

**TEXAS DEPARTMENT OF TRANSPORTATION
IH 635 MANAGED LANES PROJECT
INSTRUCTIONS TO PROPOSERS—Form A**

PROPOSAL LETTER

PROPOSER: _____

Proposal Date: _____, 2009

Texas Department of Transportation
Texas Turnpike Authority Division
125 East 11th Street
Austin, Texas 78701-2483
Attn: Phillip E. Russell, P.E.

The undersigned (“**Proposer**”) submits this detailed proposal (this “**Proposal**”) in response to that certain Request for Proposals (the “**RFP**”) issued by the Texas Department of Transportation (“**TxDOT**”), an agency of the State of Texas, dated September 18, 2007, as amended, to develop, design, construct, finance, operate and maintain the IH 635 Managed Lanes Project (the “**Project**”), as more specifically described herein and in the documents provided with the RFP (the “**RFP Documents**”). Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the RFP and the RFP Documents.

Portions of the Financial Proposal, as described in Section 4.4.4 of the ITP, have been delivered to the Escrow Agent identified in the RFP.

In consideration for TxDOT supplying us, at our request, with the RFP Documents and agreeing to examine and consider this Proposal, the undersigned undertakes [jointly and severally] *[if Proposer is a joint venture or association other than a corporation, limited liability company or a partnership, leave in words “jointly and severally,” and delete the brackets; otherwise delete the entire phrase]*:

a) to keep this Proposal open for acceptance initially for 180 days after the Proposal Due Date, without unilaterally varying or amending its terms and without any member or partner withdrawing or any other change being made in the composition of the partnership/joint venture/limited liability company/consortium on whose behalf this Proposal is submitted, without first obtaining the prior written consent of TxDOT, in TxDOT’s sole discretion; and

b) if this Proposal is accepted, to provide security (including bonds, insurance and letters of credit) for the due performance of the Comprehensive Development Agreement (“**CDA**”) as stipulated in the CDA and the RFP.

If selected by TxDOT, Proposer agrees to do the following or to cause the Developer to do the following: (a) if requested by TxDOT in its sole discretion, enter into good faith

negotiations with TxDOT regarding the terms of the CDA, in accordance with the requirements of the RFP; (b) enter into the CDA without varying or amending its terms (except for modifications agreed to by TxDOT in its sole discretion), and satisfy all other conditions to award of the CDA; and (c) perform its obligations as set forth in the ITP and CDA, including compliance with all commitments contained in this Proposal.

The following individual(s) is/are authorized to enter into negotiations with TxDOT on behalf of the Proposer and Developer in connection with this RFP, the Project and the CDA: _____

Enclosed, and by this reference incorporated herein and made a part of this Proposal, are the following:

- Executive Summary
- Technical Proposal, including Proposer Information, Certifications and Documents, Proposal Security and Escrow Agreement
- Financial Proposal (portions of which have been delivered to the Escrow Agent)

Proposer acknowledges receipt of following Addenda and sets of questions and responses:

Addendum 1 issued January 9, 2008
Addendum 2 issued March 3, 2008
Addendum 3 issued March 19, 2008
Addendum 4 issued April 2, 2008
Addendum 5 issued May 2, 2008
Addendum 6 issued June 4, 2008
Addendum 7 issued June 27, 2008
Addendum 8 issued July 21 2008
Addendum 9 issued October 10, 2008
Addendum 10 issued November 21, 2008
Addendum 11 issued December 23, 2008
Addendum 12 issued January 14, 2009

Final responses to questions issued January 14, 2009

Proposer certifies that its Proposal is submitted without reservation, qualification, assumptions or conditions. Proposer certifies that it has carefully examined and is fully familiar with all of the provisions of all of the RFP Documents, has reviewed all materials posted on the secure file transfer site for the Project, the Addenda and TxDOT's responses to questions, and is satisfied that the RFP Documents provide sufficient detail regarding the obligations to be performed by the Developer and do not contain internal inconsistencies; that it has carefully checked all the words, figures and statements in this Proposal; that it has conducted such other field investigations and

additional design development which are prudent and reasonable in preparing this Proposal; and that it has notified TxDOT of any deficiencies in or omissions from any RFP Documents or other documents provided by TxDOT and of any unusual site conditions observed prior to the date hereof.

Proposer represents that all statements made in the QS previously delivered to TxDOT (as amended and resubmitted) are true, correct and accurate as of the date hereof, except as otherwise specified in the enclosed Proposal and Proposal forms. Proposer agrees that such QS, except as modified by the enclosed Proposal and Proposal forms, is incorporated as if fully set forth herein.

Proposer understands that TxDOT is not bound to accept the Proposal offering the highest payment to TxDOT, requesting the least public funds or any Proposal TxDOT may receive.

Proposer further understands that all costs and expenses incurred by it in preparing this Proposal and participating in the RFP process will be borne solely by the Proposer, except any payment for work product that may be paid in accordance with the RFP.

Proposer consents to TxDOT's disclosure of its Proposal pursuant to Section 223.204(a), Texas Transportation Code, to any Persons in TxDOT's sole discretion after conditional award by TxDOT. Proposer acknowledges and agrees to the disclosure terms described in ITP Section 2.6. Proposer expressly waives any right to contest such disclosures under Section 223.204(a).

Proposer agrees that TxDOT will not be responsible for any errors, omissions, inaccuracies or incomplete statements in this Proposal.

This Proposal shall be governed by and construed in all respects according to the laws of the State of Texas.

Proposer's business address:

(No.) (Street) (Floor or Suite)

(City) (State or Province) (ZIP or Postal Code) (Country)

State or Country of Incorporation/Formation/Organization: _____

[insert appropriate signature block from following pages]

1. Sample signature block for corporation or limited liability company:

[Insert the proposer's name]

By: _____

Print Name: _____

Title: _____

2. Sample signature block for partnership or joint venture:

[Insert the proposer's name]

By: *[Insert general partner's or member's name]*

By: _____

Print Name: _____

Title: _____

[Add signatures of additional general partners or members as appropriate]

3. Sample signature block for attorney in fact:

[Insert the proposer's name]

By: _____

Print Name: _____

Attorney in Fact

ADDITIONAL INFORMATION TO BE PROVIDED WITH PROPOSAL LETTER:

- A. Describe in detail the legal structure of the Proposer/Developer and Equity Participants. If any entity is not yet formed or if a modification is contemplated prior to award, so state and provide a brief description of the proposed legal structure of each such entity.
1. If the Proposer/Developer/Equity Participant is a corporation or includes a corporation as a joint venture member, partner or member, provide articles of incorporation and bylaws for the Proposer/Developer and each corporation certified by an appropriate individual. If any entity is not yet formed or if a modification to existing articles of incorporation and/or bylaws is contemplated prior to award, so state, indicate that these documents will be provided prior to award and provide applicable draft documents for each such entity.
 2. If the Proposer/Developer/Equity Participant is a partnership or includes a partnership as a joint venture member, partner or member, attach full names and addresses of all partners and the equity ownership interest of each entity, provide the incorporation, formation and organizational documentation for the Proposer/Developer/Equity Participant (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability company and joint venture agreement for a joint venture) certified by an appropriate individual. If any entity is not yet formed or if a modification to the organization documents is contemplated prior to award, so state, indicate that these documents will be provided for such entity prior to award and provide applicable draft documents for each such entity.
 3. If the Proposer/Developer/Equity Participant is a joint venture or includes a joint venture as a joint venture member, partner or member, attach full names and addresses of all joint venture members and the equity ownership interest of each entity, provide the incorporation, formation and organizational documentation for the Proposer/Developer/Equity Participant (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability company and joint venture agreement for a joint venture) certified by an appropriate individual. If any entity is not yet formed or if a modification to the organization documents is contemplated prior to award, so state, indicate that these documents will be provided prior to award and provide applicable draft documents for each such entity.
 4. If the Proposer/Developer/Equity Participant is a limited liability company or includes a limited liability company as a joint venture member, partner

or member, attach full names and addresses of all members and the equity ownership interest of each entity, provide the incorporation, formation and organizational documentation for the Proposer/Developer/Equity Participant (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability company and joint venture) certified by an appropriate individual. If any entity is not yet formed or if a modification to the organization documents is contemplated prior to award, so state, indicate that this information will be provided prior to award. Attach evidence to the Proposal and to each letter that the person signing has authority to do so and provide applicable draft documents for each such entity.

- B. With respect to authorization of execution and delivery of the Proposal and validity thereof, if the Proposer is a corporation, it shall provide evidence in the form of a resolution of its governing body certified by an appropriate officer of the corporation. If the Proposer is a partnership, such evidence shall be in the form of a partnership resolution and a general partner resolution (as to each general partner) providing such authorization, in each case, certified by an appropriate officer of the general partner. If the Proposer is a limited liability company, such evidence shall be in the form of a limited liability company resolution and a managing member(s) resolution providing such authorization, certified by an appropriate officer of the managing member(s). If there is no managing member, each member shall provide the foregoing information. If the Proposer is a joint venture, such evidence shall be in the form of a resolution of each joint venture member, certified by an appropriate officer of such joint venture member. If the Proposer is a joint venture or a partnership, the Proposal must be executed by all joint venture members or all general partners, as applicable.
- C. Developer's organizational documents, including an agreement to which all equity owners, either directly or through intermediaries, are a party (partnership agreement, limited liability company operating agreement, and joint venture agreement, as applicable), must include an express provision satisfactory to TxDOT, in its sole discretion, stating that, in the event of a dispute between or among joint venture members, partners or members, as applicable, no joint venture member, partner or member, as applicable, shall be entitled to stop, hinder or delay work on the Project. Proposer shall submit the applicable organizational documents (or draft organizational documents if Developer is not yet formed) and identify on a cover page where in the agreement the provision can be found. If Developer is wholly owned by a single entity but has more than one equity owner through one or more intermediaries, Proposer shall submit organizational documents for Developer, the entity that is directly held by the ultimate equity owners of Developer and for each intermediary. For purposes of this paragraph C, the term "equity member" shall mean any entity having a direct or indirect through intermediaries equity interest in Developer of at least 10%.

IDENTIFICATION OF PROPOSER AND EQUITY PARTICIPANTS—Form B-1

NAME OF ENTITY AND CONTACT INFORMATION (address, representative, phone, fax, e-mail)	ROLE IN ORGANIZATION	Texas Contractor License and License Limit (if applicable)	Description of Work/Services To Be Performed by Entity (if applicable)

The above information is true, correct and accurate.

[Insert the Proposer’s name]

By: _____
 Name: _____
 Title: _____

INFORMATION ABOUT PROPOSER ORGANIZATION—Form B-2

1.0 Name of Proposer: _____
 Name of Developer _____

2.0 Type of entity: Proposer: _____
 Developer: _____

3.0 Proposer's address: _____

 Telephone Facsimile

4.0 How many years has the Proposer, Developer and each Equity Participant been in its current line of business, and how many years has each entity been in business under its present name?

Name	No. of years in business	No. of years under present name

5.0 Under what other or former names have the Proposer, Developer and Equity Participants operated?

Proposer: _____
 _____ : _____
 _____ : _____
 _____ : _____
 _____ : _____

6.0 The Proposer shall review its QS previously submitted to TxDOT and list below any Key Personnel and other key staff members and their relevant experience that have been approved by TxDOT since the submission of the QS. Except as updated by the following information, the Proposer's QS is hereby incorporated as if set forth in full and the Proposer represents and warrants to TxDOT that the information set forth in the QS, except as set forth herein, is true, complete and accurate in all respects and does not contain any misleading or incorrect information. Attach separate sheets if necessary.

7.0 List all Texas licenses held by the Proposer, the Developer and any Equity Participants. Attach copies of all Texas licenses. Attach a separate sheet if necessary.

8.0 If the Proposer intends to provide Payment and Performance Bonds, the Proposal shall include the following information regarding the Surety/Bonding companies committing to provide the Payment and Performance Bonds in accordance with CDA Section 16:

(a) Name and address of bonding company(ies) that will provide the surety bonds required by the CDA (must be rated in the top two categories by two nationally recognized rating agencies or at least A minus (A-) or better and Class VIII or better by A.M. Best and Company), and the name, address and phone number of the designated agent.

(b) Whether or not the listed bonding company has defaulted on any obligation within the past ten years, and, if so, a description and details of the circumstances and the outcome of such default.

9.0 If the Proposer intends to provide the Payment and Performance Letter of Credit, the Proposal shall include the following information regarding the financial institution committing to issue the Payment and Performance Letter of Credit in accordance with Attachment 1 to Form K-1:

Name and address of financial institution(s) that will issue the Payment and Performance Letter of Credit required by Attachment 1 to Form K-1 of the ITP (must have a credit rating of "A" or better according to Standard & Poors Rating Services, a division of The McGraw-Hill Companies, Inc. and with an office in Austin, Dallas, Houston, or San Antonio at which such Payment and Performance Letter of Credit can be presented for payment), and the name, address and phone number of the designated agent.

STATE OF _____)
)
COUNTY OF _____)

Each of the undersigned, being first duly sworn, deposes and says that _____ is the _____ of _____ and _____ is the _____ of _____, which entity(ies) are the _____ of _____, the entity making the foregoing Proposal, and that the answers to the foregoing questions and all other statements therein are true and correct.

(Signature)

(Signature)

(Name Printed)

(Name Printed)

(Title)

(Title)

Subscribed and sworn to before me this ___ day of _____, 2008.

