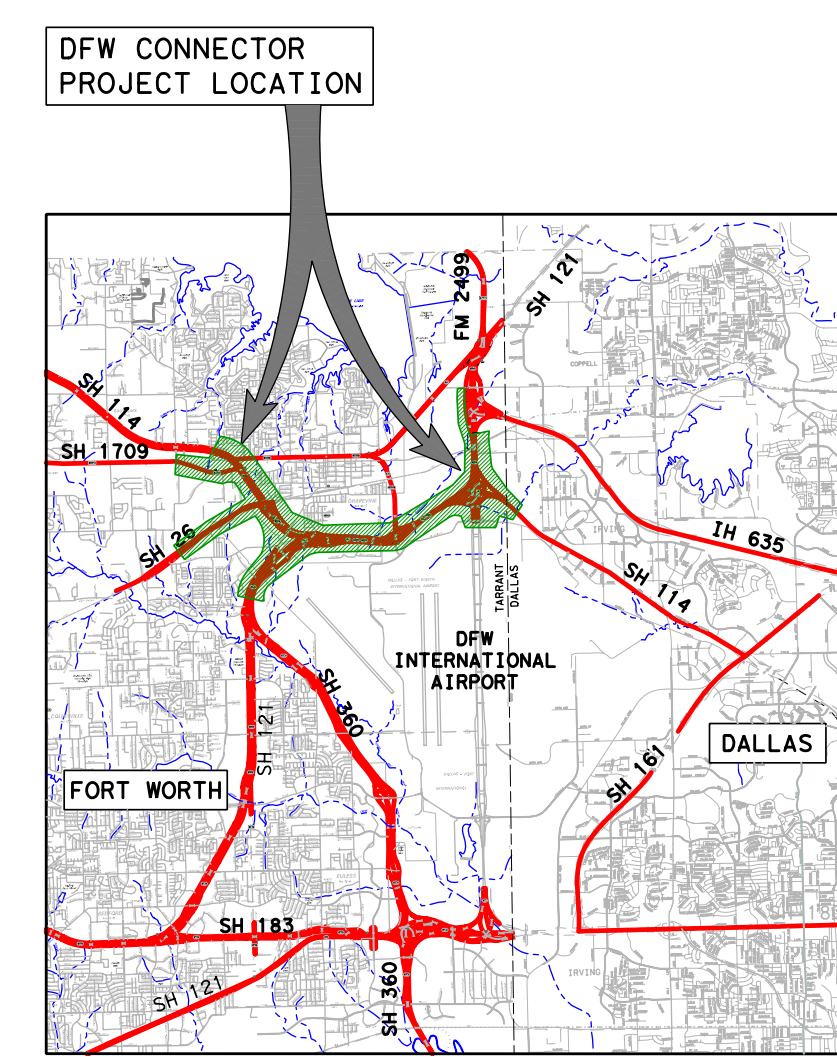
**DEVELOPER'S SCHEMATIC  
DFW CONNECTOR PROJECT  
DALLAS & TARRANT  
COUNTIES**

STATE HIGHWAY 114  
FROM BUSINESS 114L TO INTERNATIONAL PARKWAY  
AND  
STATE HIGHWAY 121  
FROM SH 360 TO FM 2499

D.2.6  
EXHIBIT 2, APPENDIX 3: SCHEMATICS

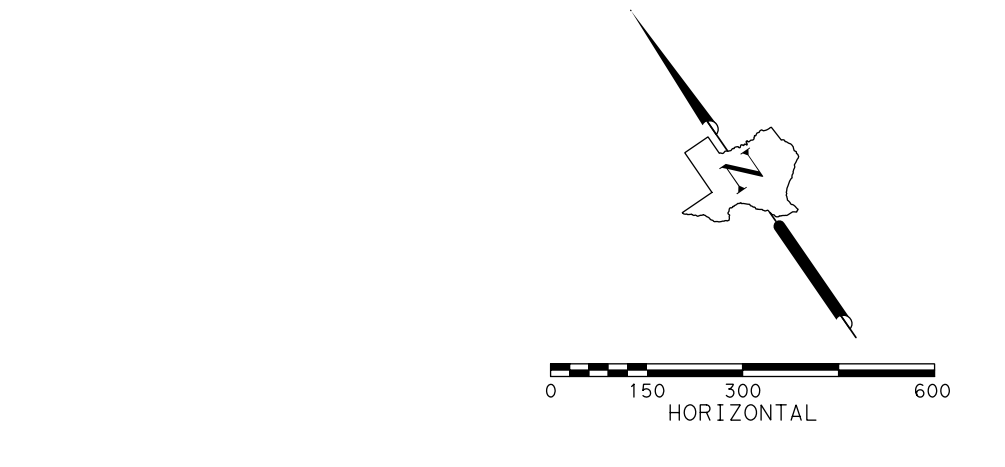
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FUNCTIONAL CLASSIFICATION, DESIGN SPEED:  
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COLLECTOR DISTRIBUTOR -URBAN FREEWAY-50 MPH  
RAMP-URBAN FREEWAY-50 MPH  
FRONTAGE ROADS-COLLECTOR-40 MPH  
CROSS STREETS-COLLECTOR-30 MPH  
TURNABOUTS,UTURNS-COLLECTOR-20 MPH  
FM 2499-URBAN FREEWAY-55 MPH

**CONFIGURATION 2 WITH DEFERRALS  
BEST AND FINAL OFFER**



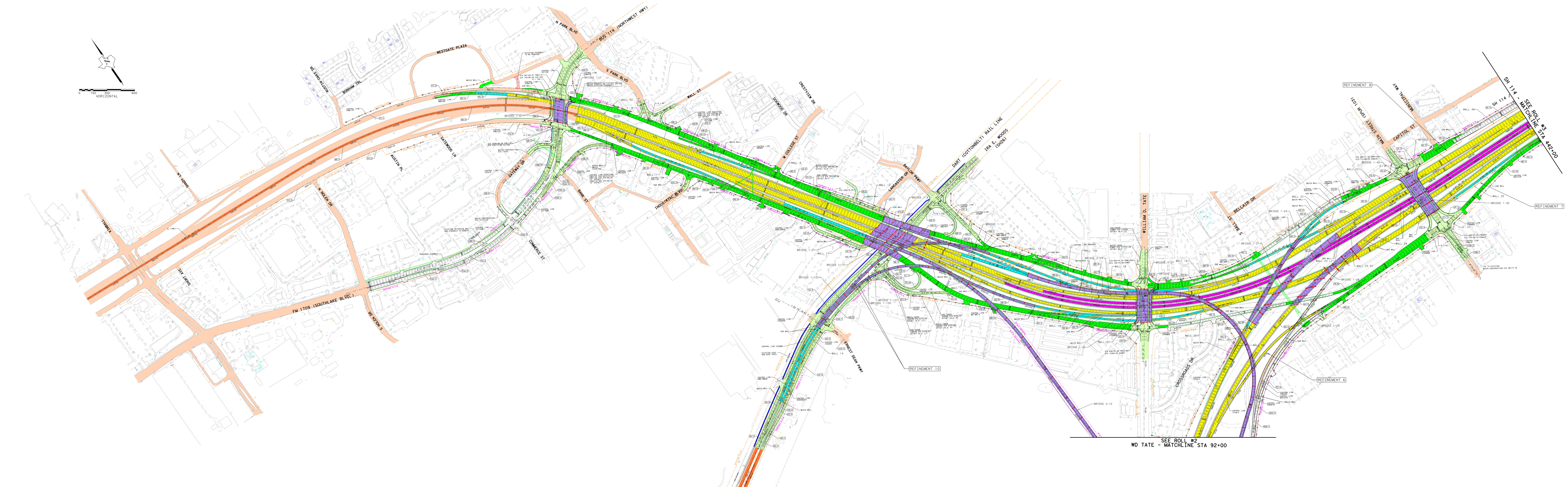
NOT FOR CONSTRUCTION OR  
PERMIT PURPOSES  
PREPARED UNDER THE SUPERVISION OF  
JAMES W. LANGSTON, P. E. #73891  
MAY 18, 2009

REF ID	DATE	DESCRIPTION	BY	CHKD	APP'D
1	05/18/09	ISSUED FOR PERMIT	JW	ML	ML
2	05/18/09	ISSUED FOR PERMIT	JW	ML	ML
3	05/18/09	ISSUED FOR PERMIT	JW	ML	ML
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74	05/18/09	ISSUED FOR PERMIT	JW	ML	ML
75	05/18/09	ISSUED FOR PERMIT	JW	ML	ML
76	05/18/09	ISSUED FOR PERMIT	JW	ML	ML
77	05/18/09	ISSUED FOR PERMIT	JW	ML	ML
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92	05/18/09	ISSUED FOR PERMIT	JW	ML	ML
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99	05/18/09	ISSUED FOR PERMIT	JW	ML	ML
100	05/18/09	ISSUED FOR PERMIT	JW	ML	ML



GEOMETRIC REFINEMENT 10

REF ID	DATE	DESCRIPTION	BY	CHKD	APP'D
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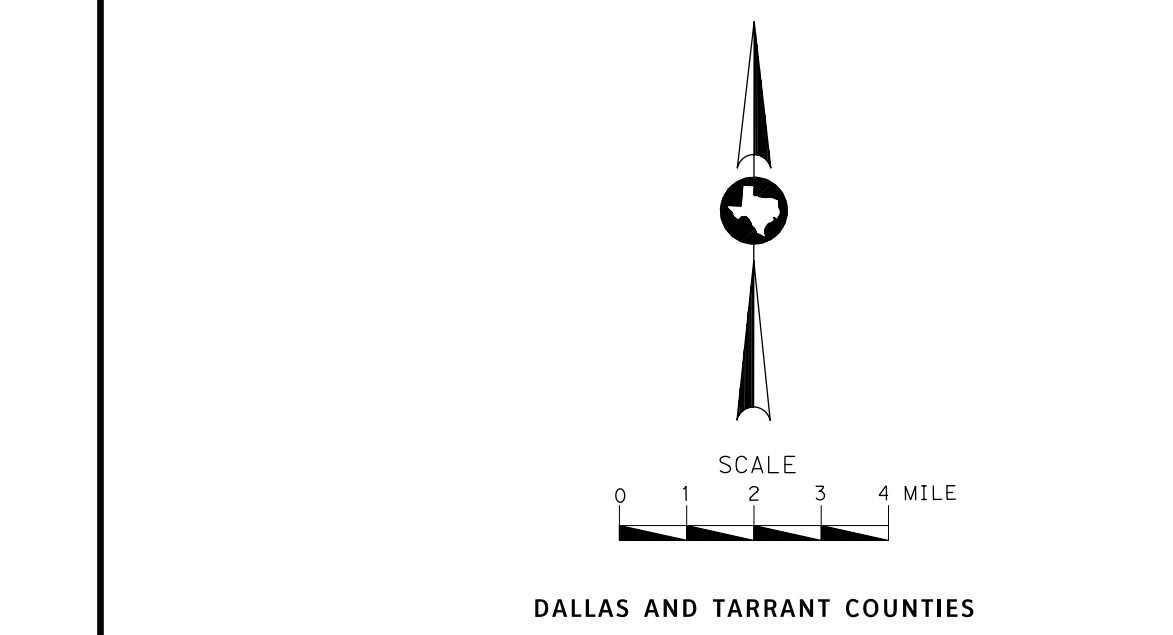
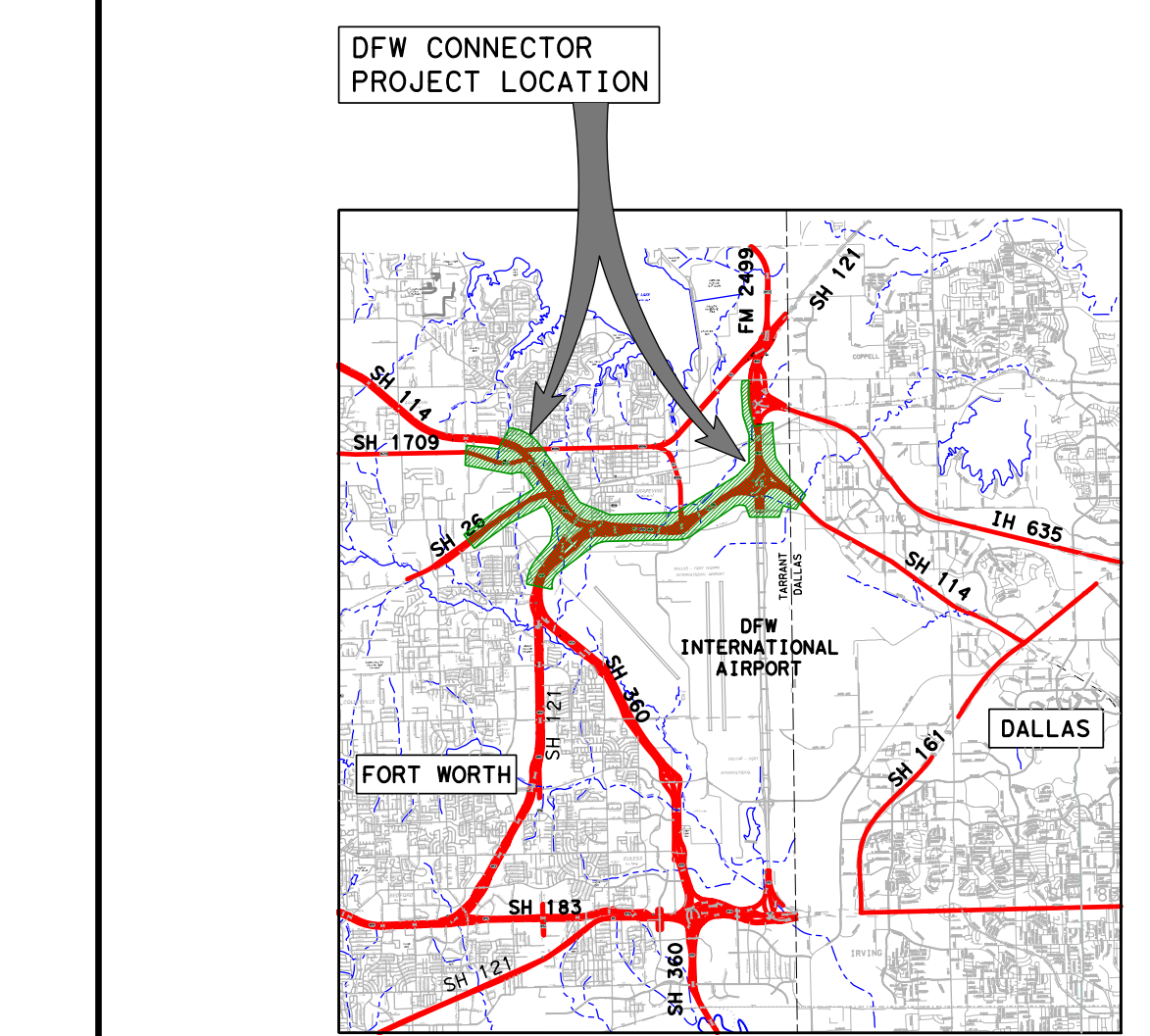
**DEVELOPER'S SCHEMATIC  
DFW CONNECTOR PROJECT  
DALLAS & TARRANT  
COUNTIES**

STATE HIGHWAY 114  
FROM BUSINESS 114L TO INTERNATIONAL PARKWAY  
AND  
STATE HIGHWAY 121  
FROM SH 360 TO FM 2499

D.2.6  
EXHIBIT 2, APPENDIX 3: SCHEMATICS

ROLL 1 OF 4  
DESIGN SPEED  
FUNCTIONAL CLASSIFICATION, DESIGN SPEED:  
MAINLANES-URBAN FREEWAY-70 MPH  
COLLECTOR DISTRIBUTOR -URBAN FREEWAY-50 MPH  
RAMP-URBAN FREEWAY-50 MPH  
FRONTAGE ROADS-COLLECTOR-40 MPH  
CROSS STREETS-COLLECTOR-30 MPH  
TURNABOUTS,UTURNS-COLLECTOR-20 MPH  
FM 2499-URBAN FREEWAY-55 MPH

**CONFIGURATION 2 WITH DEFERRALS  
BEST AND FINAL OFFER**



NOT FOR CONSTRUCTION OR  
PERMIT PURPOSES  
PREPARED UNDER THE SUPERVISION OF  
JAMES W. LANGSTON, P. E. #73891  
MAY 18, 2009

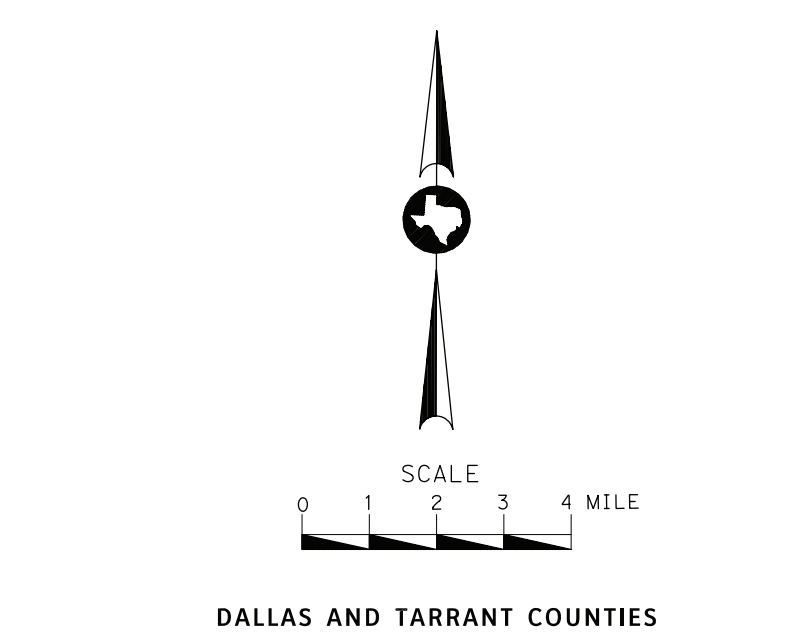
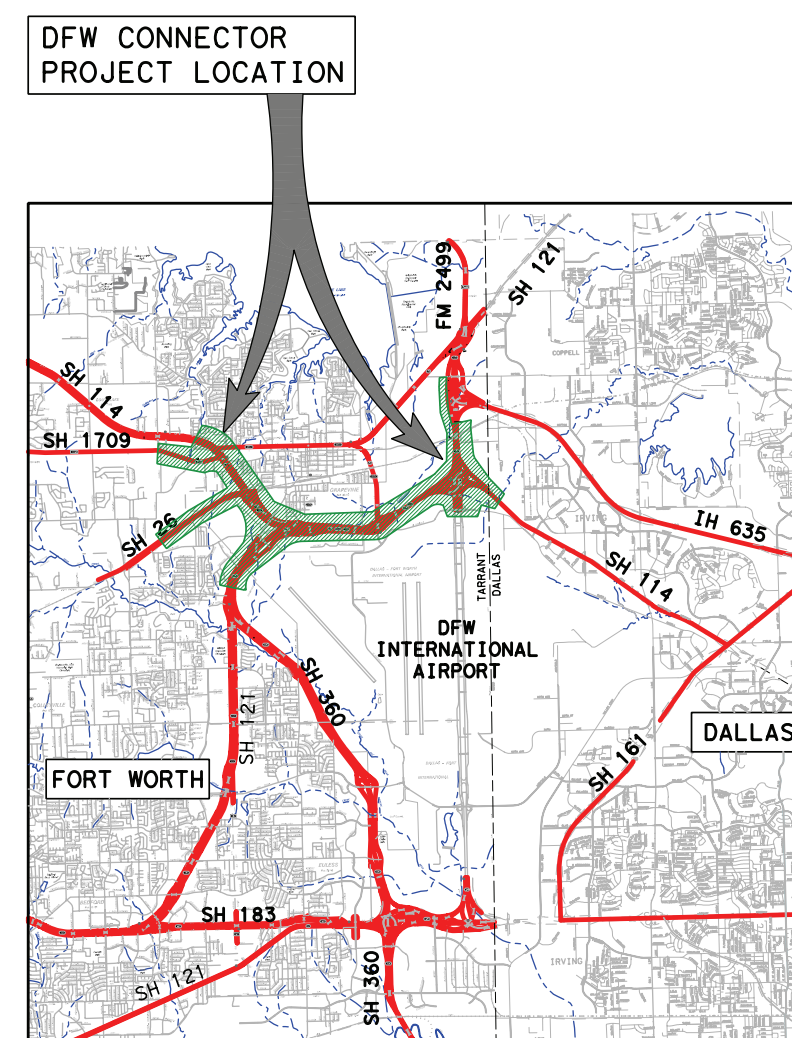
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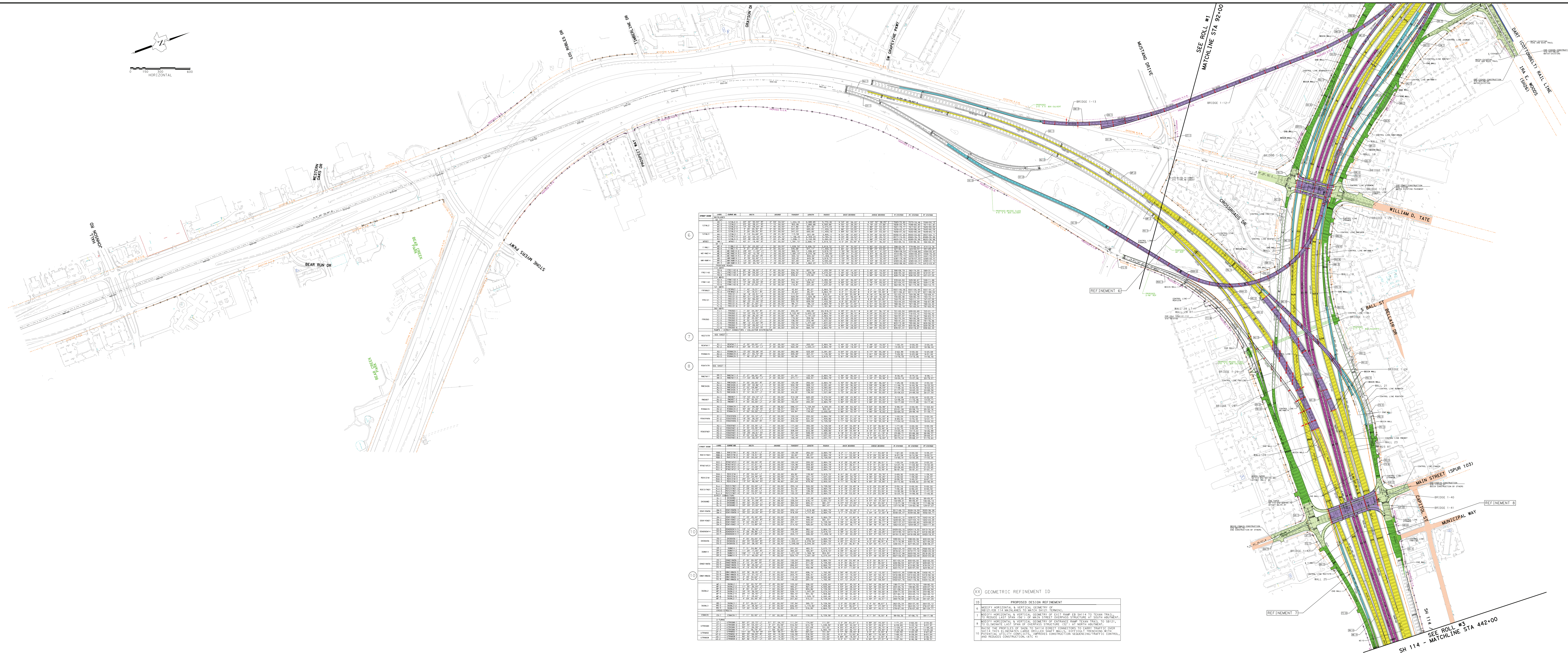
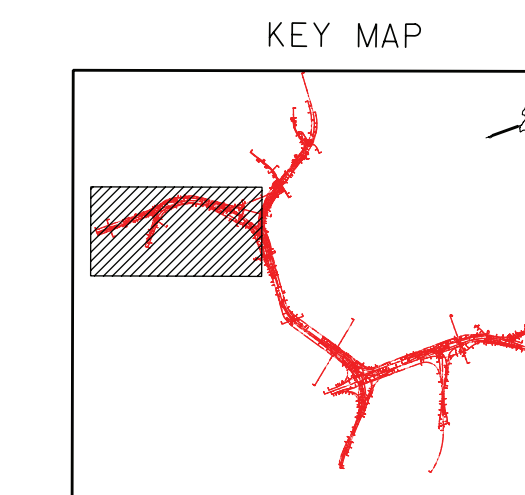
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PREPARED UNDER THE SUPERVISION OF  
WILLIAM M. FRYE, P.E., #81465  
MAY 18, 2009