Notary Public in and for
said County and State

[Seal]

My commission expires: _____

The undersigned Proposer hereby certifies that it has not entered into any substantive negotiations with Major Participants and/or Major Professional Services Firms resulting in an agreement to enter into any Subcontracts with respect to the Project, except for those listed above. The Proposer agrees that it will follow applicable CDA requirements with respect to Subcontractors. Proposer further declares that it has carefully examined the RFP Documents and acknowledges that TxDOT has determined that a Proposer's efforts to obtain participation by Subcontractors could reasonably be expected to produce 12.12% DBE participation for the professional services and construction portions of the Work.

I declare under penalty of perjury under the laws of the State of Texas that the foregoing declaration is true and correct.

Executed: _____, 2008.

(Signature)

(Name printed)

(Title)

(Signature)

(Name printed)

(Title)

(Proposer)

STATE OF _____)
)
COUNTY OF _____)

Each of the undersigned, being first duly sworn, deposes and says that _____ is the _____ of _____ and _____ is the _____ of _____, which entity(ies) are the _____ of _____, the Proposer identified in the foregoing questionnaire, and that the answers to the foregoing questions and all other statements therein are true and correct.

(Signature)

(Signature)

(Name Printed)

(Name Printed)

(Title)

(Title)

Subscribed and sworn to before me this ___ day of _____, 2008.

Notary Public in and for
said County and State

[Seal]

My commission expires: _____.

RESPONSIBLE PROPOSER QUESTIONNAIRE—Form C

PROPOSER'S NAME: _____

NAME OF ENTITY ON WHOSE BEHALF FORM IS PROVIDED: _____

1. Questions

The Proposer/Equity Participant shall respond either “yes” or “no” to each of the following questions. If the response is “yes” to any question(s), a detailed explanation of the circumstances shall be provided in the space following the questions. The Proposer/Equity Participant shall attach additional documentation as necessary to fully explain said circumstances. Failure to either respond to the questions or provide adequate explanations may preclude consideration of the proposal and require its rejection. If this form is provided only for the Proposer, the term “**affiliate**” shall mean the Developer, any Equity Participant or any entity which owns a substantial interest in or is owned in common with the Proposer, Developer or any Equity Participant, or any such entity in which the Proposer, Developer or any Equity Participant owns a substantial interest. If this form is provided by the Proposer and the individual Equity Participants, the term “**affiliate**” shall mean the entity signing the form, any entity which owns a substantial interest in or is owned in common with the entity signing the form, or any entity in which the entity signing the form owns a substantial interest.

Within the past ten years, has the identified entity, any affiliate, or any officer, director, responsible managing officer or responsible managing employee of such entity or affiliate who has a proprietary interest in such entity:

- a) Been disqualified, debarred, removed or otherwise prevented from bidding or proposing on or completing a federal, state or local contract anywhere in the United States or any other country because of a violation of law or safety regulation?

If yes, please explain the circumstances. If no, so state.

Yes ___ No ___

- b) Been convicted by a court of competent jurisdiction of any criminal charge of fraud, bribery, collusion, conspiracy or any act in violation of state, federal or foreign antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

If yes, please explain the circumstances. If no, so state.

Yes ___ No ___

- c) Had filed against it, him or her, any criminal complaint, indictment or information alleging fraud, bribery, collusion, conspiracy or any action in violation of state or federal antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

If yes, please explain the circumstances. If no, so state.

Yes ___ No ___

- d) Had filed against it, him or her, any civil complaint (including but not limited to a cross-complaint) or other claim arising out of a public works contract, alleging fraud, bribery, collusion, conspiracy or any act in violation of state or federal antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

Yes ___ No ___

- e) Been found, adjudicated or determined by any federal or state court or agency (including, but not limited to, the Equal Employment Opportunity Commission, the Office of Federal Contract Compliance Programs and any applicable Texas governmental agency) to have violated any laws or Executive Orders relating to employment discrimination or affirmative action, including but not limited to Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. Sections 2000e et seq.); the Equal Pay Act (29 U.S.C. Section 206(d)); and any applicable or similar Texas law.

If yes, please explain the circumstances. If no, so state.

Yes ___ No ___

- f) Been found, adjudicated, or determined by any state court, state administrative agency, including, but not limited to, the Texas Department of Labor (or its equivalent), federal court or federal agency, to have violated or failed to comply with any law or regulation of the United States or any state governing prevailing wages (including but not limited to payment for health and welfare, pension, vacation, travel time, subsistence, apprenticeship or other training, or other fringe benefits) or overtime compensation?

If yes, please explain the circumstances. If no, so state.

Yes ___ No ___

- g) Been convicted of violating a state or federal law respecting the employment of undocumented aliens?

If yes, please explain the circumstances. If no, so state.

Yes ___ No ___

- h) Been assessed liquidated or other damages for failure to complete any contract on time?

If yes, please explain the circumstances. If no, so state.

Yes ___ No ___

Explain the circumstances underlying any "yes" answers for the aforementioned questions on separate sheets attached hereto.

2. Verification / Declaration

I declare under penalty of perjury under the laws of the State of Texas that the foregoing declaration is true, correct and accurate to the best of my knowledge following due inquiry. Executed _____, 2008.

(Signature)

(Name Printed)

(Title)

(Name of Organization)

**INDUSTRIAL SAFETY RECORD FOR TEAM MEMBERS
PERFORMING INSTALLATION OR CONSTRUCTION WORK—Form D**

PROPOSER'S NAME: _____

NAME OF TEAM MEMBER: _____

ROLE OF TEAM MEMBER: _____

This form shall be filled out separately and provided for each member of the Proposer's team that will perform or supervise installation or construction Work for this Project, and including information for any entity in which such team member holds a substantial interest. Information must be provided with regard to all installation and construction work undertaken in the United States (including the State of Texas) by the entity, with separate statistics relative to the State of Texas. For team members that are members of joint ventures, information shall be provided as though 100% of the results were for the listed participant. The Proposer may be requested to submit additional information or explanation of data which TxDOT may require for evaluating the safety record.

	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>
1) Total Hours Worked (in thousands) Nationwide: Texas:					
2) Number of fatalities:* Nationwide: Texas:					
3) Number of lost workdays:* Nationwide: Texas:					
4) Number of lost workdays* cases: Nationwide: Texas:					
5) Number of injury/illness* cases: Nationwide: Texas:					

	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>
6) Number of days of* restricted work activity due to injury/illness: Nationwide: Texas:					
7) Incidence Rate** Lost Workday Cases Nationwide: Texas: Days Lost Nationwide: Texas:					
8) Worker's Compensation Experience Modifier Nationwide: Texas:					

* The information required for these items is the same as required for columns 3 to 6, Code 10, Log and Summary of Occupational Injuries and Illnesses, OSHA Form 200.

** Incidence Rate = No. Injuries (Cases) x 200,000 / Total Hours Worked

The above information was compiled from the records that are available to me at this time and I declare under penalty of perjury under the laws of the State of Texas that the information is true and accurate within the limitation of those records.

Name of Company (Print)	Signature	
Address	Title	
City	State and ZIP Code (or international address, if applicable)	Telephone Number

PERSONNEL WORK ASSIGNMENT FORM—Form E

Name of Proposer: _____

Key Personnel Assignment

Name of Individual Assigned

[ADD KEY PERSONNEL TITLES]

Subscribed and sworn to before me this ___ day of _____, 2008.

Notary Public in and for
said County and State

[Seal]

My commission expires: _____.

[Duplicate or modify this form as necessary so that it accurately describes the entity making the Proposal and so that it is signed on behalf of the entity(ies) making the Proposal.]

BUY AMERICA CERTIFICATION—Form G

(To be signed by authorized signatory(ies) of Design-Builder)

The undersigned certifies that only domestic steel and iron will be used in 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 which 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 Design-Build Price.

Date: _____, 2008

Signature

Title

DBE CERTIFICATION—Form H

Control _____

Project _____

Highway _____

County _____

**DISADVANTAGED BUSINESS ENTERPRISES
REQUIREMENTS**

The following goal for participation by Disadvantaged Business Enterprises is established for professional services and construction work under the CDA:

DBE

12.12%

DBE Certification

By signing the Proposal, the Proposer certifies that (1) the above DBE goal will be met by obtaining commitments equal to or exceeding the DBE percentage or that the Developer will provide a good faith effort to substantiate the attempt to meet the goal; and (2) if final award of the CDA is achieved , the Developer will submit a DBE Performance Plan meeting the requirements set forth in the DBE Special Provisions attached as Exhibit 15 to the CDA.

Failure to submit the DBE Performance Plan will be considered a breach of the requirements of the RFP. As a result, the Proposal Security provided by the Proposer will become property of the Department and the Proposer will be precluded from participating in any reprourement of the CDA for the project.

[name]

[title]

**CHILD SUPPORT STATEMENT FOR
STATE GRANTS, LOANS AND CONTRACTS—Form I**

Under Section 231.006, Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is eligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

Proposer Name: _____

List below the name and social security number of the individual or sole proprietor and each partner, shareholder or owner with an ownership interest of at least 25% of the entity identified below.

Section 231.006, Family Code, specifies that a child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under a contract to provide property, materials, or services; or receive a state-funded grant or loan.

A child support obligor or business entity ineligible to receive payments described above remains ineligible until all arrearage have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency.

Except as provided by Section 231.302(d), Family Code, a social security number is confidential and may be disclosed only for the purposes of responding to a request for information from an agency operating under the provisions of Parts A and D of Title IV of the federal Social Security Act (42 U.S.C. Section 601-617 and 651-669).

Date: _____, 2008

Company Name: _____

Signature

Title

[Duplicate or modify this form as necessary so that it accurately describes the entity making the Proposal and so that it is signed on behalf of the Proposer and each Major Participant.]

CONFLICT OF INTEREST DISCLOSURE STATEMENT—Form J

Proposer’s attention is directed to 23 CFR Part 636 Subpart A and in particular to Subsection 636.116 regarding organizational conflicts of interest. Section 636.103 defines “organizational conflict of interest” as follows:

Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the owner, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

Proposers are advised that in accordance with TxDOT’s Conflicts of Interest Policy, certain firms will not be allowed to participate on any Proposer’s team for the Project because of their work with TxDOT in connection with the Project procurement and document preparation and the CDA program.

1. Disclosure Pursuant to Section 636.116(2)(v)

In the space provided below, and on supplemental sheets as necessary, identify all relevant facts relating to past, present, or planned interest(s) of the Proposer’s team (including the Proposer, the Developer, the Major Participants, proposed consultants and proposed subcontractors, and their respective chief executives, directors, and key project personnel) which may result, or could be viewed as, an organizational conflict of interest in connection with this RFP.

Proposer shall disclose (a) any current contractual relationships with TxDOT, (b) any past, present, or planned contractual or employment relationships with any TxDOT member, officer, or employee; and (c) any other circumstances that might be considered to create a financial interest in the contract by any TxDOT member, officer, or employee if Proposer is awarded the contract. Proposer shall also disclose matters such as ownership of 10% or more of the stock of, or having directors in common with, any of the RFP preparers. Proposer shall also disclose contractual relationships with an RFP preparer in the nature of a joint venture, as well as relationships wherein the RFP preparer is a contractor or consultant (or subcontractor or subconsultant) to Proposer or a member of Proposer’s team. The foregoing is provided by way of example, and shall not constitute a limitation on the disclosure obligations.

2. Explanation

In the space provided below, and on supplemental sheets as necessary, identify steps that have been or will be taken to avoid, neutralize, or mitigate any organizational conflicts of interest described herein.

3. Certification

The undersigned hereby certifies that, to the best of his or her knowledge and belief, no interest exists that is required to be disclosed in this Conflict of Interest Disclosure Statement, other than as disclosed above.

Signature

Name

Title

Company Name

_____, 2008
Date

FINANCIAL REQUEST/OFFER – Form K

Proposer Name: _____

If the Proposer is requesting public funds during the construction phase from TxDOT for the IH 635 Section, the IH 35E Section, the IH 635/IH 35E Interchange Section and the IH 635/US 75 Interchange Section, the Proposer shall complete Sections A and B. If the Proposer is offering to make a payment to TxDOT for the IH 635 Section, the IH 35E Section, the IH 635/IH 35E Interchange Section and the IH 635/US 75 Interchange Section or is otherwise not requesting public funds, the Proposer shall complete Section C.

If Proposer is requesting public funds from TxDOT for the IH 35E Capacity Improvement Section, the Proposer shall complete Section D. If the Proposer is offering to make a payment to TxDOT or is otherwise not requesting public funds for the IH 35E Capacity Improvement Section, the Proposer shall complete Section E.

Pursuant to Exhibit C, Section 7.0, Proposer is instructed to complete this Form K to include the cost of the Payment and Performance Bonds or the Payment and Performance Letter of Credit for each item, pursuant to Proposer's election in Form K-1.

A. Request of Public Funds

- Provide the Public Funds Request in nominal U.S. dollars, rounded to the nearest dollar, for each quarter and summing to the Total, in Box 1, payable pursuant to the terms set forth in Part E of Exhibit 7 to the CDA.
- Provide the net present value of the Public Funds Request, as of the Proposal Due Date using a 5% discount rate, 30-day months and 360-day years, discounted quarterly, rounded to the nearest dollar, in Box 2 ("Net Present Value of Public Funds Request"). Proposer is instructed to identify the assumed date for NTP2 in the table below.
- See Exhibit C, Section 7.0 for additional explanation and requirements.

	[insert assumed NTP2 date] NTP2 +									
	3 mos.	6 mos.	9 mos.	12 mos.	15 mos.	18 mos.	21 mos.	24 mos.	27 mos.	30 mos.
Public Funds Request	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	33 mos.	36 mos.	39 mos.	42 mos.	45 mos.	48 mos.	51 mos.	54 mos.	57 mos.	60 mos.
Public Funds Request	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total	\$0									

Box 1

Net Present Value of Public Funds Request	\$
--	----

Box 2

***Note:** A sixth year is permitted in the event the Proposal includes an Alternative Technical Concept approved by TxDOT that requires an environmental reevaluation of the IH 635 Section that materially affects the Critical Path based on a Service Commencement Deadline of five years after the date TxDOT issues NTP2.

B. Maximum Payment Curve

- The Maximum Payment Curve is the cumulative total of Public Funds Request for each preceding quarter, as described in Section A.
- The Maximum Payment Curve will be inserted into the executed Agreement as Attachment 3 to Exhibit 7 to the CDA, including the assumed date for NTP2 specified in Section A. The Maximum Payment Curve table shall be calculated from Section A, as described in Section 7.1.3 of Exhibit C.

***Note:** A sixth year is permitted in the event the Proposal includes an Alternative Technical Concept approved by TxDOT that requires an environmental reevaluation of the IH 635 Section that materially affects the Critical Path based on a Service Commencement Deadline of five years after the date TxDOT issues NTP2.

	NTP2 +									
	3 mos.	6 mos.	9 mos.	12 mos.	15 mos.	18 mos.	21 mos.	24 mos.	27 mos.	30 mos.
Maximum Payment Curve	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	33 mos.	36 mos.	39 mos.	42 mos.	45 mos.	48 mos.	51 mos.	54 mos.	57 mos.	60 mos.
Maximum Payment Curve	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

C. Offer of Payment to TxDOT

- Provide the Concession Payment in nominal U.S. dollars, rounded to the nearest dollar, in Box 3, payable pursuant to the terms set forth in Exhibit 7, Part A, Section 1 to the CDA.
- See Exhibit C, Section 7.0 for additional explanation and requirements.

Concession Payment	\$	Box 3
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D. Capacity Improvement Funds Request

- Provide the Capacity Improvement Funds Request in nominal U.S. dollars, rounded to the nearest dollar, in Box 4, payable pursuant to the terms set forth in Exhibit 7, Part E to the CDA.
- Provide the net present value of the Capacity Improvement Funds Request, as of the Proposal Due Date using a 5% discount rate, 30-day months and 360-day years, discounted quarterly, rounded to the nearest dollar, in Box 5. The Capacity Improvement Funds Request shall be discounted from October 31, 2014 to the Proposal Due Date.
- See Exhibit C, Section 7.0 for additional explanation and requirements.

Capacity Improvement Funds Request (nominal)	\$ Box 4
Capacity Improvement Funds Request (net present value)	\$ Box 5

E. IH 35E Capacity Improvement Offer of Payment to TxDOT

- Provide the Capacity Improvement Concession Payment in nominal U.S. dollars, rounded to the nearest dollar, in Box 6, payable pursuant to the terms of Exhibit 7, Part A, Section 2 to the CDA.
- Provide the net present value of the Capacity Improvement Concession Payment, as of the Proposal Due Date using a 5% discount rate, 30-day months and 360-day years, discounted quarterly, rounded to the nearest dollar, in Box 7. The Capacity Improvement Concession Payment shall be discounted from October 31, 2014 to the Proposal Due Date.
- See Exhibit C, Section 7.0 for additional explanation and requirements.

Capacity Improvement Concession Payment (nominal)	\$ Box 6
Capacity Improvement Concession Payment (net present value)	\$ Box 7

ELECTION FOR PAYMENT AND PERFORMANCE SECURITY
Form K-1

Proposer Name: _____

Proposer is instructed to check the applicable box below indicating whether it is electing to use Payment and Performance Bonds or the Payment and Performance Letter of Credit in Form K submitted with its Proposal.

- Proposer submits this Form K-1 as an acknowledgment that it has elected to complete and submit Form K based on the use of the Payment and Performance Bonds.

- Proposer submits this Form K-1 as an acknowledgment that it has elected to complete and submit Form K based on the use of the Payment and Performance Letter of Credit. Proposer hereby acknowledges and agrees that if selected as the successful Proposer, the requirements set forth in Attachment 1 to this Form K-1 and ITP Section 6.1.1.(k)(ii) will apply to the terms and provisions of the CDA.

(Signature)

(Name Printed)

(Title)

(Name of Organization)

**ATTACHMENT 1 TO FORM K-1
LETTER OF CREDIT PROVISIONS FOR CDA**

In the event the successful Proposer has elected to provide the Payment and Performance Letter of Credit in lieu of the Payment and Performance Bonds pursuant to Form K-1, the CDA (including its Exhibits) shall be revised as follows:

A. The following definitions shall be added to Exhibit 1 to the CDA:

Claimant means any Person that (a) has a direct contractual relationship with Developer, the P&P Obligor or any of its subcontractors to supply public work labor or material for the Project and (b) would be considered a “payment bond beneficiary” under Government Code Sec. 2253.001 had a payment bond been provided for the Project.

P&P Letter of Credit means a letter of credit meeting the requirements of Sections 16.2.1 and 16.2.2 and the applicable requirements of Sections 16.2.3 of the Agreement.

P&P Obligor means the Person identified as the obligor or account party in the P&P Letter of Credit.

B. The following provisions shall replace Section 7.6.1.4 in the executed form of CDA:

7.6.1.4 Developer has delivered to TxDOT either the original of each P&P Letter of Credit or, if the original has been delivered to the Collateral Agent, a certified and conformed copy of each original including the related documentation required under Section 16.2.2.4 and Section 16.2.2.5;

C. The following provisions shall replace Section 7.8.3.1(h) in the executed form of CDA:

(h) Any payment or performance security required under Section 16.2 during the Operating Period has been obtained and Developer has delivered the same to TxDOT;

D. The following provisions shall replace Section 16.2 in the executed form of CDA:

16.2 Payment and Performance Security

16.2.1 P&P Letter of Credit

16.2.1.1. Developer shall obtain and deliver, either to TxDOT or the Collateral Agent with a certified and conformed copy to TxDOT:

(a) A P&P Letter of Credit in an amount equal to \$250,000,000, identifying the Developer as the P&P Obligor, securing Developer’s obligations to perform the original Secured Work (under clause (a) of the definition thereof) and to ensure that payments owing to Claimants are made with respect to such Secured Work, and a separate P&P Letter of Credit for each undertaking of subsequent Secured work, in an

amount equal to the lesser of \$250,000,000 or 100% of the contracted cost, as security for Developer's obligations to perform the Secured Work and to ensure that payments owing to Claimants are made with respect thereto; or

(b) P&P Letters of Credit each identifying the Design-Build Contractor and prime Contractors, respectively, securing the Design-Build Contractor's and each other prime Contractor's obligations to perform under its respective Contract for Secured Work and to ensure that payments owing to Claimants are made with respect to such Secured Work thereunder. The P&P Letter of Credit from the Design-Build Contractor shall be in the amount of \$250,000,000, and the P&P Letter of Credit from any other prime Contractor shall be in an amount equal to the lesser of \$250,000,000 or 100% of the amount of the Secured Work to be performed by such Contractor.

16.2.1.2. Each P&P Letter of Credit shall name either TxDOT as beneficiary or the Collateral Agent as beneficiary. If the Collateral Agent is the named beneficiary, the P&P Letter of Credit shall provide for automatic transfer of rights to TxDOT as transferee beneficiary in compliance with Section 16.2.2.1 and Section 16.2.2.2.

16.2.1.3 If the P&P Obligor is Developer, the P&P Letter of Credit shall be delivered prior to commencement of the original Secured Work. If the P&P Obligor is the Design-Build Contractor or any other prime Contractor, the P&P Letter of Credit shall be delivered prior to issuance of a notice to proceed to such Contractor. Any P&P Letter of Credit required for subsequent Secured Work shall be delivered prior to the commencement of such Secured Work.

16.2.1.4 Each P&P Letter of Credit shall comply with the provisions and requirements of Section 16.3.1 except as permitted or required otherwise under Section 16.2. Each P&P Letter of Credit shall be maintained (through extensions or replacements as provided in Section 16.3.1.2), in full force and effect at all times from the date of delivery until (a) if provided by Developer, at least one year and 90 days after the date of Final Acceptance of all Project Segments (as to the original Secured Work) or one year and 90 days after final acceptance of the Construction Work related to the subsequent Secured Work, as applicable, or (b) if provided by the Design-Build Contractor or a prime Contractor, as provided in clause (a) above plus completion of any warranty period.

16.2.1.5 Neither the Collateral Agent nor any participating Lender in the senior Project Debt may be the issuer of a P&P Letter of Credit.

16.2.1.6. TxDOT has determined, as permitted by Transportation Code Section 223.205, that the P&P Letter(s) of Credit identified in this Section 16.2 constitute security sufficient to (a) ensure the proper performance of the Developer's obligations for carrying out and completing the public work included in the CDA; and (b) protect TxDOT and Claimants with respect thereto.

16.2.2. Collateral Agent as P&P Letter of Credit Beneficiary

Notwithstanding Section 16.3.1.1(g), the Collateral Agent may be named as the beneficiary of any P&P Letter of Credit, but only if the following terms and conditions are satisfied.

16.2.2.1 The P&P Letter of Credit shall expressly authorize assignment and transfer of the beneficiary rights thereunder from the Collateral Agent to TxDOT without condition or limitation and shall expressly permit TxDOT, as beneficiary, to draw without presentation of the original P&P Letter of Credit. Developer (or, if applicable, the Design-Build Contractor and other prime Contractor) shall bear any fees charged by the issuer of the P&P Letter of Credit for transferring the beneficiary rights thereunder.

16.2.2.2 The P&P Letter of Credit also shall name TxDOT as automatic and exclusive transferee beneficiary upon Final Acceptance of all Project Segments, and upon final acceptance of the Construction Work related to subsequent Secured Work (or, if applicable, Developer's final acceptance of the work under the Design-Build Contract or the Contract with any other prime Contractor for the original or subsequent Secured Work).

16.2.2.3 The Collateral Agent may draw on the P&P Letter of Credit solely for the following purposes:

(a) Making payments owing to Claimants or reimbursing a Lender (or, where the P&P Obligor is the Design-Build Contractor or other prime Contractor, reimbursing Developer) for making payments owing to Claimants, but only where circumstances set forth in Section 16.2.5.2 exist for using the P&P Letter of Credit for such payments;

(b) Paying or reimbursing its costs of curing Developer's failure to perform its obligations under the CDA Documents respecting the Secured Work (or, if applicable, paying or reimbursing Developer or itself for costs of curing the Design-Build Contractor's or other prime Contractor's failure to perform its performance obligations under its respective Contract(s)), or

(c) Holding the proceeds as cash security, useable only for the purposes specified in clauses (a) and (b) above, where the P&P Letter of Credit will expire within 45 days and has not been replaced or extended pursuant to Section 16.3.1.2.

16.2.2.4 The Collateral Agent first commits in writing to TxDOT to provide written notice to TxDOT within two Business Days after making a draw on the P&P Letter of Credit, indicating the date, amount and purpose of the draw in reasonable detail.

16.2.2.5 Developer has delivered to TxDOT, concurrently with the issuance of such P&P Letter of Credit, a certified copy of the P&P Letter of Credit and a present, executed transfer and assignment of the beneficiary rights from the Collateral Agent to TxDOT and documents reasonably satisfactory to TxDOT that permit TxDOT to

exercise its rights as the transferee beneficiary under such P&P Letter of Credit and to make drawings thereunder as and when set forth in Section 16.2.5:

16.2.2.6 Developer (or, if applicable, the Design-Build Contractor and other prime Contractor) shall bear any fees charged by the issuer of the P&P Letter of Credit for transferring the beneficiary rights thereunder.

16.2.3. Increase in P&P Letter of Credit Amount

If TxDOT does not receive any certificate, release, certified payroll or affidavit of wages paid as required by Exhibit 7 to the CDA or Section 16.2.6.2, it may require Developer to immediately increase (or, if applicable, cause the Design-Build Contractor and any other prime Contractor to immediately increase) the amount of the P&P Letter of Credit to such amount as TxDOT determines is appropriate to protect its interests and the Project, provided that the amount of any such increase shall not exceed the value of work for which TxDOT did not receive any such certificate, release, certified payroll or affidavit of wages paid.

16.2.4. Payment Claims Against P&P Letter of Credit

Payment claims against the P&P Letter of Credit shall be governed by this Section 16.2.4. To ensure that all potential Claimants receive notice of the procedures set forth in this Section 16.2.4, Developer shall require that Sections 16.2.4.1 through 16.2.4.6 be restated, with the blanks filled in, in each Contract that includes Secured Work and in all subcontracts thereunder (including contracts with Suppliers) that include Secured Work. In addition, each such Contract and subcontract shall include a provision requiring the Contractor or subcontractor to provide formal notice regarding the claims procedures under this Section 16.2.4 to each employee performing public work labor (as such term is defined in Government Code Section 2253.001) under the Contract or subcontract, in the same manner in which equal opportunity notices are required to be given to employees.