**PAVEMENT LEGEND**

	EXISTING STREETS REMAINING
	PROPOSED FRONTAGE ROADS
	PROPOSED STRUCTURES
	PROPOSED SHOULDER/GOES
	PROPOSED RAMP, DIRECT CONNECTORS COLLECTOR DISTRIBUTORS
	PROPOSED MANAGED LANES
	PROPOSED MAINLANES
	PROPOSED CONSTRUCTION BY OTHERS
	PROPOSED CROSS STREETS/UTURNS
	EXISTING R.O.W.
	PROPOSED R.O.W.
	PROPOSED RETAINING WALL
	ALIGNMENT
	CONTROL OF ACCESS
	DIRECTION OF TRAFFIC, ONE LANE BENTS/ABUTMENTS
	DISPLACED BUILDING
	CURVE DATA LABEL



REFINEMENT ID	DATE	DESCRIPTION	BY	CHECKED	APPROVED
6	05/18/09	PROPOSED DESIGN REFINEMENT	W.M. FRYE	W.M. FRYE	W.M. FRYE
7	05/18/09	PROPOSED DESIGN REFINEMENT	W.M. FRYE	W.M. FRYE	W.M. FRYE
8	05/18/09	PROPOSED DESIGN REFINEMENT	W.M. FRYE	W.M. FRYE	W.M. FRYE
9	05/18/09	PROPOSED DESIGN REFINEMENT	W.M. FRYE	W.M. FRYE	W.M. FRYE
10	05/18/09	PROPOSED DESIGN REFINEMENT	W.M. FRYE	W.M. FRYE	W.M. FRYE

REFINEMENT ID	DATE	DESCRIPTION	BY	CHECKED	APPROVED
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8	05/18/09	PROPOSED DESIGN REFINEMENT	W.M. FRYE	W.M. FRYE	W.M. FRYE
9	05/18/09	PROPOSED DESIGN REFINEMENT	W.M. FRYE	W.M. FRYE	W.M. FRYE
10	05/18/09	PROPOSED DESIGN REFINEMENT	W.M. FRYE	W.M. FRYE	W.M. FRYE

PROPOSED DESIGN REFINEMENT

- MODIFY HORIZONTAL & VERTICAL GEOMETRY OF EXISTING 12' MAINLANE TO MATCH EXISTING
- MODIFY HORIZONTAL & VERTICAL GEOMETRY OF EXISTING RAMP TO MATCH EXISTING
- MODIFY HORIZONTAL & VERTICAL GEOMETRY OF EXISTING RAMP TO MATCH EXISTING
- MODIFY HORIZONTAL & VERTICAL GEOMETRY OF EXISTING RAMP TO MATCH EXISTING
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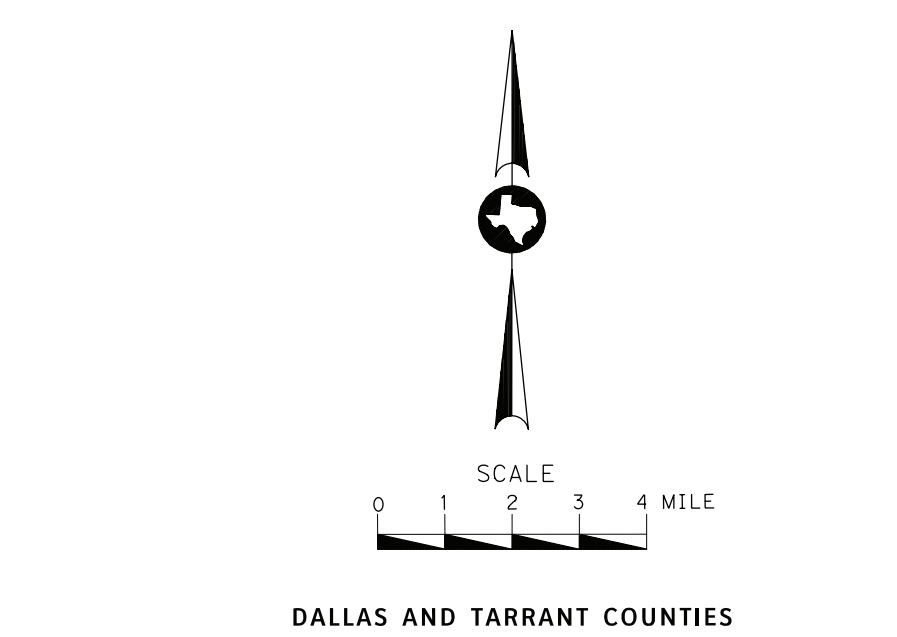
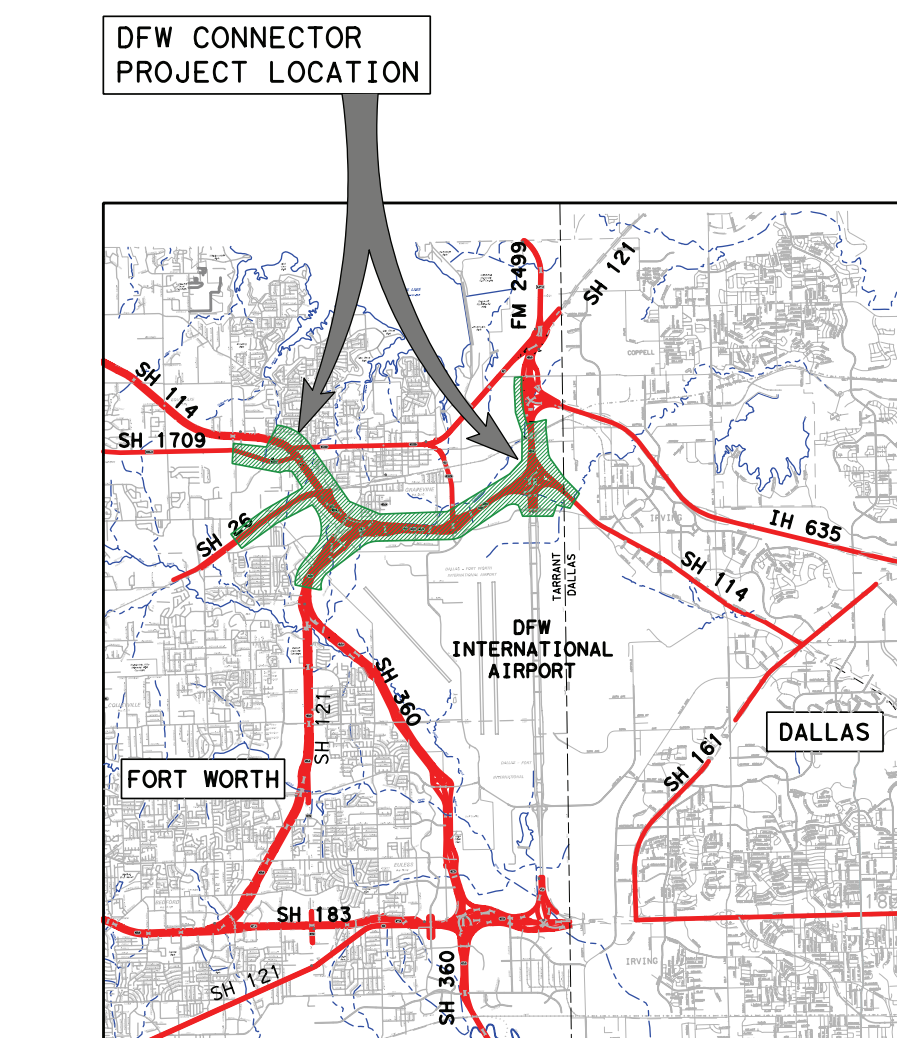
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WILLIAM M. FRYE, P.E., #81465  
MAY 18, 2009





**EXHIBIT 3**  
**FEDERAL REQUIREMENTS**

<b><u>Exhibit Description</u></b>	<b><u>No. of Pages</u></b>
Attachment 1 – Federal Requirements for Federal-Aid Construction Projects	2
Attachment 2 – FHWA Form 1273	24
Attachment 3 – Wage Determination of the Secretary of Labor	4
Attachment 4 – Equal Employment Opportunity	5
Attachment 5 – Affirmative Action	5
Attachment 6 – Debarment and Suspension Certification	1
Attachment 7 – Lobbying Certification	1
Attachment 8 – Compliance with Buy America Requirements	2
Attachment 9 – Special Provisions for ARRA Funding	4



## ATTACHMENT 1 TO EXHIBIT 3

### FEDERAL REQUIREMENTS FOR FEDERAL-AID CONSTRUCTION PROJECTS

GENERAL. — The Work herein proposed will be financed in whole or in part with Federal funds, and therefore all of the statutes, rules and regulations promulgated by the Federal Government and applicable to work financed in whole or in part with Federal funds will apply to such work. The "Required Contract Provisions, Federal-Aid Construction Contracts, Form FHWA 1273," are included in this Exhibit 3. Whenever in said required contract provisions references are made to:

(a) "SHA contracting officer", "SHA resident engineer", or "authorized representative of the SHA", such references shall be construed to mean TxDOT or its Authorized Representative;

(b) "contractor", "prime contractor", "bidder" or "prospective primary participant", such references shall be construed to mean Developer or its authorized representative;

(c) "contract" or "prime contract", such references shall be construed to mean the Comprehensive Development Agreement between Developer and TxDOT for the Project;

(d) "subcontractor", "supplier", "vendor", "prospective lower tier participant" or "lower tier subcontractor", such references shall be construed to mean any Subcontractor or Supplier; and

(e) "department", "agency" or "department or agency entering into this transaction", such references shall be construed to mean TxDOT, except where a different department or agency is specified.