16.2.4.1. This contract concerns a public works project (the "Project") for which a letter of credit has been posted to secure obligations that would otherwise be secured by a payment bond provided by _____ (the "Prime Contractor") pursuant to Transportation Code Section 223.205. Each person or entity that would have the right under said statute to make a claim against a payment bond provided thereunder (a "Claimant") will instead have the right to make a claim under said letter of credit, as described below. Such alternative security is authorized by and provided in accordance with Transportation Code Section 223.205, and no Claimant will have any right to make a claim against TxDOT for failure to obtain a payment bond under Transportation Code Section 223.205.

16.2.4.2. All claims made pursuant to this Section 16.2.4 must:

(a) Be in writing, signed, and sworn by the Claimant or the Claimant's agent;

(b) Provide a general description of the labor, services, equipment or material furnished or agreed to be furnished, including the approximate dates and place of delivery or performance, in a manner that reasonably identifies the labor, services, equipment or material;

(c) State the Claimant's name and address;

(d) State the name of the person or entity to or for whom the work or items were done or furnished, including the name and address of the party with whom the Claimant contracted;

(e) State the total amount claimed, and that such amount is just and correct;

(f) State the value of the work already performed or items furnished, and that all known just and lawful offsets, payments, and credits have been allowed; and

(g) State the amount of any retainage that has not yet become due. A claim for retainage must include the amount of the contract, any amount paid, and the outstanding balance. However, to the extent that any prior claim made under this Section 16.2.4 included retainage, a separate subsequent claim for retainage need not be made.

16.2.4.3. The notices of claim must be delivered by certified or registered mail to the Prime Contractor at the following address: _____, with a copy to the Collateral Agent at the following address: _____, with a copy to [Developer if the Developer is separate from the Prime Contractor] at the following address: _____, and a copy to the Texas Department of Transportation at the following Address: _____.

In addition, if the Claimant does not have a direct contract with the Prime Contractor, a copy must be delivered to _____ [the party with whom the Claimant has entered into a contract] at the following address: _____.

16.2.4.4. A subcontractor who has a direct contractual relationship with the Prime Contractor shall make its claim, except for claims for payment of retainage, no later than the 15th day of the third month after each month in which any of the claimed labor was performed or any of the claimed material was delivered. A subcontractor who does not have a direct contractual relationship with the Prime Contractor shall make its claim, except for claims for payment of retainage, no later than the 15th day of the second month after each month in which any of the claimed labor was performed or any of the claimed material was delivered. Claims for payment of retainage shall be made no later than the 90th day after the date of final completion of the Project.

16.2.4.5. Any lawsuit filed by a Claimant to enforce its claim must be filed no earlier than the 61st day after the date the notice was mailed to all recipients identified above and no later than one year after such mailing date.

16.2.4.6. To the maximum extent permitted by law, any claim not made within the specified deadline is forever waived and extinguished, and any lawsuit not filed within the specified deadline is forever barred.

16.2.5. Draws on the P&P Letter of Credit

16.2.5.1. Each P&P Letter of Credit shall be subject to draw by TxDOT where it will expire within 45 days, provided that TxDOT has not received a new or replacement version, or extension, of the P&P Letter of Credit pursuant to Section 16.3.1.2, and, if Section 16.2.2 applies, TxDOT has no actual knowledge of a prior, full draw on the expiring P&P Letter of Credit by the Collateral Agent.

16.2.5.2. Each P&P Letter of Credit shall be subject to draw by TxDOT for the purpose of disbursement of funds owing to a Claimant under any one of the following circumstances:

(a) TxDOT has received a copy of a claim that complies on its face with Section 16.2.4.2, together with a proof of delivery thereof to the Prime Contractor and the Collateral Agent, (ii) TxDOT has not received from the Prime Contractor, within 30 days after service of the notice of claim, a sworn notice stating (A) that the Prime Contractor contests the claim, (B) whether the claim is contested in whole or in part, and if in part, the portion of the claim amount being contested, (C) the grounds for contesting the claim and (D) that the Prime Contractor is acting in good faith in contesting the claim, and (iii) if Section 16.2.2 applies, TxDOT has not received, within five days after expiration of such 30-day period, written notice from the Collateral Agent certifying that it has drawn on the P&P Letter of Credit and paid the uncontested portion of the claim;

(b) Upon TxDOT's receipt of a settlement agreement signed by all parties with competing interests to the funds that specifically provides that settlement funds are to be paid from the P&P Letter of Credit, in which case, such funds shall be disbursed according to the express terms of the settlement agreement;

(c) Upon TxDOT's receipt of an entered court order providing for payment of a claim from draw on the P&P Letter of Credit, in which case funds drawn shall be disbursed according to the terms of such court order; or

(d) A claim has been made and notice thereof given in accordance with Section 16.2.4, (ii) and at that time, or at any other time during the pendency of the claim, the P&P Obligor is or becomes, voluntarily or involuntarily, a debtor in any bankruptcy proceeding under applicable Law, and (iii) if Section 16.2.2 applies, TxDOT has not received, within five days thereafter, written notice from the Collateral Agent certifying that it has drawn on the P&P Letter of Credit and paid the claim in full.

No beneficiary of a P&P Letter of Credit shall have any obligation to investigate, verify or ascertain the eligibility of the person making a claim as a Claimant, the validity of any claim, notice of contest of claim, settlement agreement or court order or whether the Claimant has timely provided notice of claim. Rather, for the purpose of determining whether the P&P Letter of Credit is subject to draw, the beneficiary may, without liability, conclusively assume eligibility of the person making a claim as a Claimant and timely notice of a claim, and may conclusively assume the truthfulness and validity of, and may rely on, the claim, notice of contest of claim, settlement agreement, court order or any other information submitted under this Section 16.2.

16.2.5.3. If provided for Developer as the P&P Obligor, the P&P Letter of Credit shall be subject to draw by TxDOT due to the failure of Developer to perform its obligations under the CDA Documents respecting the Secured Work. Any draw by TxDOT is subject to Section 17.3.7. If Section 16.2.2 applies, TxDOT shall provide the Collateral Agent 30 days prior written notice of TxDOT's right to draw (which may be included in the notice of Developer Default), and shall not draw on the P&P Letter of Credit if within such 30-day period or the applicable cure period for the Developer Default, whichever is longer, TxDOT receives written notice from the Collateral Agent certifying that it is exercising step-in rights to cure the breach and has drawn on the P&P Letter of Credit for the purpose of paying or reimbursing its costs of curing Developer's failure to perform, as provided in Section 16.2.2.3.

16.2.5.4. If provided for the Design-Build Contractor or other prime Contractor as the P&P Obligor, the P&P Letter of Credit shall be subject to draw due to breach of such account party's performance obligations under its Contract. TxDOT shall have the conclusive right to rely on any declaration or other determination that Developer makes of the Design-Build Contractor's or other prime Contractor's breach or failure to perform its obligations. If Section 16.2.2 applies, TxDOT shall provide the Collateral Agent 30 days prior written notice of TxDOT's right to draw, and shall not draw on the P&P Letter of Credit if within such 30-day period TxDOT receives written notice from the Collateral Agent certifying that has drawn on the P&P Letter of Credit for the purpose of paying or reimbursing Developer or itself for costs of curing the Design-Build Contractor's or other prime Contractor's failure to perform, as provided in Section 16.2.2.3.

16.2.5.5. If provided for Developer as the P&P Obligor, the P&P Letter of Credit shall also constitute security in favor of TxDOT for payment and performance of Developer's obligation to defend and indemnify TxDOT under Section 16.5.1.6, and accordingly will be subject to draw by TxDOT as provided in Section 17.3.7. If the P&P Letter of Credit is provided by the Design-Build Contractor or other prime Contractor as the P&P Obligor, then, without limiting any other remedies, TxDOT may exercise its rights under Section 17.3.5 if Developer fails to defend and indemnify TxDOT under Section 16.5.1.6.

16.2.5.6. Developer shall deliver to TxDOT written notice at least five days before it draws on any P&P Letter of Credit provided by the Design-Build Contractor or any other prime Contractor. Each such notice shall set forth the intended amount and purpose of the draw in reasonable detail. Developer shall deliver to TxDOT

written notice of any draw on a P&P Letter of Credit by the Collateral Agent within five days after Developer obtains knowledge of any such draw. Each such notice shall set forth, to Developer's knowledge, the date, amount and purpose of the draw in reasonable detail.

16.2.6. Applicability to Secured Work

16.2.6.1. The requirements of this Section 16.2 shall apply in connection with Upgrades, new improvements, and reconstruction or rehabilitation during the Term (i.e. subsequent Secured Work).

16.2.6.2 Whenever Developer is performing subsequent Secured Work, Developer shall deliver to TxDOT, within 20 days after the end of each calendar month until final acceptance of the Construction Work related to such subsequent Secured Work, written certificates regarding payment and affidavits of wages paid equivalent to those described in paragraphs 9, 11(a) and 11(c) of the form of certificate in Attachment 2 to Exhibit 7 to the CDA.

16.2.7. Security from O&M Contractors

In the event Developer obtains payment or performance security from any O&M Contractor, Developer shall cause TxDOT to be named at issuance of such payment and performance security as an additional obligee or beneficiary thereunder, and shall deliver a certified copy thereof, with the multiple obligee rider or other comparable documentation, to TxDOT within ten days after issuance.

E. A new Section 17.3.8.1(g) shall be added to the executed form of CDA, as follows:

(g) Failure to maintain, extend or replace any P&P Letter of Credit.

F. A new Section 17.3.8.2(d) shall be added to the executed form of CDA, as follows:

(d) Developer has failed to (i) pay in full when due sums owing any Contractor for services, materials or equipment, except only for retainage provided in the relevant Contract and amounts in dispute, or (ii) deliver any certificate, release, certified payroll or affidavit of wages paid required with any Payment Request or required under Section 16.2.6.2.

G. A new Section 4.5 shall be added to Part E of the executed form of Exhibit 7 to the CDA, as follows:

4.5 If TxDOT receives a copy of a sworn notice of claim from a Claimant that complies on its face with Section 16.2.4.2, together with a proof of delivery thereof to the Prime Contractor and Collateral Agent, then TxDOT may withhold from any Payment Request to Developer an amount necessary to pay 50% of such claim; provided, however, that in no event shall TxDOT be entitled to withhold under this Section 4.5 an amount greater than 10% of any Public Funds Request (without taking into account such withholdings), and TxDOT shall not be entitled to withhold any amount that exceeds the 10%

limitation from a subsequent Public Funds Request. TxDOT may withhold such amount immediately on receipt of the sworn notice of claim and proof of delivery, without regard to whether the claim is or becomes contested. TxDOT shall release any withheld funds to Developer, without interest, within ten days after (a) receipt of proof of final resolution and discharge of the claim, or (b) payment by TxDOT, or receipt of proof of payment by the Collateral Agent, of the claim out of a P&P Letter of Credit.

PROPOSAL AND FINANCIAL CLOSE SECURITY—Form L

(Separate Documents)

PROPOSAL BOND—Form L-1

Bond No. _____

STATED EXPIRATION DATE: _____ [Note: Insert date that is 180 days after the Proposal Due Date and delete this bracket.]

KNOW ALL PERSONS BY THESE PRESENTS, that the _____ **[NOTE: insert name of Proposer as the Principal and delete this bracketed text]**, as Principal and _____, as Surety or as Co-Sureties, each a corporation duly organized under the laws of the State indicated on the attached page, having its principal place of business at the address listed on the attached page, in the State indicated on the attached page, and authorized as a surety in the State of Texas, are hereby jointly and severally held and firmly bound unto the Texas Department of Transportation (“TxDOT”), in the sum of \$_____. **[NOTE: insert amount of \$35 million if Proposer includes only committed debt instruments in accordance with ITP Exhibit C Section 5.3.1 or \$50 million if Proposer includes any uncommitted debt instruments in accordance with ITP Exhibit C Section 5.3.2 if a single bond is provided; multiple bonds in lesser amounts may be provided if the sum equals \$35 million or \$50 million, as applicable, and delete this bracketed text]** (the “Bonded Sum”).

WHEREAS, the Principal is herewith submitting its Proposal for furnishing the development, design and construction of the IH 635 Managed Lanes Project, which Proposal is incorporated herein by this reference and has been submitted pursuant to TxDOT’s Request for Proposals dated as of September 18, 2007 (as amended or supplemented, the “RFP”), in accordance with the Instructions to Proposers thereto (“ITP”) included in the RFP, to develop, design, construct, finance, operate and maintain the IH 635 Managed Lanes Project through a Comprehensive Development Agreement (the “CDA”);

NOW, THEREFORE,

1. The condition of this bond is such that, upon occurrence of any of the following events, then this obligation shall be null and void; otherwise it shall remain in full force and effect:

(a) TxDOT provides written notice to the Principal and Surety or Principal and Sureties listed on the attached page (the “Co-Sureties”) that either (i) no CDA for the Project will be awarded by TxDOT pursuant to the RFP, or (ii) TxDOT does not intend to award the CDA to Principal (which shall be presumed to be the case if final award of the CDA is made to another Proposer);

(b) Principal performs its obligations to achieve Delivery by the deadline set forth in ITP Section 1.6.2; and achieves financial close by the deadline set forth in ITP

Section 1.6.3, as such deadline may be extended in accordance with the ITP or by mutual agreement of the parties; or

(c) Performance is otherwise excused under the ITP; or

(d) If TxDOT has not previously delivered notice of forfeiture hereunder, failure of TxDOT to conditionally award the CDA to Principal within 180 days after the Proposal Due Date.