PERFORMANCE OF PREVIOUS CONTRACT. — In addition to the provisions in Section II, "Nondiscrimination," and Section VII, "Subletting or Assigning the Contract," of the Form 1273 required contract provisions, Developer shall cause the contractor to comply with the following:

The bidder shall execute the CERTIFICATION WITH REGARD TO THE PERFORMANCE OF PREVIOUS CONTRACTS OR SUBCONTRACTS SUBJECT TO THE EQUAL OPPORTUNITY CLAUSE AND THE FILING OF REQUIRED REPORTS located in the proposal. No request for subletting or assigning any portion of the contract in excess of \$10,000 will be considered under the provisions of Section VII of the required contract provisions unless such request is accompanied by the CERTIFICATION referred to above, executed by the proposed subcontractor.

NON-COLLUSION PROVISION. — The provisions in this section are applicable to all contracts except contracts for Federal Aid Secondary Projects. Title 23, United States Code, Section 112, requires as a condition precedent to approval by the Federal Highway Administrator of the contract for this work that each bidder file a sworn statement executed by, or on behalf of, the person, firm, association, or corporation to whom such contract is to be awarded, certifying that such person, firm, association, or corporation has not, either directly or

indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted bid. A form to make the non-collusion affidavit statement required by Section 112 as a certification under penalty of perjury rather than as a sworn statement as permitted by 28 U.S.C., Sec. 1746, is included in the Proposal.

**PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN SUBCONTRACTING.** — Part 26, Title 49, Code of Federal Regulations applies to the Project. Pertinent sections of said Code are incorporated within other sections of the Agreement and the TxDOT Disadvantaged Business Enterprise Program adopted pursuant to 49 CFR Part 26.

#### CONVICT PRODUCED MATERIALS

a. FHWA Federal-aid projects are subject to 23 CFR § 635.417, Convict produced materials.

b. Materials produced after July 1, 1991, by convict labor may only be incorporated in a Federal aid highway construction project if such materials have been: (i) produced by convicts who are on parole, supervised release, or probation from a prison, or (ii) produced in a prison project in which convicts, during the 12 month period ending July 1, 1987, produced materials for use in Federal aid highway construction projects, and the cumulative annual production amount of such materials for use in Federal aid highway construction does not exceed the amount of such materials produced in such project for use in Federal aid highway construction during the 12 month period ending July 1, 1987.

FHWA FORM 1273 SECTIONS VII.1 AND VII.2 INAPPLICABLE – Pursuant to 23 CFR 635.116(d), the requirements of Sections VII.1 and VII.2 of FHWA Form 1273 (Attachment 2 to Exhibit 3 to the Agreement) are inapplicable to the Agreement.

#### ACCESS TO RECORDS

a. As required by 49 CFR 18.36(i)(10), Developer and its subcontractors shall allow FHWA and the Comptroller General of the United States, or their duly authorized representatives, access to all books, documents, papers, and records of Developer and subcontractors which are directly pertinent to any grantee or subgrantee contract, for the purpose of making audit, examination, excerpts, and transcriptions thereof.

b. Developer agrees to include this section in each Subcontract at each tier, without modification except as appropriate to identify the subcontractor who will be subject to its provisions.

#### AMERICAN REINVESTMENT AND RECOVERY ACT (ARRA)

The Work herein proposed will be financed in part with ARRA Federal funds and shall be performed in compliance with all applicable ARRA requirements, including those contained in Attachment 9 to this Exhibit 3.

**ATTACHMENT 2 TO EXHIBIT 3**

**REQUIRED CONTRACT PROVISIONS  
FEDERAL-AID CONSTRUCTION CONTRACTS**

**FHWA Form 1273**

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## I GENERAL

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.
2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.
3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.
4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:
  - Section I, paragraph 2;
  - Section IV, paragraphs 1, 2, 3, 4, and 7;
  - Section V, paragraphs 1 and 2a through 2g.
5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.
6. Selection of Labor: During the performance of this contract, the contractor shall not:
  - a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or
  - b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

## II. NONDISCRIMINATION

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630 and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:
  - a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.
  - b. The contractor will accept as his operating policy the following statement:

"It is the policy of this Company 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, preapprenticeship, and/or on-the-job training."
2. **EEO Officer:** The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.
3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:
  - a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

- b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.
  - c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.
  - d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
  - e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.
4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.
- a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.
  - b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)
  - c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.
5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

- a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
- b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
- c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
- d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

**6. Training and Promotion:**

- a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.
- b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.
- c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
- d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

- 7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

- a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.
- b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.
- c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA and shall set forth what efforts have been made to obtain such information.
- d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.

**8. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

- a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.
- b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.
- c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.



9. **Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.
- a. The records kept by the contractor shall document the following:
    - i. The number of minority and non-minority group members and women employed in each work classification on the project;
    - ii. The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;
    - iii. The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and
    - iv. The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.
  - b. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the job training is being required by special provision, the contractor will be required to collect and report training data.

### III. NONSEGREGATED FACILITIES

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

1. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.
2. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit

directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

3. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

#### **IV. PAYMENT OF PREDETERMINED MINIMUM WAGE**

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

##### **1. General:**

- a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.
- b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the

time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

- c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.

## **2. Classification:**

- a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.
- b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:
  - i. the work to be performed by the additional classification requested is not performed by a classification in the wage determination;
  - ii. the additional classification is utilized in the area by the construction industry;
  - iii. the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
  - iv. with respect to helpers, when such a classification prevails in the area in which the work is performed.
- c. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour

Administrator for determination. Said Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary

- e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

**3. Payment of Fringe Benefits:**

- a. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor or subcontractors, as appropriate, shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly case equivalent thereof.
- b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

**4. Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:**

- a. Apprentices:
  - i. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.
  - ii. The allowable ratio of apprentices to journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the

applicable wage rate listed in the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor or subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

- iii. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.
- iv. In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

b. Trainees:

- i. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration.
- ii. The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered

program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

- iii. Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.
- iv. In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. **Helpers:**

- d. Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under an approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

**5. Apprentices and Trainees (Programs of the U.S. DOT):**

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

**6. Withholding:**

The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, as

much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the SHA contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

**7. Overtime Requirements:**

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

**8. Violation:**

Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

**9. Withholding for Unpaid Wages and Liquidated Damages:**

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

**V. STATEMENTS AND PAYROLLS**

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related

subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

**1. Compliance with Copeland Regulations (29 CFR 3)**

The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

**2. Payrolls and Payroll Records:**

- a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.
- b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.
- c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime



contractor is responsible for the submission of copies of payrolls by all subcontractors.

- d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
  - i. that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;
  - ii. that such laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 3;
  - iii. that each laborer or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalent for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- e. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.
- f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.
- g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

## **VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR**

1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis,

highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than \$1,000,000 (23 CFR 635) the contractor shall:

- a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.
  - b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.
  - c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.
2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

## **VII. SUBLETTING OR ASSIGNING THE CONTRACT**

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635).
  - a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.
  - b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.
2. The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines is necessary to assure the performance of the contract.
4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

#### **VIII. SAFETY: ACCIDENT PREVENTION**

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SHA contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.
2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).
3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

#### **IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the Project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway

project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

### NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

18 U.S.C. 1020 reads as follows:

- *"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or*
- *Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or*
- *Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;*
- *Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both."*

#### X. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$100,000 or more.)

By submission of this bid or the execution of this contract, or subcontract, as appropriate, the bidder, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub. L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub. L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.
3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.
4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

**XI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

**1. Instructions for Certification - Primary Covered Transactions**

(Applicable to all Federal-aid contracts - 49 CFR 29)

- a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.
- d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage

sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.

- f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.
- i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

\* \* \* \* \*

### **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Primary Covered Transactions**

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  - b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and
  - d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\* \* \* \* \*

3. Instructions for Certification - Lower Tier Covered Transactions:

(Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more - 49 CFR 29)

- a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.
- d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the

meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

- e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
- h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

\* \* \* \* \*

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--  
Lower Tier Covered Transactions:**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.



2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\* \* \* \* \*

## **XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 - 49 CFR 20)

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:
  - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
  - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT 3 TO EXHIBIT 3**

**FEDERAL PREVAILING WAGE RATE**

**(Subject to change)**

GENERAL DECISION: TX20080043 02/08/2008 TX43

Date: February 8, 2008

General Decision Number: TX20080043 02/08/2008

Superseded General Decision Number: TX20070045

State: Texas

Construction Types: Heavy and Highway

Counties: Collin, Dallas, Denton, Ellis, Grayson, Johnson,  
Kaufman, Parker, Rockwall, Tarrant and Wichita Counties in Texas.

HEAVY AND HIGHWAY CONSTRUCTION PROJECTS IN WICHITA COUNTY ONLY.  
HIGHWAY CONSTRUCTION PROJECTS ONLY FOR REMAINING COUNTIES.