2. The Principal and the Surety or Co-Sureties hereby agree to pay to TxDOT the full Bonded Sum hereinabove set forth, as liquidated damages and not as a penalty, within ten days after occurrence of any of the following events:

(a) Principal (i) withdraws any part or all of its Proposal (including withdrawing, repudiating or otherwise indicating in writing that it will not meet any commitment made in its Proposal) prior to 180 days following the Proposal Due Date, except as specifically permitted under the ITP, or (ii) fails to increase the Proposal Security in accordance with ITP Exhibit B, Section 3.3; or

(b) If conditional award is made to Principal, Principal withdraws any part of its Proposal (including withdrawing, repudiating or otherwise indicating in writing that it will not meet any commitment made in its Proposal) prior to receipt of notification from TxDOT either that (i) final award has been achieved with another Proposer, or (ii) TxDOT does not intend to award the contract to Principal, unless such failure is excused in accordance with ITP Section 4.7; or

(c) Following delivery of execution documents to Principal by TxDOT, Principal fails to achieve Delivery by the deadline set forth in ITP Section 1.6.2; or fails to either (i) achieve financial close by the deadline set forth in ITP Sections 1.6.3, including, if applicable, and pay the Concession Payment, or (ii) exercise its option to extend the deadline for financial close in accordance with the requirements set forth in ITP Section 5.11.6.

Principal agrees and acknowledges that such liquidated damages are reasonable in order to compensate TxDOT for damages it will incur as a result of Principal's failure to satisfy the obligations under the RFP to which Principal agreed when submitting its Proposal. Such damages include potential harm to the credibility and reputation of TxDOT's transportation improvement program, including the CDA program, with policy makers and with the general public, delays to the Project and additional costs of administering this or a new procurement (including engineering, legal, accounting, overhead and other administrative costs). Principal further acknowledges that these damages would be difficult and impracticable to measure and prove, are incapable of accurate measurement because of, among other things, the unique nature of the Project and the efforts required to receive and evaluate proposals for it, and the unavailability of a substitute for those efforts. The amounts of liquidated damages stated herein represent good faith estimates and evaluations as to the actual potential damages that TxDOT would incur as a result of Principal's failure to satisfy the

obligations under the RFP to which Principal agreed when submitting its Proposal, and do not constitute a penalty. Principal agrees to such liquidated damages in order to fix and limit Principal's costs and to avoid later Disputes over what amounts of damages are properly chargeable to Principal.

3. The following terms and conditions shall apply with respect to this bond:

(a) This Proposal Bond shall not be subject to forfeiture in the event that TxDOT disqualifies the Proposal based on a determination that it is non-responsive or non-compliant.

(b) If suit is brought on this bond by TxDOT and judgment is recovered, Principal and Surety or Co-Sureties shall pay all costs incurred by TxDOT in bringing such suit, including, without limitation, reasonable attorneys' fees and costs as determined by the court.

(c) Any extension(s) of the time for award of the CDA that Principal may grant in accordance with the CDA or otherwise, shall be subject to the reasonable approval of Surety or Co-Sureties.

(d) Correspondence or claims relating to this bond should be sent to Surety at the following address:

SIGNED and SEALED this _____ day of _____, 2008

Principal

By: _____

Co-Surety

By: _____
Attorney in Fact

By: _____

Co-Surety

By: _____
Attorney in Fact

By: _____

Co-Surety

By: _____
Attorney in Fact

[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]

CO-SURETIES

SURETY NAME

SURETY ADDRESS

INCORPORATED IN

LETTER OF CREDIT (PROPOSAL)–Form L-2
IRREVOCABLE STANDBY LETTER OF CREDIT

ISSUER:

PLACE FOR PRESENTATION OF DRAFT: (Name and Address of Bank/Branch)

APPLICANT:

BENEFICIARY: Texas Department of Transportation
125 E. 11th Street
Austin, Texas 78701-2483

LETTER OF CREDIT NUMBER:

PLACE AND DATE OF ISSUE:

AMOUNT: [\$_____] [Note: insert amount of Thirty Five Million Dollars (\$35,000,000) if Proposer includes only committed debt instruments in accordance with ITP Exhibit C Section 5.3.1 or Fifty Million Dollars (\$50,000,000) if Proposer includes any uncommitted debt instruments in accordance with ITP Exhibit C Section 5.3.2 and delete this bracketed text]

STATED EXPIRATION DATE: _____ [Note: Insert date that is 180 days after the Proposal Due Date and delete this bracketed text.]

The Issuer hereby issues this Irrevocable Standby Letter of Credit in favor of TxDOT, for the amount of [_____] [Note: insert Thirty Five Million United States Dollars (\$35,000,000) or Fifty Five Million United States Dollars (\$50,000,000), as applicable, and delete this bracketed text], available by draft at sight drawn on the Issuer. Any draft under this Credit shall be in the amount of [_____] [Note: insert Thirty Five Million United States Dollars (\$35,000,000) or Fifty Million United States Dollars (\$50,000,000), as applicable, and delete this bracketed text] and shall:

1. Identify this Irrevocable Standby Letter of Credit by the name of the Issuer, and the Letter of Credit number, amount, and place and date of issue; and
2. Be accompanied by the Beneficiary's signed and dated statement stating one of the following:
 - (a) "This drawing is due to _____'s withdrawal of all or any part of its Proposal prior to 180 days following the Proposal Due Date, without TxDOT's consent, except as specifically permitted under the ITP."or
 - (b) "This drawing is due to _____'s failure to increase the Proposal Security as required by ITP Exhibit B, Section 3.3."

or

(c) "This drawing is due to _____'s failure, after conditional award , to execute and deliver to TxDOT the CDA and all other documents required in ITP Sections 6.1.1 by the deadline set forth in ITP Section 1.6.2, without excuse under ITP Section 4.7."

or

(d) "This drawing is due to _____'s failure to achieve financial close by the deadline set forth in ITP Section 1.6.3 and, if applicable, pay the Concession Payment, in accordance with the requirements of the ITP."

or

(e) "This drawing is due to _____'s withdrawal, repudiation or other indication that it will not meet any commitments made in its Proposal prior to the time allowed for TxDOT's execution of the CDA (after receiving conditional award)."

All drafts will be honored if presented to _____ (Bank/Branch - Name & Address) on or before the Stated Expiration Date described above.

If a Demand for Payment is made by you hereunder at or prior to 10:00 a.m., central time, on any weekday (i.e., Monday through Friday, excluding Texas state holidays and U.S. federal holidays) (a "Business Day"), and provided that such Demand for Payment conforms to the terms and conditions hereof, payment shall be made by us to you in immediately available funds free and clear of and without deduction for any taxes, duties, fees, liens, set-offs or other deductions of any kind and regardless of any objection by any third party (subject to any court order or judgment), to the account designated below or such other account at a national bank in the United States of America that you may designate in the Demand for Payment on the next Business Day after demand is made. If a Demand for Payment is made by you hereunder after 10:00 a.m., central time, on a Business Day, and provided that such Demand for Payment conforms to the terms and conditions hereof, such payment shall be made no later than the close of business, local time of the location of the account designated below or such other account at a national bank in the United States of America that you may designate in the Demand for Payment, on the second Business Day after demand is made. Payment under this Letter of Credit shall be made in same day funds, by wire transfer to your account described below or such other account as you may designate in writing.

Financial Institution: _____
Routing Number: _____
Account Name: _____
Account Number to Credit: _____
Reference: _____
Attention: _____

All bank charges and commissions incurred in connection with the issuance, administration, advisement, confirmation, negotiation or any other fees associated with

this Letter of Credit (including any drawings hereunder) shall be for the account of the applicant.

Except so far as otherwise expressly stated, this Letter of Credit is subject to the International Standby Practices ("ISP98"), International Chamber of Commerce Publication No. 590 (the "Uniform Customs"), which shall in all respects be deemed a part hereof as fully as if incorporated herein except as modified hereby.

This Letter of Credit is issued under the laws of the State of Texas and applicable U.S. federal law, and shall, as to matters not governed by Uniform Customs, be governed by and construed in accordance with the laws of the State of Texas, including the Uniform Commercial Code, Chapter 5, Texas Business and Commerce Code, without regard to principles of conflicts of law.

Any failure by you to draw upon this Letter of Credit as permitted hereunder shall not cause this Letter of Credit to be unavailable for any future drawing, provided that this Letter of Credit has not expired prior to such future drawing and that all requirements of this Letter of Credit are independently satisfied with respect to any such future drawing.

If legal proceedings are initiated by any party with respect to payment of the Letter of Credit, we agree that such proceeding shall be subject to Texas courts and law.

Communications with respect to this Letter of Credit shall be in writing and shall be addressed to us at _____, Attention: _____, specifically referring to the number of this Letter of Credit.

Issuer:

By: _____
(Authorized signature of Issuer)

FINANCIAL CLOSE BOND—Form L-3

Bond No. _____

STATED EXPIRATION DATE: _____ **[NOTE: Insert date that is 370 days from the original deadline for financial close set forth in ITP Section 1.6.3 and delete this bracketed text.]**

KNOW ALL PERSONS BY THESE PRESENTS, that the _____ **[NOTE: insert name of Proposer as the Principal and delete this bracketed text]**, as Principal and _____, as Surety or as Co-Sureties, each a corporation duly organized under the laws of the State indicated on the attached page, having its principal place of business at the address listed on the attached page, in the State indicated on the attached page, and authorized as a surety in the State of Texas, are hereby jointly and severally held and firmly bound unto the Texas Department of Transportation (“TxDOT”), in the sum of [\$_____] [Note: insert amount of \$50,000,000 if Proposer includes only committed debt instruments in accordance with ITP Exhibit C Section 5.3.1 or \$75,000,000 if Proposer includes any uncommitted debt instruments in accordance with ITP Exhibit C Section 5.3.2 and delete this bracketed text] (the “Bonded Sum”).

WHEREAS, the Principal has entered into a Comprehensive Development Agreement with TxDOT dated _____, 2009 (the “CDA”) **[NOTE: insert date of CDA and delete this bracketed text]** to develop, design, construct, finance, operate and maintain the IH 635 Managed Lanes Project (the “Project”);

NOW, THEREFORE,

1. The condition of this bond is such that this obligation shall be null and void upon Principal achieving financial close for the Project by the Project Financing Deadline, as set forth in the CDA, and, (b) making the Concession Payment to TxDOT, if applicable, by the deadline set forth in the CDA; otherwise it shall remain in full force and effect, and the Bonded Sum will be forfeited to TxDOT as liquidated damages and not as a penalty, upon receipt by Principal and Surety or by Principal and Sureties listed on the attached page (the “Co-Sureties”) of notice of such forfeiture from TxDOT:

2. The Principal and the Surety or Co-Sureties hereby agree to pay to TxDOT the full Bonded Sum hereinabove set forth, as liquidated damages and not as a penalty, within ten days after occurrence of any of the following events:

(a) Principal fails to achieve financial close by the Project Financing Deadline set forth in the CDA, unless such failure is excused in accordance with the CDA ;
or

(b) Principal fails to pay the Concession Payment by the deadline set forth in the CDA **[NOTE: if the executed form of CDA does not include a Concession Payment, this parenthetical (b) shall not be required or included in the executed Form L-3.]**

Principal agrees and acknowledges that such liquidated damages are reasonable in order to compensate TxDOT for damages it will incur as a result of Principal's failure to satisfy the obligations under the CDA. Such damages include potential harm to the credibility and reputation of TxDOT's transportation improvement program, including the CDA program, with policy makers and with the general public, delays to or termination of the Project and additional procurement costs (including engineering, legal, accounting, overhead and other administrative costs). Principal further acknowledges that these damages would be difficult and impracticable to measure and prove, are incapable of accurate measurement because of, among other things, the unique nature of the Project and the efforts required to receive and evaluate proposals for it, and the unavailability of a substitute for those efforts. The amounts of liquidated damages stated herein represent good faith estimates and evaluations as to the actual potential damages that TxDOT would incur as a result of Principal's failure to satisfy the obligation under the CDA to achieve financial close, and do not constitute a penalty. Principal agrees to such liquidated damages in order to fix and limit Principal's costs and to avoid later Disputes over what amounts of damages are properly chargeable to Principal.

3. The following terms and conditions shall apply with respect to this bond:

(a) If suit is brought on this bond by TxDOT and judgment is recovered, Principal and Surety or Co-Sureties shall pay all costs incurred by TxDOT in bringing such suit, including, without limitation, reasonable attorneys' fees and costs as determined by the court.

(b) Any extension of time for financial close beyond the extension allowed by the CDA that is agreed to by TxDOT and Principal shall be subject to the reasonable approval of Surety or Co-Sureties.