Modification Number    Publication Date

0                    02/08/2008

SUTX2004-004 11/09/2004

	Rates	Fringes
Air Tool Operator	\$ 10.06	0.00
Asphalt Distributor Operator	\$ 13.99	0.00
Asphalt paving machine operator	\$ 12.78	0.00
Asphalt Raker	\$ 11.01	0.00
Asphalt Shoveler	\$ 8.80	0.00
Batching Plant Weigher	\$ 14.15	0.00
Broom or Sweeper Operator	\$ 9.88	0.00
Bulldozer operator	\$ 13.22	0.00
Carpenter	\$ 12.80	0.00
Concrete Finisher, Paving	\$ 12.85	0.00
Concrete Finisher, Structures	\$ 13.27	0.00
Concrete Paving Curbing Machine Operator	\$ 12.00	0.00
Concrete Paving Finishing Machine Operator	\$ 13.63	0.00
Concrete Paving Joint Sealer Operator	\$ 12.50	0.00
Concrete Paving Saw Operator	\$ 13.56	0.00
Concrete Paving Spreader Operator	\$ 14.50	0.00

Concrete Rubber	\$ 10.61	0.00
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel Operator	\$ 14.12	0.00
Electrician	\$ 18.12	0.00
Flagger	\$ 8.43	0.00
Form Builder/Setter, Structures	\$ 11.63	0.00
Form Setter, Paving & Curb.	\$ 11.83	0.00
Foundation Drill Operator, Crawler Mounted	\$ 13.67	0.00
Foundation Drill Operator, Truck Mounted	\$ 16.30	0.00
Front End Loader Operator	\$ 12.62	0.00
Laborer, common	\$ 9.18	0.00
Laborer, Utility	\$ 10.65	0.00
Mechanic	\$ 16.97	0.00
Milling Machine Operator, Fine Grade	\$ 11.83	0.00
Mixer operator	\$ 11.58	0.00
Motor Grader Operator, Fine Grade	\$ 15.20	0.00
Motor Grader Operator, Rough	\$ 14.50	0.00
Oiler	\$ 14.98	0.00
Painter, Structures	\$ 13.17	0.00
Pavement Marking Machine Operator	\$ 10.04	0.00
Pipelayer	\$ 11.04	0.00
Reinforcing Steel Setter, Paving	\$ 14.86	0.00
Reinforcing Steel Setter, Structure	\$ 16.29	0.00
Roller Operator, Pneumatic, Self-Propelled	\$ 11.07	0.00
Roller Operator, Steel Wheel, Flat Wheel/Tamping	\$ 10.92	0.00
Roller Operator, Steel Wheel, Plant Mix Pavement	\$ 11.28	0.00
Scraper Operator	\$ 11.42	0.00
Servicer	\$ 12.32	0.00
Slip Form Machine Operator	\$ 12.33	0.00
Spreader Box operator	\$ 10.92	0.00
Tractor operator, Crawler Type	\$ 12.60	0.00
Tractor operator, Pneumatic	\$ 12.91	0.00
Traveling Mixer Operator	\$ 12.03	0.00
Truck driver, lowboy-Float\$	\$ 14.93	0.00
Truck driver, Single Axle, Heavy	\$ 11.47	0.00
Truck driver, Single Axle, Light	\$ 10.91	0.00
Truck Driver, Tandem Axle, Semi-Trailer	\$ 11.75	0.00

Truck Driver, Transit-Mix	\$ 12.08	0.00
Wagon Drill, Boring Machine, Post Hole Driller Operator	\$ 14.00	0.00
Welder	\$ 13.57	0.00
Work Zone Barricade Servicer	\$ 10.09	0.00

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

#### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

**ATTACHMENT 4 TO EXHIBIT 3**

**EQUAL EMPLOYMENT OPPORTUNITY**

**SPECIAL PROVISION**

**000---001**

**Standard Federal Equal Employment Opportunity  
Construction Contract Specifications (Executive Order 11246)**

1. As used in these specifications:
  - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
  - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
  - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
  - d. "Minority" includes:
    - i. Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
    - ii. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
    - iii. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
    - iv. American Indian or Alaskan Native (all persons having origins in any of the original peoples of North American and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Hometown Plan area (including goals and timetables) shall be in accordance with that plan for those trades which have unions participating in the Hometown Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved Hometown

Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Hometown Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Hometown Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Hometown Plan goals and timetables.

4. The contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing contracts in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the contract is being performed. Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any Office of Federal Contract Compliance Programs office or any Federal procurement contracting officer. The contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.
5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.
7. The contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
  - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each construction project. The contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
  - b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

- c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the contractor may have taken.
- d. Provide immediate written notification to the Director when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or woman sent by the contractor, or when the contractor has other information that the union referral Process has impeded the contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under 7b above.
- f. Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the contractor's EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the contractor's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractor's EEO policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.



- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.
  - k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
  - l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
  - m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the contractor's EEO policy and the contractor's obligations under these specifications are being carried out.
  - n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
  - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
  - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.
9. A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the contractor has achieved its goals for women generally, the

contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
11. The contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
14. The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).
16. In addition to the reporting requirements set forth elsewhere in this contract, the contractor and the subcontractors holding subcontracts, not including material suppliers, of \$10,000 or more, shall submit for every month of July during which work is performed, employment data as contained under Form PR 1391 (Appendix C to 23 CFR, Part 230), and in accordance with the instructions included thereon.

**ATTACHMENT 5 TO EXHIBIT 3**

**AFFIRMATIVE ACTION**

**SPECIAL PROVISION**

**000--1981**

**Notice of Requirement for Affirmative Action to  
Ensure Equal Employment Opportunity (Executive Order 11246)**

**1. General.**

In addition to the affirmative action requirements of the Special Provision titled "Standard Federal Equal Employment Opportunity Construction Contract Specifications" as set forth elsewhere in this proposal, the contractor's attention is directed to the specific requirements for utilization of minorities and females as set forth below.

**2. Goals.**

- a. Goals for minority and female participation are hereby established in accordance with 41 CFR 60-4.
- b. The goals for minority and female participation expressed in percentage terms for the contractor's aggregate work force in each trade on all construction work in the covered area, are as follows:

**Goals for minority  
participation in  
each trade  
(per- cent)**

**Goals for female  
participation in  
each trade  
(per-cent)**

See Table 1

6.9

- c. These goals are applicable to all the contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and non-federally involved construction. The contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Standard Federal Equal Employment Opportunity Construction Contract Specifications Special Provision and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority and female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

d. A contractor or subcontractor will be considered in compliance with these provisions by participation in the Texas Highway-Heavy Branch, AGC, Statewide Training and Affirmative Action Plan. Provided that each contractor or subcontractor participating in this plan must individually comply with the equal opportunity clause set forth in 41 CFR 60-1.4 and must make a good faith effort to achieve the goals set forth for each participating trade in the plan in which it has employees. The overall good performance of other contractors and subcontractors toward a goal in an approved plan does not excuse any covered contractor's or subcontractor's failure to make good faith efforts to achieve the goals contained in these provisions. Contractors or subcontractors participating in the plan must be able to demonstrate their participation and document their compliance with the provisions of this plan.

**3. Subcontracting.**

The contractor shall provide written notification to TxDOT within ten Business Days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation pending concurrence of TxDOT in the award. The notification shall list the names, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

**4. Covered area.**

As used in this special provision, and in the contract resulting from this solicitation, the geographical area covered by these goals for female participation is the State of Texas. The geographical area covered by these goals for other minorities are the counties in the State of Texas as indicated in Table 1.

**5. Reports.**

The contractor is hereby notified that he may be subject to the Office of Federal Contract Compliance Programs (OFCCP) reporting and record keeping requirements as provided for under Executive Order 11246 as amended. OFCCP will provide direct notice to the contractor as to the specific reporting requirements that he will be expected to fulfill.

**Table 1**

<b>County</b>	<b>Goals for Minority Participation</b>	<b>County</b>	<b>Goals for Minority Participation</b>
Anderson	22.5	Concho	20.0
Andrews	18.9	Cooke	17.2
Angelina	22.5	Coryell	16.4
Aransas	44.2	Cottle	11.0
Archer	11.0	Crane	18.9
Armstrong	11.0	Crockett	20.0
Atascosa	49.4	Crosby	19.5
Austin	27.4	Culberson	49.0
Bailey	19.5	Dallam	11.0
Bandera	49.4	Dallas	18.2
Bastrop	24.2	Dawson	19.5

Baylor	11.0	Deaf Smith	11.0
Bee	44.2	Delta	17.2
Bell	16.4	Denton	18.2
Bexar	47.8	DeWitt	27.4
Blanco	24.2	Dickens	19.5
Borden	19.5	Dimmit	49.4
Bosque	18.6	Donley	11.0
Bowie	19.7	Duval	44.2
Brazoria	27.3	Eastland	10.9
Brazos	23.7	Ector	15.1
Brewster	49.0	Edwards	49.4
Briscoe	11.0	Ellis	18.2
Brooks	44.2	El Paso	57.8
Brown	10.9	Erath	17.2
Burleson	27.4	Falls	18.6
Burnet	24.2	Fannin	17.2
Caldwell	24.2	Fayette	27.4
Calhoun	27.4	Fisher	10.9
Callahan	11.6	Floyd	19.5
Cameron	71.0	Foard	11.0
Camp	20.2	Fort Bend	27.3
Carson	11.0	Franklin	17.2
Cass	20.2	Freestone	18.6
Castro	11.0	Frio	49.4
Chambers	27.4	Gaines	19.5
Cherokee	22.5	Galveston	28.9
Childress	11.0	Garza	19.5
Clay	12.4	Gillespie	49.4
Cochran	19.5	Glasscock	18.9
Coke	20.0	Goliad	27.4
Coleman	10.9	Gonzales	49.4
Collin	18.2	Gray	11.0
Collingsworth	11.0	Grayson	9.4
Colorado	27.4	Gregg	22.8
Comal	47.8	Grimes	27.4
Comanche	10.9	Guadalupe	47.8

<b>County</b>	<b>Goals for Minority Participation</b>	<b>County</b>	<b>Goals for Minority Participation</b>
Hale	19.5	Lavaca	27.4
Hall	11.0	Lee	24.2
Hamilton	18.6	Leon	27.4
Hansford	11.0	Liberty	27.3
Hardeman	11.0	Limestone	18.6
Hardin	22.6	Lipscomb	11.0
Harris	27.3	Live Oak	44.2
Harrison	22.8	Llano	24.2
Hartley	11.0	Loving	18.9
Haskell	10.9	Lubbock	19.6
Hays	24.1	Lynn	19.5

Hemphill	11.0	Madison	27.4
Henderson	22.5	Marion	22.5
Hidalgo	72.8	Martin	18.9
Hill	18.6	Mason	20.0
Hockley	19.5	Matagorda	27.4
Hood	18.2	Maverick	49.4
Hopkins	17.2	McCulloch	20.0
Houston	22.5	McLennan	20.7
Howard	18.9	McMullen	49.4
Hudspeth	49.0	Medina	49.4
Hunt	17.2	Menard	20.0
Hutchinson	11.0	Midland	19.1
Irion	20.0	Milam	18.6
Jack	17.2	Mills	18.6
Jackson	27.4	Mitchell	10.9
Jasper	22.6	Montague	17.2
Jeff Davis	49.0	Montgomery	27.3
Jefferson	22.6	Moore	11.0
Jim Hogg	49.4	Morris	20.2
Jim Wells	44.2	Motley	19.5
Johnson	18.2	Nacogdoches	22.5
Jones	11.6	Navarro	17.2
Karnes	49.4	Newton	22.6
Kaufman	18.2	Nolan	10.9
Kendall	49.4	Nueces	41.7
Kennedy	44.2	Ochiltree	11.0
Kent	10.9	Oldham	11.0
Kerr	49.4	Orange	22.6
Kimble	20.0	Palo Pinto	17.2
King	19.5	Panola	22.5
Kinney	49.4	Parker	18.2
Kleberg	44.2	Parmer	11.0
Knox	10.9	Pecos	18.9
Lamar	20.2	Polk	27.4
Lamb	19.5	Potter	9.3
Lampasas	18.6	Presidio	49.0
LaSalle	49.4	Rains	17.2

<b>County</b>	<b>Goals for Minority Participation</b>	<b>County</b>	<b>Goals for Minority Participation</b>
Randall	9.3	Webb	87.3
Reagan	20.0	Wharton	27.4
Real	49.4	Wheeler	11.0
Red River	20.2	Wichita	12.4
Reeves	18.9	Wilbarger	11.0
Refugio	44.2	Willacy	72.9
Roberts	11.0	Williamson	24.1
Robertson	27.4	Wilson	49.4
Rockwall	18.2	Winkler	18.9
Runnels	20.0	Wise	18.2

Rusk	22.5	Wood	22.5
Sabine	22.6	Yoakum	19.5
San Augustine	22.5	Young	11.0
San Jacinto	27.4	Zapata	49.4
San Patricio	41.7	Zavala	49.4
San Saba	20.0		
Schleicher	20.0		
Scurry	10.9		
Shackelford	10.9		
Shelby	22.5		
Sherman	11.0		
Smith	23.5		
Somervell	17.2		
Starr	72.9		
Stephens	10.9		
Sterling	20.0		
Stonewall	10.9		
Sutton	20.0		
Swisher	11.0		
Tarrant	18.2		
Taylor	11.6		
Terrell	20.0		
Terry	19.5		
Throckmorton	10.9		
Titus	20.2		
Tom Green	19.2		
Travis	24.1		
Trinity	27.4		
Tyler	22.6		
Upshur	22.5		
Upton	18.9		
Uvalde	49.4		
Val Verde	49.4		
Van Zandt	17.2		
Victoria	27.4		
Walker	27.4		
Waller	27.3		
Ward	18.9		
Washington	27.4		

**ATTACHMENT 6 TO EXHIBIT 3**

**DEBARMENT AND SUSPENSION CERTIFICATION**

1. By signing and submitting its proposal or bid, and by executing the Agreement or Subcontract, each prospective Developer and subcontractor (at all tiers) shall be deemed to have signed and delivered the following certification:

The undersigned certifies to the best of its knowledge and belief, that it and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and
- d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective Developer or subcontractor is unable to certify to any of the statements in this certification, such Person shall attach a certification to its proposal or bid, or shall submit it with the executed Agreement or subcontract, stating that it is unable to provide the certification and explaining the reasons for such inability.



## ATTACHMENT 7 TO EXHIBIT 3

### CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

By signing and submitting its proposal or bid, and by executing the Agreement or Subcontract, each prospective Developer and subcontractor (at all tiers) shall be deemed to have signed and delivered the following:

1. The prospective Developer/subcontractor certifies, to the best of its knowledge and belief, that:
  - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
  - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, and shall include a copy of said form in its proposal or bid, or submit it with the executed Agreement or Subcontract.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
3. Developer/subcontractor shall require that the language of this certification be included in all lower tier Subcontracts which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.
4. The undersigned certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the undersigned understands and agrees that the provisions of 31 U.S.C. §3801, et seq., apply to this certification and disclosure, if any.

[Note: Pursuant to 31 U.S.C. §1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure or failure.]

## ATTACHMENT 8 TO EXHIBIT 3

### COMPLIANCE WITH BUY AMERICA REQUIREMENTS

Developer shall comply with the Federal Highway Administration (FHWA) Buy America Requirement in 23 CFR 635.410, which permits FHWA participation in the Agreement only if domestic steel and iron will be used on the Project. To be considered domestic, all steel and iron used and all products manufactured from steel and iron must be produced in the United States and all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes that protect or enhance the value of the material to which the coating is applied. This requirement does not preclude a minimal use of foreign steel and iron materials, provided the cost of such materials does not exceed 0.1% of the contract price under the Agreement.

Concurrently with execution of the Agreement, Developer has completed and submitted, or shall complete and submit, to TxDOT a Buy America Certificate, in format below. After submittal, Developer is bound by its original certification. However, in accordance with 49 USC 5323(j)(7), Developer may have the opportunity to correct an inadvertent error in its certification. Developer may correct any certification of noncompliance or failure to properly complete this certification if Developer attests under penalty of perjury that it submitted an incorrect certification as a result of an inadvertent or clerical error. The burden of establishing such inadvertent or clerical error is on Developer. Developer's failure to sign the certification is not considered an inadvertent or clerical error.

A false certification is a criminal act in violation of 18 U.S.C. 1001. Should this Agreement be investigated, Developer has the burden of proof to establish that it is in compliance.

At Developer's request, TxDOT may, but is not obligated to, seek a waiver of Buy America requirements if grounds for the waiver exist. However, Developer certifies that it will comply with the applicable Buy America requirements if a waiver of those requirements is not available or not pursued by TxDOT. A request for a waiver shall be treated as a Request for Change Order under Section 13.3 of the Agreement.

BUY AMERICA CERTIFICATE

Certificate of Compliance

Developer hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2), and the applicable regulations in 23 CFR 635.410.

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

Signature: \_\_\_\_\_

Developer's Name: \_\_\_\_\_

Title: \_\_\_\_\_

Or

Certificate for Noncompliance

Developer hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2), but may qualify for a waiver to the requirement to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and regulations in 23 CFR 635.410.

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

Signature: \_\_\_\_\_

Developer's Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTACHMENT 9 TO EXHIBIT 3**  
**SPECIAL PROVISIONS FOR ARRA FUNDING**

2004 Specifications

**SPECIAL PROVISION**

**000-1555**

**Important Notice to Contractors**

The Contractor's attention is directed to the fact that this project is expected to be funded from the America Recovery and Reinvestment Act of 2009 (ARRA). For projects funded by the ARRA, Contractors must:

- report by the 10th day of the month, the number of project employees, hours worked, and payroll for the previous month (The reporting requirement also includes subcontractor employees.) and
- include this requirement in subcontracts with subcontractors.

The Engineer will approve the form and method used for this reporting. Noncompliance with this requirement will result in the Department taking actions including but not limited to withholding estimates and suspending the work. This reporting will not be paid for directly but will be considered subsidiary to Items of the Contract.

1-1

000-1555  
03-09

**SPECIAL PROVISION**

**000--1580**

**Important Notice to Contractors**

The Contractor's attention is directed to the fact that this project is expected to be funded from the America Recovery and Reinvestment Act of 2009 (ARRA). Section 902 of the ARRA provides the U.S. Comptroller General and his representatives with the authority to:

- (1) to examine any records of the contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract; and
- (2) to interview any officer or employee of the contractor or any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions.

Accordingly, the Comptroller General and his representatives shall have the authority and rights as provided under Section 902 of the ARRA with respect to this contract, which is funded with funds made available under the ARRA. Section 902 further states that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General.

Additionally, be advised that Section 1515(a) of the ARRA provides as follows:

**Access.**

For projects using ARRA funds, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), is authorized:

- (1) to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract, that pertain to, and involve transactions relating to, the contract, subcontract, grant, or subgrant; and
- (2) to interview any officer or employee of the contractor, grantee, subgrantee, or agency regarding such transactions.

Section 1515(b) further provides that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an inspector general.

**SPECIAL PROVISION**

**000--1592**

**State On-the-Job Training Program  
America Recovery and Reinvestment Act of 2009 (ARRA) Projects**

1. **Description.** This project is expected to be funded from the America Recovery and Reinvestment Act of 2009 (ARRA). For these projects the primary objective of this Special Provision is the training and upgrading of minorities, women and economically disadvantaged persons toward journeyworker status. Accordingly, the Contractor shall make every effort to enroll minority, women and economically disadvantaged persons to the extent that such persons are available within a reasonable area of recruitment. This training commitment is not intended, and shall not be used to discriminate against any applicant for training, whether or not he/she is a member of a minority group.
2. **Trainee Assignment.** The Department has assigned project specific trainee graduate goals to this project as shown below. These goals are in addition to any goals assigned to specific contractors by the Department's Office of Civil Rights (OCR) to meet federal aid requirements.

For Amount of Original Contract		Trainee Graduate Goal
Above (\$)	To and Including (\$)	
0	1,000,000	0
1,000,000	25,000,000	1
25,000,000	50,000,000	2
50,000,000	75,000,000	3
75,000,000	100,000,000	4
100,000,000	Over 100,000,000	5

For these goal assignments, training may occur on this project or on other Contractor Department contracts. Graduations completed toward the goal must occur within the duration of this project or within a year from beginning of contract time charges, whichever is later. In accordance with program requirements, report all training and graduations to the Engineer and OCR.

3. **Program Requirements.** The Contractor is required to fulfill all of the requirements of the OJT program including the maintenance of records and submittal of periodic reports documenting program performance under this Special Provision. OJT program documents are available through the TxDOT Office of Civil Rights, Contract Compliance Section at 125 E. 11<sup>th</sup> Street, Austin, Texas 78701.

All training and administration costs will be subsidiary. Trainees shall be paid at least the minimum prevailing wage outlined elsewhere in the contract.

4. **Compliance.** The Contractor will have fulfilled the contractual responsibilities under this Special Provision by having provided acceptable training to the number of trainees specified in their goal assignment. Noncompliance with this Special Provision may be cause for corrective and appropriate measures pursuant to Article 8.6., Abandonment of Work or Default of Contract, Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges.

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000-1592  
04-09

## EXHIBIT 4

### TXDOT-PROVIDED APPROVALS

1. Finding of No Significant Impact issued by FHWA and FAA on April 23, 2009.
2. USACE Nationwide Permit and Section 401 Certification Based on the Schematic Design and Schematic ROW.



**EXHIBIT 5**

**MAXIMUM PAYMENT SCHEDULE**

**MAXIMUM PAYMENT CURVE – Configuration 1**

Months after NTP	Maximum Cumulative Draw
1	\$0.00
2	\$56,220.73
3	\$203,801.80
4	\$344,354.56
5	\$505,990.34
6	\$3,030,012.81
7	\$6,721,174.40
8	\$11,009,541.08
9	\$15,400,149.33
10	\$19,529,522.75
11	\$24,243,028.58
12	\$29,125,269.86
13	\$34,626,999.18
14	\$42,193,509.41
15	\$50,090,921.85
16	\$59,080,013.81
17	\$69,411,687.01
18	\$90,668,451.04
19	\$94,969,546.16
20	\$113,896,221.94
21	\$134,591,046.32
22	\$151,136,807.37
23	\$174,535,678.16
24	\$197,929,889.10
25	\$220,068,521.90
26	\$233,328,406.93
27	\$244,094,355.32
28	\$258,076,780.68
29	\$277,649,156.48
30	\$301,130,499.94
31	\$330,219,633.88
32	\$335,593,647.13
33	\$341,622,246.17
34	\$348,574,985.40
35	\$353,699,691.77
36	\$363,237,504.37
37	\$368,697,679.47
38	\$375,805,825.29
39	\$384,284,524.26
40	\$394,999,052.60
41	\$404,287,005.34
42	\$416,430,957.32
43	\$436,695,779.07
44	\$456,896,997.74
45	\$481,471,201.69
46	\$496,906,934.06
47	\$502,447,586.45
48	\$508,866,925.34
49	\$516,268,277.08
50	\$529,956,075.08
51	\$537,330,541.13
52	\$552,564,049.42
53	\$553,653,056.70
54	\$599,707,000.00