(c) Correspondence or claims relating to this bond should be sent to Surety at the following address:

SIGNED and SEALED this _____ day of _____, 2008

Principal

By: _____

Co-Surety **[Note: if only one Surety is used, replace “Co-Surety” with
“Surety” on this line and delete Co-Surety blocks below.]**

By: _____
Attorney in Fact

By: _____

Co-Surety

By: _____
Attorney in Fact

By: _____

Co-Surety

By: _____
Attorney in Fact

[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]

LETTER OF CREDIT (PROPOSAL)–Form L-4
IRREVOCABLE STANDBY LETTER OF CREDIT
(FINANCIAL CLOSE SECURITY)

ISSUER:

PLACE FOR PRESENTATION OF DRAFT: (Name and Address of Bank/Branch)

APPLICANT:

BENEFICIARY: Texas Department of Transportation
125 E. 11th Street
Austin, Texas 78701-2483

LETTER OF CREDIT NUMBER:

PLACE AND DATE OF ISSUE:

AMOUNT: [\$_____] Note: Insert amount of Fifty Million Dollars (\$50,000,000)) if Proposer includes only committed debt instruments in accordance with ITP Exhibit C Section 5.3.1 or Seventy-Five Million Dollars (\$75,000,000) if Proposer includes any uncommitted debt instruments in accordance with ITP Exhibit C Section 5.3.2 and delete this bracketed text]

STATED EXPIRATION DATE: _____[NOTE: Insert date that is 370 days from the original deadline for financial close set forth in ITP Section 1.6.3 and delete this bracket.]

The Issuer hereby issues this Irrevocable Standby Letter of Credit in favor of TxDOT, for the amount of [\$_____] [Note: insert Fifty Million United States Dollars (\$50,000,000) or Seventy Five Million United States Dollars (\$75,000,000), as applicable, and delete this bracketed text], available by draft at sight drawn on the Issuer. Any draft under this Credit shall be in the amount of [Note: insert Fifty Million United States Dollars (\$50,000,000) or Seventy Five Million United States Dollars (\$75,000,000), as applicable, and delete this bracketed text] and shall:

1. Identify this Irrevocable Standby Letter of Credit by the name of the Issuer, and the Letter of Credit number, amount, and place and date of issue; and
2. Be accompanied by the Beneficiary's signed and dated statement stating one of the following:
 - (a) "This drawing is due to _____'s failure to achieve financial close by the Project Financing Deadline set forth in the CDA, without excuse under the CDA"; or

(b) "This drawing is due to _____'s failure to pay the Concession Payment by the deadline set forth in the CDA." **[NOTE: if executed form of CDA does not include a Concession Payment, this parenthetical (b) shall not be required or included in the executed Form L-4.]**

All drafts will be honored if presented to _____ (Bank/Branch - Name & Address) _____ on or before the Stated Expiration Date described above.

If a Demand for Payment is made by you hereunder at or prior to 10:00 a.m., central time, on any weekday (i.e., Monday through Friday, excluding Texas state holidays and U.S. federal holidays) (a "Business Day"), and provided that such Demand for Payment conforms to the terms and conditions hereof, payment shall be made by us to you in immediately available funds free and clear of and without deduction for any taxes, duties, fees, liens, set-offs or other deductions of any kind and regardless of any objection by any third party (subject to any court order or judgment), to the account designated below or such other account at a national bank in the United States of America that you may designate in the Demand for Payment on the next Business Day after demand is made. If a Demand for Payment is made by you hereunder after 10:00 a.m., central time, on a Business Day, and provided that such Demand for Payment conforms to the terms and conditions hereof, such payment shall be made no later than the close of business, local time of the location of the account designated below or such other account at a national bank in the United States of America that you may designate in the Demand for Payment, on the second Business Day after demand is made. Payment under this Letter of Credit shall be made in same day funds, by wire transfer to your account described below or such other account as you may designate in writing.

Financial Institution: _____
Routing Number: _____
Account Name: _____
Account Number to Credit: _____
Reference: _____
Attention: _____

All bank charges and commissions incurred in connection with the issuance, administration, advisement, confirmation, negotiation or any other fees associated with this Letter of Credit (including any drawings hereunder) shall be for the account of the applicant.

Except so far as otherwise expressly stated, this Letter of Credit is subject to the International Standby Practices ("ISP98"), International Chamber of Commerce Publication No. 590 (the "Uniform Customs"), which shall in all respects be deemed a part hereof as fully as if incorporated herein except as modified hereby.

This Letter of Credit is issued under the laws of the State of Texas and applicable U.S. federal law, and shall, as to matters not governed by Uniform Customs, be governed by and construed in accordance with the laws of the State of Texas, , including the Uniform Commercial Code, Chapter 5, Texas Business and Commerce Code, without regard to principles of conflicts of law.

Any failure by you to draw upon this Letter of Credit as permitted hereunder shall not cause this Letter of Credit to be unavailable for any future drawing, provided that this Letter of Credit has not expired prior to such future drawing and that all requirements of this Letter of Credit are independently satisfied with respect to any such future drawing.

If legal proceedings are initiated by any party with respect to payment of the Letter of Credit, we agree that such proceeding shall be subject to Texas courts and law. Communications with respect to this Letter of Credit shall be in writing and shall be addressed to us at _____, Attention: _____, specifically referring to the number of this Letter of Credit.

Issuer:

By: _____
(Authorized signature of Issuer)

ESCROW AGREEMENT—Form M
(IH 635 MANAGED LANES PROJECT)

THIS ESCROW AGREEMENT (this “**Agreement**”) is made and entered into as of this _____, 200__, by and between _____ (“**Proposer**”), and _____ (“**Escrow Agent**”), to and for the benefit of the Texas Department of Transportation (“**TxDOT**”), an agency of the State of Texas, with reference to the following facts:

A. TxDOT has issued a Request for Proposals dated _____, 200__, as amended (the “**RFP**”), for the _____ Project (the “**Project**”). Initially capitalized terms not defined herein shall have the meanings set forth in the RFP.

B. Proposer wishes to submit to TxDOT a proposal (the “**Proposal**”) in response to the RFP.

C. In accordance with Section _____ of the Instructions to Proposers (“**ITP**”), Proposer is depositing certain materials relating to its Proposal, including portions of its Proposal (the “**Escrowed Materials**”) with the Escrow Agent to be held in a secure location and available for review by TxDOT as specified herein.

D. Proposer wishes to employ the services of Escrow Agent to act as the escrow holder with regard to the Escrowed Materials for the limited purposes set forth below, and Escrow Agent has agreed to serve as such escrow holder under the terms and conditions provided in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Proposer hereby irrevocably provides the following escrow instructions to Escrow Agent. These Escrow Instructions, although provided unilaterally, are specifically for the benefit of TxDOT as an intended third party beneficiary and may not be revised, supplemented, waived or withdrawn without the prior written consent of TxDOT’s authorized representative.

1. Designation of Authorized Representatives. Any initial authorized representatives of Proposer shall be identified in writing by use of the Certificate of Authorized Proposer Representative, attached hereto as Exhibit A-1. From time to time Proposer may designate alternative or additional authorized representatives by submitting a new Certificate of Authorized Proposer Representative to the Escrow Agent and TxDOT. Any initial authorized representatives of TxDOT shall be identified in writing by use of the Certificate of Authorized TxDOT Representative in the form attached hereto as Exhibit A-2. TxDOT may from time to time designate alternative or additional authorized representatives upon submission to the Escrow Agent and to Proposer a new Certificate of Authorized TxDOT Representative.

2. Deposit. Proposer hereby deposits with Escrow Agent the Escrowed Materials, consisting of _____ separately sealed boxes labeled _____. The Proposer will also complete and deliver to the Escrow

Agent the Receipt of Initial Intellectual Property for Escrow Deposit, attached hereto as Exhibit B. At the time of deposit, the Escrow Agent and Proposer shall verify the boxes and acknowledge that verification by execution of Exhibit B. Proposer may from time to time deposit additional property to be held as Escrowed Materials, provided such additional property is identified in writing in a form substantially similar to that attached hereto as Exhibit C. Escrow Agent agrees to hold the Escrowed Materials in safekeeping under the terms and conditions of this Agreement.

3. Manner of Holding of Escrowed Materials.

(a) Escrow Agent shall hold the Escrowed Materials in a designated area on the premises of Escrow Agent located at 8310 Capital of Texas Highway North, Suite 490, Austin, Texas 78731, or such other address within a ten-mile radius of 125 East 11th Street, in the City of Austin, Texas as is specified to TxDOT and the Proposer in writing not later than fifteen (15) days prior to the time such Escrowed Materials are to be relocated to such new location. The Escrowed Materials shall be stored in an area that is locked at all times.

(b) During the term hereof, Escrow Agent shall allow access to the Escrowed Materials only to such agents, attorneys or employees of TxDOT or designated third parties identified by TxDOT's authorized representative in writing in a Project Specific Authorized Personnel list (a "Permission List") attached hereto as Exhibit D as the same may be amended from time to time (the term "TxDOT" as used in this Agreement is inclusive of all agents, attorneys or employees of TxDOT and designated third parties designated in the Permission List as authorized personnel. Except as set forth in the preceding sentence, the authorized representative of TxDOT may not permit any third party to review the Escrowed Materials. Such authorized access shall include the ready ability of TxDOT to temporarily place and operate computerized programs, applications, data and electronic files that are included in the Escrowed Materials on a stand-alone secure personal computer. Any person that is granted access to the Escrowed Materials pursuant to the terms hereof is referred to as a "Reviewer."

(c) During the first seven days following receipt of the Escrowed Materials, the Escrow Agent shall allow TxDOT access to the escrow site weekdays from 8:00 a.m. to 8:00 p.m. and from 10:00 a.m. to 3:00 p.m. on the first weekend. Thereafter, TxDOT shall provide notice to Escrow Agent at least one business day in advance of its planned review of Escrowed Materials during the Escrow Agent's normal business hours of 8:00 a.m. – 5:00 p.m., Austin, Texas time, Monday through Friday, or on a weekday night and at least two business days in advance of its planned review of Escrowed Materials on a weekend. During the term hereof, Escrow Agent shall provide reasonable access for TxDOT reviews beyond Escrow Agent's regular business hours. Access to the Escrowed Materials shall be subject to compliance with the procedures of the Escrow Agent described herein, which are designed to maintain proper control over access to the Escrow Agent's office and any confidential or proprietary information of the Escrow Agent or its clients. In particular, the Escrow Agent will require that at least one employee of the Escrow Agent shall be present at all times that Escrowed Materials are being reviewed on its premises.

(d) Notwithstanding the preceding sentence, neither the Escrow Agent nor its duly authorized agents shall in any way have the duty to monitor the activity of the Reviewers. Proposer agrees and acknowledges that Escrow Agent is providing a storage facility that is restricted to the Escrow Agent's employees and duly authorized agents, that the Escrowed Materials will be further secured in a locked storage area, and that the Escrow Agent will verify that each person seeking access to the Escrowed Materials has been identified in the Permission List by requiring the person seeking access to the Escrowed Materials to produce a current driver's license bearing that individual's image.

(e) Proposer further agrees that the Escrow Agent shall not be required to ensure that any person granted access to the Escrowed Materials in accordance with the procedure provided in this section (i) commits no unlawful act in relation to the Escrowed Materials, (ii) willfully, recklessly or negligently removes Escrowed Materials from the premises, or otherwise uses such materials inappropriately or inconsistent with the intents of Proposer or the confidentiality agreement described below; or (iii) willfully, recklessly or negligently damages or destroys any part of the Escrowed Materials. Escrow Agent shall not undertake to examine the person, clothing or personal effects of any Reviewer to determine whether such person is removing any part of the Escrowed Materials from the Escrow Agent. In addition, Reviewers will be required to sign-in and sign-out when reviewing Escrowed Materials. Finally, the Reviewers will be required to agree to maintain the confidentiality of the Escrowed Materials, and any proprietary or confidential information of the Escrow Agent or its clients upon signing in to review the Escrowed Materials.

(f) No access shall be given to any representative of Proposer unless TxDOT agrees to such access in writing. No third party, including the employees of Escrow Agent, shall be allowed access to the Escrowed Materials, although this shall not preclude employees of Escrow Agent from having access to the locked area for other purposes. Notwithstanding the foregoing, Escrow Agent or its duly authorized agents shall have the right to examine the external surface of the Escrowed Materials in order to perform audits. For purposes of the preceding sentence, any audit of the Escrowed Materials shall be limited to an examination of the alpha-numeric sequence numbers recorded on the outside container, binding or envelope in which the Escrowed Materials are stored. Accordingly, Escrow Agent's examination may determine whether the contents of such container, binding or envelope have been removed, disturbed, damaged or destroyed. The Escrow Agent shall have no duty to supply any computers, printers or other devices necessary to access, review or verify the Escrowed Materials.

(g) In no event shall TxDOT, the Proposer or any person or entity selected or appointed by them have the right to access, connect to or otherwise use any computer or other network of the Escrow Agent, other than to have access to electricity. Reviewers will not have access to Escrow Agent's wireless computer networks and will agree to not attempt to gain access. Escrow Agent shall not be responsible for Reviewers' use of cell phones or other wireless devices to communicate any portion of the data or information contained in the Escrowed Materials, whether from the premises of Escrow Agent or otherwise. Further, Escrow Agent shall not be responsible for the use of any computer by the Reviewers or for the use of any Escrowed Materials (or portions

thereof), information or data that may be retained on a computer hard drive or other memory device. Any responsibility for the “wiping” of hard drives or other equipment shall be that of TxDOT.

(h) Any additional material used by TxDOT while conducting reviews of the Escrowed Materials (collectively, “Additional Materials”) shall be added to the deposit made hereunder and treated in the same manner by the escrow agent as those materials deposited by the Proposer, provided such Additional Materials are identified in writing in a form substantially similar to that attached hereto as Exhibit E. These Additional Materials could include, but are not limited to, computers, printers, workpapers, thumb-drives, CD-ROMs or hand-written notes.