**MAXIMUM PAYMENT CURVE – Configuration 2**

Months after NTP	Maximum Cumulative Draw
1	\$17,696,999.96
2	\$41,262,435.14
3	\$64,919,564.61
4	\$73,997,300.34
5	\$83,625,201.87
6	\$96,462,403.92
7	\$110,308,243.26
8	\$124,979,331.31
9	\$139,833,807.96
10	\$154,779,978.91
11	\$171,193,258.66
12	\$193,199,890.73
13	\$214,748,051.30
14	\$235,654,351.77
15	\$259,953,341.35
16	\$284,160,636.63
17	\$307,591,190.99
18	\$320,930,051.05
19	\$339,268,911.11
20	\$357,699,465.47
21	\$375,579,854.03
22	\$397,403,097.50
23	\$419,226,340.97
24	\$438,848,921.24
25	\$461,405,719.11
26	\$483,137,268.28
27	\$504,868,817.45
28	\$526,600,366.62
29	\$548,240,221.49
30	\$569,971,770.66
31	\$590,878,071.13
32	\$611,876,065.90
33	\$632,874,060.67
34	\$653,780,361.14
35	\$674,778,355.91
36	\$689,449,443.96
37	\$704,212,226.30
38	\$718,516,537.15
39	\$737,038,785.81
40	\$752,535,122.56
41	\$767,939,765.01
42	\$783,436,101.76
43	\$798,840,744.21
44	\$814,337,080.96
45	\$829,741,723.41
46	\$842,579,925.46
47	\$855,924,433.20
48	\$868,069,940.94
49	\$880,815,448.68
50	\$891,176,904.62
51	\$898,237,365.74
52	\$904,931,049.66
53	\$910,157,624.78
54	\$911,899,816.48
55	\$913,642,008.19
56	\$915,292,505.59
57	\$916,943,003.00

**MAXIMUM PAYMENT CURVE – Configuration 3**

Months after NTP	Maximum Cumulative Draw
1	\$21,150,026.68
2	\$35,574,030.49
3	\$49,885,476.76
4	\$56,325,518.32
5	\$63,300,854.56
6	\$73,352,701.68
7	\$85,070,407.73
8	\$98,560,934.11
9	\$114,509,580.69
10	\$146,708,331.93
11	\$181,792,114.40
12	\$217,479,242.12
13	\$254,781,484.31
14	\$287,320,154.23
15	\$328,656,212.44
16	\$366,633,198.06
17	\$408,930,552.06
18	\$453,902,716.67
19	\$504,519,350.70
20	\$547,666,110.42
21	\$597,131,387.09
22	\$646,765,073.14
23	\$687,826,889.74
24	\$729,825,595.64
25	\$763,310,669.48
26	\$797,317,185.93
27	\$830,521,370.27
28	\$862,633,725.36
29	\$901,954,202.65
30	\$942,044,603.12
31	\$979,204,961.07
32	\$1,015,432,347.01
33	\$1,046,850,593.28
34	\$1,071,624,242.66
35	\$1,094,809,298.48
36	\$1,115,643,871.23
37	\$1,131,432,213.55
38	\$1,146,471,594.71
39	\$1,170,384,721.02
40	\$1,191,429,771.51
41	\$1,216,193,216.23
42	\$1,239,731,988.73
43	\$1,260,214,296.92
44	\$1,284,010,020.52
45	\$1,304,901,974.67
46	\$1,321,587,801.50
47	\$1,338,842,740.94
48	\$1,349,525,984.76
49	\$1,369,084,059.10
50	\$1,384,954,168.45
51	\$1,399,106,993.04
52	\$1,416,702,299.17
53	\$1,448,894,765.26
54	\$1,469,302,185.87
55	\$1,478,214,696.30
56	\$1,489,907,008.50
57	\$1,535,142,000.00

## EXHIBIT 6

### CDA SPECIAL PROVISION FOR THE DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

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

**I. 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 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 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 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 1A.c.(1) of this provision.)

For purposes of this Section (1.A.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 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 7

### DEVELOPER'S DBE PERFORMANCE PLAN

#### **DBE PLAN**

The following 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 the DFW Connector 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 professional services and construction Work performed under the CDA 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 as well as the identification of DBEs for performance of design work, other professional services and construction will be determined as work progresses and submitted to TxDOT on a form similar to TxDOT's Form SMS4901 Disadvantage Business Enterprise (DBE) Program Commitment Form.

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

The work activities to be self-performed by the Developer's workforce will be identified by 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 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. Community outreach meetings
- 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 may be asked to complete a Prequalification Form. This form is reviewed internally by The Developer to evaluate the following areas:

- ◆ 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 issued to the subcontractors. A log is maintained to track the subcontractors contacted and their response. Sample subcontract, material contract 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. The CDA and applicable addenda may also be transmitted to the subcontractor.

## 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 the project management team makes a selection of the successful subcontractors for each work scope subcontracted. If a DBE is not selected the reasons for this decision are documented. Appropriate agreements are drafted and forwarded to the subcontractor for execution.

## 7. PLAN ADMINISTRATION

The following individual will administer the subcontracting Program:

**NAME:** \_\_\_\_\_ *DBE Liaison*

**ADDRESS:** \_\_\_\_\_  
\_\_\_\_\_

**PHONE:** \_\_\_\_\_  
**FAX:** \_\_\_\_\_

The \_\_\_\_\_ specific duties, as they relate to this subcontracting plan, include oversight of the subcontracting program, and the development, assist in the preparation and execution of individual subcontracting plans, documentation and the monitoring of performance relative to the contractual subcontracting requirements contained in this plan including, but not limited to:

- 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 Business Opportunities Program (BOP) Office.
  - 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.*

*Developer shall pay each Subcontractor for Work performed within ten days after receiving payment from TxDOT for the Work performed by the Subcontractor, and shall pay any retainage on a Subcontractor's Work within ten 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.*

*Satisfactory completion shall have been accomplished when: (a) the Subcontractor has fulfilled the Subcontract requirements and the requirements under the CDA Documents for the subcontracted Work, including the submission of all submittals required by the Subcontract*

*and CDA Documents; and (b) the Work done by the Subcontractor has been inspected and approved by Developer and the final quantities of the Subcontractor's Work have been determined and agreed upon.*

*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 modified to fit the CDA. 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 businesses by allowing time for the preparation of bids, quantities, specifications and delivery schedules. 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. Counsel and discuss subcontracting opportunities with representatives of DBE's.
- C. 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.

**EXHIBIT 8**

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

## Northgate Constructors On-the-Job Training Program

### Policy Statement

Northgate Constructors will institute an on-the-job training program on the DFW Connector Project (*TxDOT Project # Pending*), in accordance with the 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, and TxDOT Special Provisions 000-1001 (attached), and 000-1592 (attached as Attachment 9 to CDA Exhibit 3) of the 2004 Specifications. The program is designed to increase participation of minority groups, disadvantaged persons and women in all phases of the highway construction industry.

### Nondiscrimination

It is the policy of Northgate Constructors to ensure that all applicants are considered and that employees are treated fairly during their employment, without regard to race, color, religion, age, physical or mental disability, sex, marital status, ancestry, national origin, veteran's status, citizenship, pregnancy, sexual orientation, other protected activities, or any other characteristic protected by federal, state, or local law. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; wages or other forms of compensation; selection for training, including apprenticeship, pre-apprenticeship, and/or on the job training; and ensuring and maintaining a work environment free of harassment, intimidation, and coercion at all sites and in all facilities at which employees are assigned to work.

### Northgate Annual Goal Commitment

Northgate Constructors will train at a minimum, the number of trainees required by TxDOT's Annual Estimate of Trainees Based upon Contract Amount, using the estimated amount of actual field work (not including design or close out work), for the current year on the DFW Connector Project (*TxDOT Project # Pending*). Northgate Constructors will submit the planned number of trainees to TxDOT for review and approval prior to January 31<sup>st</sup> of each year. Training will begin in 2010.

### Dissemination of OJT Program

Northgate Constructors will advise employees and applicants for employment of available training programs and prerequisites for each program. Upon entering the program, each trainee will receive a copy of their completed **Form 2201, Contractor OJT Enrollment Request Form (Attached)**.

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## Good Faith Efforts

Northgate Constructors will begin their annual training efforts within 60 days of receiving approval on their annual training goal. In the event Northgate Constructors does not have any individuals enrolled and undergoing training by that time, Northgate Constructors will provide to TxDOT the **Contractor Training Plan (Attached)**.

## Reporting Requirements

Northgate Constructors will notify TxDOT within seven (7) days of intent to assign trainee to the project using the Form 2201, Contractor OJT Enrollment Request Form.

Northgate Constructors will electronically submit **Form 2202, Contractor OJT Weekly Reporting Form (Attached)**, by Wednesday of each week, to the appropriate TxDOT Area Engineer(s), to document training activity, hours trained, termination, or graduation during the training period indicated.

Northgate Constructors will notify TxDOT within seven (7) days of intent to graduate a trainee from the OJT program, provided the trainee has demonstrated to Northgate Constructors his/her ability to perform at a journeyman level. Northgate Constructors reserves the right to graduate a qualified trainee at any time should they be deemed qualified.

When a trainee is terminated for any reason, Northgate Constructors will 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.

Northgate Constructors will utilize Form 2201, Contractor OJT Enrollment Request Form to notify TxDOT of the replacement trainee's enrollment.

When a trainee is transferred, Northgate Constructors will notify TxDOT's Area Engineer for the previous project and the Area Engineer for the project to which the trainee is being transferred, using **Form 2202 – Contractor OJT Weekly Reporting Form..**

Northgate Constructors will retain original training records for a period not less than three years following completion of the contract work.

## Trainee Requirements

No employee will be enrolled in the OJT program in any classification in which he/she has previously completed a training course leading to journeyman status, or in which he/she has been employed as a journeyman.

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### Trainee Wage Rates

Trainees will be paid at a minimum the established percentages of the project specific journeyman starting wage rates as set forth by Northgate Constructors (NCJSW). Under no circumstance will the trainee receive less than the minimum wage. Trainees' compensation will be not less than 60% of NCJSW 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.

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## Texas Department of Transportation Contractor On-the-Job Training Plan

I. Contractor Information			
Contractor		FY 2009 OJT Goal	
Contractor Representative	E-mail address	Phone Number	
Training must begin on a Federal-aid project. Indicate what project(s) selected trainees will be training on. Submit a Form-1391 for each project listed.			
II. Recruitment (Form FHWA-1273 requirement)			
Describe what methods will be used to locate minorities and women as OJT candidates:			
Describe how employees and applicants for employment will be advised of the OJT program:			
III. Selections (Form FHWA-1273 requirement)			
Describe how trainees and their classifications were selected:			
Training Classification	Approximate Training Start Date	Projected Number of Minorities	Projected Number of Females
<i>I understand and will comply fully with the plans and specifications under which this training is being performed and will report subsequent revisions to the training program as changes occur. I will take all good faith efforts to ensure that minorities and women have the equal opportunity to compete for and participate as trainees. Furthermore, I will ensure that trainees develop as journey-level workers in the type of classification employed.</i>			
Contractor Representative Signature			Date
Texas Department of Transportation Use Only			
Comments:			
<input type="checkbox"/> Approved   <input type="checkbox"/> Disapproved	Print name		Title
	Signature		Date



# Texas Department of Transportation CONTRACTOR OJT ENROLLMENT REQUEST FORM

Form 2201  
(Rev. 03/09)  
Page 1 of 1

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last Name: \_\_\_\_\_  
SSN (last 4 digits): \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_ Phone: \_\_\_\_\_

Gender: \_\_\_\_\_  
Ethnicity: \_\_\_\_\_ If other, please specify: \_\_\_\_\_

New Hire or Upgrade: \_\_\_\_\_ Previous Wage: \_\_\_\_\_  
Previous Classification: \_\_\_\_\_  
The candidate expressed interest in the OJT Program by responding to:  
If Upgrade: \_\_\_\_\_  
If New Hire: \_\_\_\_\_  
If other, please specify: \_\_\_\_\_  
How did the candidate demonstrate the commitment and capability to complete the program?