4. Release of Escrowed Materials; Delivery of Intellectual Property Escrow Agreement.

a. Escrow Agent shall release the Escrowed Materials deposited hereunder only upon receipt by Escrow Agent of (i) a certificate signed by TxDOT’s authorized representative, certifying that TxDOT has determined not to enter into a contract with Proposer and has executed a Comprehensive Development Agreement (“**CDA**”) with another party, in which event the Escrowed Materials shall be released as directed by Proposer; (ii) a certificate signed by TxDOT’s authorized representative, certifying that TxDOT has decided to terminate the procurement, in which event the Escrowed Materials shall be released as directed by Proposer; (iii) joint instructions from the authorized representatives of Proposer and TxDOT directing release of the Escrowed Materials, in which event the Escrowed Materials shall be released as provided therein; or (iv) written instructions from TxDOT’s authorized representative, without any further required action or consent by Proposer, directing release of the Escrowed Materials to the Office of the Attorney General, in which event the Escrowed Materials shall be released to the Attorney General by Escrow Agent as directed by TxDOT. Evidence of such release shall be made via delivery of the Release of Intellectual Property from Escrow – Exhibit F, executed and acknowledged by the Escrow Agent and the Depositor. Any Additional Materials deposited by TxDOT shall be released to TxDOT or the Office of the Attorney General in the same manner, with a copy of Exhibit F to be provided to the Proposer.

b. If TxDOT and the Proposer enter into a CDA, the Proposer and an escrow agent, which may be the Escrow Agent, shall hold the Escrowed Materials in escrow pursuant to the terms and conditions set forth in one or more Intellectual Property Escrow Agreements to be executed by the Proposer and such escrow agent. In the event the escrow agent under the Intellectual Property Escrow Agreement(s) is not the Escrow Agent, the Escrowed Materials shall be released and transferred to the new escrow and escrow agent under the Intellectual Property Escrow Agreement(s) upon the joint written instructions of TxDOT and the Proposer. For purposes of the preceding sentence, Escrow Agent shall use such methods of transfer as shall be directed in writing by TxDOT and the Proposer, provided any costs associated with such transfer shall have been provided for by Proposer, and Escrow Agent has received any satisfactory indemnification it might require in relation to such transfer.

5. Rights of Escrow Agent. If conflicting demands are made or notices serviced upon Escrow Agent with respect to this escrow, including but not limited to demands or notices related to an open records request or a Freedom of Information Act request, the parties hereto expressly agree that Escrow Agent shall have the absolute right at its election to do any of the following at the expense (including fees and expenses of attorneys for Escrow Agent) of the Proposer:

a. withhold and stop all further proceedings in, and performance of this escrow;

b. file a suit in interpleader and obtain an order from the court requiring the parties to interplead and litigate in such court their several claims and rights amongst themselves; or

c. deliver all Escrowed Materials with seals intact to another location to be selected by Proposer within 30 days after Escrow Agent delivers notice thereof to TxDOT.

6. Fees. Proposer shall pay all fees and expenses in connection with Escrow Agent's obligations under this Agreement, as set forth on Exhibit G attached hereto.

7. Notices. Any communication, notice or demand of any kind whatsoever under this Agreement shall be in writing and delivered by personal service (including express or courier service), by electronic communication, whether by facsimile (with receipt confirmed by telephone) or electronic mail (with receipt confirmed by return email), or by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to the Proposer:

Attention: _____
Telephone: _____
Facsimile: _____

If to TxDOT:
Texas Department of Transportation
Texas Turnpike Authority Division
125 E. 11th Street
Austin, TX 78701
Attention: _____
Telephone: _____
Facsimile: _____

With copies to:

Texas Department of Transportation
Office of General Counsel
125 East 11th Street
Attention: General Counsel
Telephone: (512) 463-8630
Facsimile: (512) 475-3070

If to the Escrow Agent:

[name, address and contact information]

or to such other addresses and such other places as any party hereto may from time to time designate by written notice to the others.

All notices and other communications required or permitted under this Agreement which are addressed as provided in this Section 7 are effective upon delivery, if delivered personally or by overnight mail, upon confirmed transmission if by electronic communication, and are effective five days following deposit in the United States mail, postage prepaid if delivered by mail.

8. Representations. Proposer represents and warrants that neither Proposer nor any members of its team has a financial or other interest in, or relationship with, the Escrow Agent or its principals or officers, except that Escrow Agent may be the depository for accounts or escrowed documents maintained by such entities. Escrow Agent represents and warrants that it has no financial or other interest in, or relationship with, Proposer, the Proposer's team members identified to Escrow Agent, or their principals or officers, except as a depository for accounts or escrowed documents. Escrow Agent further represents, warrants and covenants that the employees of Escrow Agent who have access to the Escrowed Materials also have no such interest or relation with such entities.

9. Counterparts. This Agreement may be executed in one or more counterparts, all of which together shall be deemed an original.

10. Headings. The title headings of the respective paragraphs of this Agreement are inserted for convenience only, and shall not be deemed to be part of this Agreement or considered in construing this Agreement.

11. Governing Law. The laws of the State of Texas shall govern this Agreement.

12. Liability of Escrow Agent.

(a) The Escrow Agent shall have only those duties as are specifically provided herein, which shall be deemed purely ministerial in nature, and shall under no circumstance be deemed a fiduciary for any of the parties to this Agreement or any other person. The Escrow Agent shall neither be responsible for, nor chargeable with,

knowledge of the terms and conditions of any other agreement, instrument or document, including without limitation any Proposal or any CDA. This Agreement sets forth all matters pertinent to the escrow contemplated hereunder, and no additional obligations of the Escrow Agent shall be inferred from the terms of this Agreement or any other agreement. IN NO EVENT SHALL THE ESCROW AGENT BE LIABLE, DIRECTLY OR INDIRECTLY, FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL LOSSES OR DAMAGES OF ANY KIND WHATSOEVER (INCLUDING WITHOUT LIMITATION LOST PROFITS), EVEN IF THE ESCROW AGENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES AND REGARDLESS OF THE FORM OF ACTION.

(b) The Escrow Agent shall have no responsibility to inquire into or determine the genuineness, authenticity, or sufficiency of any notices, requests, securities, checks, or other documents or instruments submitted to it in connection with its duties hereunder. The Escrow Agent shall be entitled to deem the signatories of any documents or instruments submitted to it hereunder as being those purported to be authorized to sign such documents or instruments on behalf of the parties hereto, and shall be entitled to rely upon the genuineness of the signatures of such signatories without inquiry and without requiring substantiating evidence of any kind.

(c) Escrow Agent shall place the Escrowed Materials in a secure location so as to satisfy the requirements of Section 3 above. The Escrow Agent, however, does not insure that the Escrowed Materials will not be damaged or destroyed due to temperature, humidity, fire, smoke, electrical interference or other environmental factors, and the Escrow Agent is only required to take the same precautions to control the environment in which the Escrowed Materials will be stored as it would normally take in the storage of paper documentation.

(d) Escrow Agent shall not be required to advance its own funds, nor to incur any personal financial obligation in the performance of its duties hereunder.

13. Indemnification of Escrow Agent. The Escrow Agent shall be, and hereby is, indemnified and saved harmless by the Proposer from and against any and all losses, liabilities, damages, costs and expenses, including without limitation attorney fees and expenses, which may be incurred by it as a result of its acceptance of the Escrowed Materials or arising from the performance of its duties hereunder, including but not limited to compliance with court orders, subpoenas and Attorney General opinions, unless such losses, liabilities, damages, costs and expenses shall have been finally adjudicated to have primarily resulted from the bad faith or gross negligence of the Escrow Agent, and such indemnification shall survive the resignation or removal of the Escrow Agent or the termination of this Agreement. Any liability of Escrow Agent hereunder shall be limited to the total amount of fees it has received from Proposer under this Escrow Agreement.

14. Assignment. No assignment of the interest of any of the parties hereto shall be binding upon the Escrow Agent unless and until written notice of such assignment shall be delivered to and acknowledged by the Escrow Agent.

15. Advice of Counsel. The Escrow Agent shall have the right, but not the obligation, to consult with counsel of its choice and shall not be liable for action taken or omitted to be taken by Escrow Agent either in accordance with the advice of such counsel or in accordance with any opinion of counsel addressed and delivered to the Escrow Agent. The Escrow Agent shall have the right to perform any of its duties hereunder through its agents, attorneys, custodians or nominees.

16. Resignation of Escrow Agent. The Escrow Agent may resign as such following the giving of ninety (90) calendar days prior written notice to the Proposer and TxDOT. In such event, the duties of the Escrow Agent shall terminate ninety (90) days after receipt of such notice (or as of such earlier date as may be mutually agreeable); and the Escrow Agent shall then deliver the balance of the Escrowed Materials then in its possession to a successor escrow agent as shall be appointed by the Proposer and acceptable to TxDOT as evidenced by a written notice filed with the Escrow Agent. If the Proposer has failed to appoint a successor prior to the expiration of ninety (90) calendar days following receipt of the notice of resignation, the Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor escrow agent located within a 10-mile radius of 125 East 11th Street, Austin, Texas, or for other appropriate relief, and any such resulting appointment shall be binding upon all of the parties hereto.

17. Successor Entity. Any entity into which the Escrow Agent may be merged, converted or with which the Escrow Agent may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Escrow Agent shall be a party shall succeed to all the Escrow Agent's rights, obligations and immunities hereunder without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

18. Court Orders. In the event that any escrow property shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment or decree shall be made or entered by any court order affecting the property deposited under this Agreement, Escrow Agent shall provide TxDOT and Proposer with written notice within 10 days after the occurrence of such event. The Escrow Agent is hereby expressly authorized, in its sole discretion, to obey and comply with all writs, orders or decrees so entered or issued, which it is advised by legal counsel of its own choosing is binding upon it, whether with or without jurisdiction, and in the event that the Escrow Agent obeys or complies with any such writ order or decree it shall not be liable to any of the parties hereto or to any other person, firm or corporation, by reason of such compliance notwithstanding such writ, order or decree by subsequently reversed, modified, annulled, set aside or vacated.

IN WITNESS WHEREOF, the parties hereto, each intending to be legally bound by this writing, have caused this Agreement to be executed the date first above written.

PROPOSER

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

The escrow provided for in this Agreement is hereby accepted by Escrow Agent.

By: _____
Title: _____

EXHIBIT A-1

CERTIFICATE OF AUTHORIZED PROPOSER REPRESENTATIVE

The specimen signatures shown below are the specimen signatures of the individuals who have been designated as authorized representatives of _____ and are authorized to initiate and approve transactions of all types for the escrow account or accounts established under the Escrow Agreement to which this Exhibit A-1 is attached, on behalf of _____.

Name / Title

Specimen Signature

Name

Signature

Title

Name

Signature

Title

Name

Signature

Title

Name

Signature

Title

EXHIBIT A-2

CERTIFICATE OF TXDOT AUTHORIZED REPRESENTATIVE

TxDOT CDA Program Office

7600 Chevy Chase Drive
Building 2, Suite 400
Austin, Texas 78752
Phone: (512) 904-1600
Fax: (512) 904-1699



Certificate of TxDOT Authorized Representative TM

CERTIFICATE OF TXDOT AUTHORIZED REPRESENTATIVE

The specimen signatures shown below are the specimen signatures of the individuals who have been designated as authorized representatives of the Texas Department of Transportation and are authorized to initiate and approve transactions of all types for the escrow account or accounts established under the Escrow Agreement to which this Exhibit A-2 is attached, on behalf of the Texas Department of Transportation.

Name/ Title

Specimen Signature

Primary

_____ Printed Name

_____ Title

Signature

Alternate

_____ Printed Name

_____ Title

Signature

Alternate

_____ Printed Name

_____ Title

Signature

Alternate

_____ Printed Name

_____ Title

Signature

Effective Date { _____ INSERT NEW DATE } Replacing { _____ INSERT OLD DATE }

EXHIBIT B

RECEIPT OF INITIAL INTELLECTUAL PROPERTY FOR DEPOSIT

Related to

**[NAME OF PROJECT]
INTELLECTUAL PROPERTY ESCROW**

The following items have been deposited with _____, as Escrow Agent, pursuant to Section 2 of the Escrow Agreement – Form ___:

Name of Depositor: _____

Name of Depositor's Representative: _____

Date and Time Received: _____

Description of the Property (include number of items, identifying description on the items):

Received by (Escrow Agent) Signature _____

Depositor's Representative Signature _____

EXHIBIT C

RECEIPT OF ADDITIONAL INTELLECTUAL PROPERTY FOR DEPOSIT

Related to

**[NAME OF PROJECT]
INTELLECTUAL PROPERTY ESCROW**

The following items have been deposited with _____,
as Escrow Agent, pursuant to Section 2 of the Escrow Agreement – Form ___:

Name of Depositor: _____

Name of Depositor's Representative: _____

Date and Time Received: _____

Description of the Property (include number of items, identifying description on the items):

Received by (Escrow Agent) Signature _____

Depositor's Representative Signature _____

EXHIBIT D

PROJECT SPECIFIC AUTHORIZED PERSONNEL

EXHIBIT E

TXDOT CHAIN OF CUSTODY FORM

TxDOT CDA Program Office

7600 Chevy Chase Drive
Building 2, Suite 400
Austin, Texas 78752
Phone: (512) 904-1600
Fax: (512) 904-1699



Chain of Custody TM

This form provides documentation for the continual control and/or disposition of listed materials being transferred for use and/or storage. Provide a description of the material being transferred, the number of materials being transferred, and the final location for the material being transferred in the appropriate location below. Upon transfer, sign and date this document and provide to the designated representative.