Contractor: \_\_\_\_\_ Phone: \_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Address: \_\_\_\_\_ City, State, ZIP: \_\_\_\_\_  
Email: \_\_\_\_\_

Training Classification: \_\_\_\_\_  
Planned Training Start Date: \_\_\_\_\_ Training Start Wage: \_\_\_\_\_  
Contract CSJ: (9999-99-999) Federal-aid project: Yes  No   
Is the OJT Special Provision included in the contract? Yes  No   
\*If no, a change order must be generated.  
County: \_\_\_\_\_ District: \_\_\_\_\_  
Area Engineer: \_\_\_\_\_

\_\_\_\_\_  
Trainee Signature Contractor Representative Signature  
\_\_\_\_\_  
Type Name Type Name

Electronically submit this form within 7 days to the Texas Department of Transportation (TxDOT) Office of Civil Rights at OCR\_TxDOT-OJT-Program@dot.state.tx.us. A signed copy must be maintained in the project files. Upon receipt of this form and if appropriate, TxDOT will furnish an enrollment confirmation letter to the Contractor, the applicable Area Engineer(s) and the District Director of Construction.

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Texas Department of Transportation  
OJT WEEKLY REPORTING FORM

Form 2202  
(Rev. 04/09)  
Page 1 of 1

First Name: \_\_\_\_\_ Last Name: \_\_\_\_\_ SSN (Last 4 digits): \_\_\_\_\_  
 Job Classification: \_\_\_\_\_ Contractor/Employer: \_\_\_\_\_  
 Begin Date of Workweek: \_\_\_\_\_ End Date of Workweek: \_\_\_\_\_  
 Contract CSJ(9999-99-999): \_\_\_\_\_ County: \_\_\_\_\_ Training Hours Worked: \_\_\_\_\_  
 Contract CSJ(9999-99-999): \_\_\_\_\_ County: \_\_\_\_\_ Training Hours Worked: \_\_\_\_\_  
 Contract CSJ(9999-99-999): \_\_\_\_\_ County: \_\_\_\_\_ Training Hours Worked: \_\_\_\_\_  
 Hourly Wage Rate: \_\_\_\_\_ Cumulative Hrs to Date: \_\_\_\_\_  
 Percentage of Full Wage (beginning of period): \_\_\_\_\_ % Percentage of Training completed (To Max. Training Hours): \_\_\_\_\_

Training Not to Exceed	hours for this classification	Date Completed

**Special Instructions:**  
 Graduate this Trainee as of: \_\_\_\_\_  
 Terminate this Trainee as of: \_\_\_\_\_ Reason for Termination: \_\_\_\_\_  
 Narrative Description of Progress or Problems (4 lines max.): \_\_\_\_\_  
 Check box if reimbursement is requested. Reimbursement is \$0.80 per training hour upon graduation. Reimbursement will be made under the active Federal-aid contract identified here. County \_\_\_\_\_ CSJ \_\_\_\_\_

Contractor Representative	Contact Phone	Email
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Electronically submit this form to the applicable Area Engineer(s), reporting on the preceding week. Upon graduation or termination, also electronically submit this form within 7 days to the Texas Department of Transportation Office of Civil Rights at OCR\_TxDOT-OJT-Program@dot.state.tx.us.

Date Checked Against Payroll:	
Payroll Period:	
Area Office Representative Signature and Title	Print Name: _____
	Signature: _____
	Title: _____
Area Office Comments:	

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**SPECIAL PROVISION**

**000--1001**

**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 1968 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.

## Small Business Mentoring/Training Program

NorthGate Constructors has created a Small Business Mentor Protégé Program to provide opportunities for disadvantaged and small businesses to participate in the areas of goods and services; design and construction.

### Definition of Terms

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 DBE and/or HUB or otherwise so certified by TxDOT.

NorthGate Constructors Mentor (Mentor) – Employees from NorthGate Constructors.

NorthGate Constructors (NGC) Protégé (Mentor Protégé) – DBEs/ HUBs/ SBEs that sign an agreement with NGC to participate in the NGC-Small Business Mentor Protégé Program.

Session – A series of meetings for the NGC-Small Business Mentor Protégés.

## **Program Goals**

NorthGate Constructor's (NGC) Small Business Mentor Protégé Program provides an opportunity to selected Small Business Mentor Protégés to learn about NGC's business opportunities and its business practices. Mentor Protégés will receive information to assist them in bidding and performing on NGC's contracts by working directly with NGC 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**



NGC will introduce the Mentor Protégés to key NGC staff and to TxDOT's project staff and provide networking opportunities with individuals. NGC mentors, in collaboration with NGC'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. NGC will publish bulletins that identify the firms participating in the Mentor Protégé program in order to improve awareness of the program and to achieve program goals.

### **Eligibility**

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 the program must submit a Small Business Mentor Protégé application to NorthGate Constructors (NGC). NGC 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, on average, five (5) active participants during the design and construction phase of the project. A total of two (2) active participants will be mentored during the capital maintenance period. 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 NGC, the Mentor Protégé must 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, NGC will provide each Mentor Protégé with a Certificate of Completion

## **Program Approach and Topics**

NorthGate Constructors Small Business Mentor Protégé program aims to provide effective mentoring to DBEs/HUBs/SBEs that have already been selected as subcontractors for the project. NGC 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 the 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 training – actual, real-time experience.

## **Participant Responsibilities and Reporting**

### **A. Mentor Protégé:**

The Mentor Protégé is responsible for complying with the following guidelines:

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

### **B. Mentor:**

A NGC 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 Protégé may have regarding the Program.

The Mentor will complete a quarterly report for each Protégé that outlines topics covered, progress towards completion, and recommended future training. The Mentor will submit each quarterly report to NGC's DBE Liaison Manager and TxDOT by the 10<sup>th</sup> working day of the following quarter.

**EXHIBIT 9**

**FORM OF PERFORMANCE BOND**

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

**DFW CONNECTOR PROJECT**

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

WHEREAS, the Texas Department of Transportation ("Obligee"), has awarded to \_\_\_\_\_, a \_\_\_\_\_ ("Principal"), a Comprehensive Development Agreement for the DFW Connector Project, duly executed and delivered as of \_\_\_\_\_, 2008 (the "Contract"), on the terms and conditions set forth therein; and

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

NOW, THEREFORE, Principal and \_\_\_\_\_, a \_\_\_\_\_ ("Surety"), an admitted surety insurer in the State of Texas, are held and firmly bound unto Obligee in the initial amount of \$50,000,000, subject to increase in accordance with the NTP2 Rider attached hereto (the "Bonded Sum"), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS BOND IS SUCH THAT, if Principal shall promptly and faithfully perform all of its obligations under the Contract Documents, including any and all amendments and supplements thereto, then the obligations under this Bond shall be null and void; otherwise this Bond shall remain in full force and effect. Obligee shall release this Bond upon the occurrence of all of the conditions to release set forth in Section 8.1.3 of the Contract.

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

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

2. This Bond specifically guarantees the performance of each and every obligation of Principal under the CDA Documents, as they may be amended and supplemented, including but not limited to, its liability for Liquidated Damages as specified in the Contract Documents, but not to exceed the Bonded Sum.

3. The guarantees contained herein shall survive Final Acceptance of the Work called for in the Contract Documents with respect to those obligations of Principal which survive such Final Acceptance.

4. Whenever Principal shall be, and is declared by Obligees to be, in default under the Contract Documents, provided that Obligees is not then in material default thereunder, Surety shall promptly:

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

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

c. obtain bids or negotiated proposals from qualified contractors acceptable to the Obligees for a contract for performance and completion of the Work, through a procurement process approved by the Obligees, arrange for a contract to be prepared for execution by the Obligees and the contractor selected with the Obligees's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Contract, and pay to the Obligees the amount of damages as described in Paragraph 6 of this Bond in excess of the unpaid balance of the Price incurred by the Obligees resulting from the Principal's default; or

d. waive their right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances, (i) after investigation, determine the amount for which they may be liable to the Obligees and, as soon as practicable after the amount is determined, tender payment therefore to the Obligees, or (ii) deny liability in whole or in part and notify the Obligees citing reasons therefore.

5. If Surety does not proceed as provided in Paragraph 4 of this Bond with reasonable promptness, Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Obligees to Surety demanding that Surety perform its obligations under this Bond, and the Obligees shall be entitled to enforce any remedy available to the Obligees. If Surety proceeds as provided in Subparagraph 4.d of this Bond, and the Obligees refuses the payment tendered or Sureties has denied liability, in whole or in part, without further notice, the Obligees shall be entitled to enforce any remedy available to the Obligees.

6. After the Obligees has terminated the Principal's right to complete the Contract, and if Surety elects to act under Subparagraph 4.a, 4.b, or 4.c above, then the responsibilities of Surety to the Obligees shall not be greater than those of the Principal under the Contract, and the responsibilities of the Obligees to Surety shall not be greater than those of the Obligees under the Contract. To the limit of the Bonded

Sum, but subject to commitment of the unpaid balance of the Price to mitigation costs and damages on the Contract, Surety is obligated without duplication for:

- a. the responsibilities of the Principal for correction of defective work and completion of the Work;
- b. actual damages, including additional legal, design, engineering, professional and delay costs resulting from Principal's default, and resulting from the actions or failure to act of Surety under Paragraph 4 of this Bond; and
- c. Liquidated Damages under the Contract.

7. No alteration, modification or supplement to the Contract Documents or the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Surety under this Bond provided that the aggregate dollar amount of TxDOT-Directed Changes, without the Surety's prior written consent thereto having been obtained, does not increase the Price by more than \$\_\_\_\_\_ ***[Insert amount that is 10% of the Price]***. Surety waives notice of any alteration, modification, supplement or extension of time other than Change Orders for TxDOT-Directed Changes in excess of such amount.

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

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

9. No right of action shall accrue on this Bond to or for the use of any entity other than Obligeo or its successors and assigns.

IN WITNESS WHEREOF, Principal and Surety have caused this Bond to be executed and delivered as of \_\_\_\_\_, 200\_\_.

Principal:

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
(Seal)

Surety:

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
(Seal)

**[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]**

**SURETY**

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

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

# NTP2 RIDER

To be attached to and form a part of

Bond No.

Type of  
Bond: **Performance Bond**

dated  
effective

(MONTH-DAY-YEAR)

**[Developer]**

, as Principal,

(PRINCIPAL)

and by

, as Surety,

in favor of **Texas Department of Transportation**

(OBLIGEE)

in consideration of the mutual agreements herein contained the Principal and the Surety hereby consent to the following:

**The Bonded Sum hereunder shall increase to the amount of \$250,000,000 effective upon issuance by the Obligee of NTP2 under the Contract.**

Nothing herein contained shall vary, alter or extend any provision or condition of this bond except as herein expressly stated.

This rider  
is effective

(MONTH-DAY-YEAR)

Signed and Sealed

(MONTH-DAY-YEAR)

(PRINCIPAL)

By: \_\_\_\_\_  
(PRINCIPAL)

\_\_\_\_\_  
(SURETY)

By: \_\_\_\_\_  
**Attorney in fact**