Name: _____ Title: _____ Employer: _____
(Releasing custody)

Description of Materials Being Transferred:

<u>DCN (if applicable)</u>	<u>Project</u>	<u>Owner</u>	<u>Document Description</u>

Number of Items Being Transferred: _____

NOTE: If additional information is necessary to complete the transfer of ownership, include on separate sheet(s) of paper and number the pages on the center bottom of this form.

Date of Transfer: _____

Transfer Location From: _____ To: _____

Transfer Method: _____

SIGNATURE: _____
(Releasing)

SIGNATURE: _____
(Delivering)

SIGNATURE: _____
(Receiving)

Return original to TxDOT CDA Program Administrative Assistant at 7600 Chevy Chase Drive Building 2, Suite 400, Austin, Texas 78752.

EXHIBIT F

LIST OF RELEASED ESCROWED MATERIALS

**Related to
[NAME OF PROJECT]
INTELLECTUAL PROPERTY ESCROW**

The following list of materials are released from escrow custody of _____, as escrow agent and custody of the list of materials is hereby transferred to the Depositor, TxDOT, or a representative of their respective advisors, pursuant to direction from an Authorized Party.

<u>TITLE OF ESCROWED DOCUMENT/MATERIAL</u>	<u>DEPOSITOR</u>	<u>DATE</u>
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		

This transfer of custody is acknowledged as evidenced by execution below:

Depositor (or Depositor's advisor) [TxDOT or TxDOT advisor, if applicable]

By: _____

Its: _____

Date: _____

Escrow Agent

By: _____

Its: _____

Date: _____

EXHIBIT G
ESCROW AGENT'S FEE SCHEDULE

OPINION OF COUNSEL—Form N

[LETTERHEAD OF INDEPENDENT LAW FIRM OR IN-HOUSE COUNSEL – SEE SECTION 6.1.1(b) OF THE ITP FOR LEGAL COUNSEL REQUIREMENTS]

Texas Department of Transportation
Texas Turnpike Authority Division
125 East 11th Street
Austin, TX 78701

Re: Comprehensive Development Agreement (“CDA”) for IH 635 Managed Lanes Project dated as of _____, 2008, by and between Texas Department of Transportation, and _____ (the “Developer”)

Gentlemen:

[Describe relationship to Developer and its joint venture members, general partners, members, as applicable, and any other entities whose approval is required in order to authorize delivery of the proposal and execution of the CDA.] This letter is provided to you pursuant to Section 6.1.1(b) of the Instructions to Proposers of that certain Request for Proposals issued by the Texas Department of Transportation (“TxDOT”) on September 18, 2007, as amended.

In giving this opinion, we have examined _____. We have also considered such questions of law and we have examined such documents and instruments and certificates of public officials and individuals who participated in the procurement process as we have deemed necessary or advisable. [if certificate used/obtained from Developer or Guarantor, such certificate should also run in favor of TxDOT and should be attached to opinion]

In giving this opinion, we have assumed that all items submitted to us or reviewed by us are genuine, accurate and complete, and if not originals, are true and correct copies of originals, and that all signatures on such items are genuine.

Subject to the foregoing, we are of the opinion that:

1. [opinion regarding organization/formation and existence of Developer and that Developer has corporate power to own its properties and assets, carry on its business, make the Proposal, enter into the CDA and to perform its obligations under the CDA] [if Developer is a partnership/joint venture, these opinions are also required for each of its joint venture members and general partners]

2. [opinion regarding good standing and qualification to do business in State of Texas for Developer] [if Developer is a partnership/joint venture, these opinions are also required for each of its joint venture members and general partners]

3. [opinion regarding organization/formation and existence of Guarantor and that Guarantor has corporate power to own its properties and assets, to carry on its business, to enter into the Guaranty and to perform its obligations under the Guaranty] [if Guarantor is a partnership/joint venture, these opinions are also required for each of its joint venture members and general partners] [if there is no Guaranty, this opinion may be omitted]

4. [opinion that Proposal and CDA have been duly authorized by all necessary corporate action on the part of the Developer and the Proposal and CDA have been duly executed and delivered by Developer] [if Developer is a partnership/joint venture, add: and its joint venture members/general partners after the first and second "Developer"]

5. [opinion that Guaranty has been duly authorized by all necessary corporate action on the part of Guarantor and the Guaranty has been duly executed and delivered by Guarantor] [if Guarantor is a partnership/joint venture, add: and its joint venture members/general partners after the first and second "Guarantor"] [if there is no Guaranty, this opinion may be omitted]

6. [opinion that the CDA constitutes a legal, valid and binding obligation of the Developer enforceable against the Developer in accordance with its terms] [if Developer is a partnership/joint venture, add: and its joint venture members/general partners after the second "Developer"]

7. [opinion that the Guaranty constitutes a legal, valid and binding obligation of the Guarantor enforceable against the Guarantor in accordance with its terms; [if Guarantor is a partnership/joint venture, add: and its joint venture members/general partners after the second "Guarantor"] [if there is no Guaranty, this opinion may be omitted]

8. [opinion that all required approvals have been obtained with respect to execution, delivery and performance of the Proposal and the CDA; and that neither the Proposal nor the CDA conflict with any agreements to which Developer is a party [if Developer is a partnership/joint venture, add: and its joint venture members/general partners are a party] or with any orders, judgments or decrees by which Developer is bound [if Developer is a partnership/joint venture, add: and its joint venture members/general partners are bound]

9. [opinion that all required approvals have been obtained with respect to execution, delivery and performance of the Guaranty; and that the Guaranty does not conflict with any agreements to which Guarantor is a party [if Guarantor is a partnership/joint venture, add: and its joint venture members/general partners are a party] or with any orders, judgments or decrees by which Guarantor is bound] [if Guarantor is a partnership/joint venture, add: and its joint venture members/general partners are bound] [if there is no Guaranty, this opinion may be omitted]

10. [opinion that execution, delivery and performance of all obligations by Developer under the Proposal and the CDA do not conflict with, and are authorized by, the articles of incorporation and bylaws of Developer [if Developer is a partnership, replace articles of incorporation and bylaws with partnership agreement and (if applicable) certificate of limited partnership); if Developer is a joint venture, replace articles of incorporation and bylaws with joint venture agreement; if Developer is a limited liability company, replace articles of incorporation and bylaws with operating agreement and certificate of formation]

11. [opinion that execution, delivery and performance of all obligations by Guarantor under the Guaranty does not conflict with, and is authorized by, the articles of incorporation and bylaws of Guarantor] [if Guarantor is a partnership, replace articles of incorporation and bylaws with partnership agreement and (if applicable) certificate of limited partnership); if Guarantor is a joint venture, replace articles of incorporation and bylaws with joint venture agreement; if Guarantor is a limited liability company, replace articles of incorporation and bylaws with operating agreement and certificate of formation] [if there is no Guaranty, this opinion may be omitted]

12. [opinion that execution and delivery by the Developer of the Proposal and the CDA do not, and the Developer's performance of its obligations under the Proposal and the CDA will not, violate any current statute, rule or regulation applicable to the Developer or to transactions of the type contemplated by the Proposal or the CDA]

13. [opinion that execution and delivery by the Guarantor of the Guaranty do not, and the Guarantor's performance of its obligations under the Guaranty will not, violate any current statute, rule or regulation applicable to the Guarantor or to transactions of the type contemplated by the Guaranty] [if there is no Guaranty, this opinion may be omitted]

14. [opinion that the Lease Escrow Agreement, the Intellectual Property Escrow Agreement(s), the Project Trust Agreement, the Tolling Services Agreement, the Lender's Direct Agreement, and the Independent Engineer Agreement have been duly authorized by all necessary corporate action on the part of the Developer and the Agreements have been duly executed and delivered by Developer] [if Developer is a partnership/joint venture, add: and its joint venture members/general partners after the first and second "Developer"]

15. [opinion that the Lease Escrow Agreement, the Intellectual Property Escrow Agreement(s), the Project Trust Agreement, the Tolling Services Agreement, the Lender's Direct Agreement, and the Independent Engineer Agreement constitute legal, valid and binding obligations of the Developer enforceable against the Developer in accordance with their terms] [if Developer is a partnership/joint venture, add: and its joint venture members/general partners after the second "Developer"]

16. [opinion that execution and delivery by the Developer of the Lease Escrow Agreement, the Intellectual Property Escrow Agreement(s), the Project Trust Agreement, the Tolling Services Agreement, the Lender's Direct Agreement, and the

Independent Engineer Agreement do not, and the Developer's performance of its obligations under such agreements will not, violate any current statute, rule or regulation applicable to the Developer or to transactions of the type contemplated by the agreements]

17. [opinion that the Lease (and any amendments to the Lease), when executed by Developer in accordance with the terms of the Lease Escrow Agreement, will be duly authorized by all necessary corporate action on the part of the Developer] [if Developer is a partnership/joint venture, add: and its joint venture members/general partners after "Developer"]

18. [opinion that upon execution and delivery by the Developer of the Lease, in accordance with the terms of the Lease Escrow Agreement, the Lease (and any amendments to the Lease), will constitute legal, valid and binding obligations of the Developer enforceable against the Developer in accordance with its terms]

[RESERVED]—Form O

Detailed Costing Form – Form P/Part A

Form P/Part A Instructions for Completion:

Fill out Form P/Part A as follows:

- For each line item on pages 2-6, enter the total cost of construction. The total cost of construction shall represent Work that is eligible for reimbursement under Federal Law including costs for project management, administration, design, contingencies and any allowance for inflation.
- Enter all non-reimbursable costs other than operations and maintenance costs on page 7.
- Include the cost of items to be provided that are within TxDOT right of way but outside the limits of the Project, within the Section that is closest to the proposed location of the items.
- The amount entered into the total cost field shall be sub-divided in the adjacent fields to represent how much is planned to be spent on the specific line item for each quarter.
- Operations and maintenance costs entered in Section II of this Form P/Part A are non-reimbursable and shall include costs during construction and following each Service Commencement.
- Costs associated with the IH 35E Capacity Improvement Section are not included in Form P/Part A, and shall be provided only in Form P/Part B below.

Note. A sixth year is permitted in the event the Proposal includes an Alternative Technical Concept approved by TxDOT that requires an environmental reevaluation of the IH 635 Section that materially affects the Critical Path based on a Service Commencement Deadline of five years after the date TxDOT issues NTP2.

DETAILED COSTING FORM—Form P/Part A

ITEM	Total Cost						
IH 635 / IH 35E Interchange			Year 1	Year 2	Year 3	Year 4	Year 5
Roads	\$	1st Qtr	\$	\$	\$	\$	\$
		2nd Qtr	\$	\$	\$	\$	\$
		3rd Qtr	\$	\$	\$	\$	\$
		4th Qtr	\$	\$	\$	\$	\$
Drainage	\$	1st Qtr	\$	\$	\$	\$	\$
		2nd Qtr	\$	\$	\$	\$	\$
		3rd Qtr	\$	\$	\$	\$	\$
		4th Qtr	\$	\$	\$	\$	\$
Structures	\$	1st Qtr	\$	\$	\$	\$	\$
		2nd Qtr	\$	\$	\$	\$	\$
		3rd Qtr	\$	\$	\$	\$	\$
		4th Qtr	\$	\$	\$	\$	\$
Building & Enclosed Facilities	\$	1st Qtr	\$	\$	\$	\$	\$
		2nd Qtr	\$	\$	\$	\$	\$
		3rd Qtr	\$	\$	\$	\$	\$
		4th Qtr	\$	\$	\$	\$	\$
Traffic Management & Sequencing	\$	1st Qtr	\$	\$	\$	\$	\$
		2nd Qtr	\$	\$	\$	\$	\$
		3rd Qtr	\$	\$	\$	\$	\$
		4th Qtr	\$	\$	\$	\$	\$
Mobilization (Cannot exceed 10% of IH 635 / IH 35E Interchange Construction Costs)	\$	1st Qtr	\$	\$	\$	\$	\$
		2nd Qtr	\$	\$	\$	\$	\$
		3rd Qtr	\$	\$	\$	\$	\$
		4th Qtr	\$	\$	\$	\$	\$
IH 635 / IH 35E Interchange Construction Costs \$ (Box B)	\$ (Box B)	1st Qtr	\$	\$	\$	\$	\$
		2nd Qtr	\$	\$	\$	\$	\$
		3rd Qtr	\$	\$	\$	\$	\$
		4th Qtr	\$	\$	\$	\$	\$

DETAILED COSTING FORM—Form P/Part A

ITEM	Total Cost						
IH 35E Section			Post NTP2				
			Year 1	Year 2	Year 3	Year 4	Year 5
Roads	\$	1st Qtr	\$	\$	\$	\$	\$
		2nd Qtr	\$	\$	\$	\$	\$
		3rd Qtr	\$	\$	\$	\$	\$
		4th Qtr	\$	\$	\$	\$	\$
Drainage	\$	1st Qtr	\$	\$	\$	\$	\$
		2nd Qtr	\$	\$	\$	\$	\$
		3rd Qtr	\$	\$	\$	\$	\$
		4th Qtr	\$	\$	\$	\$	\$
Structures	\$	1st Qtr	\$	\$	\$	\$	\$
		2nd Qtr	\$	\$	\$	\$	\$
		3rd Qtr	\$	\$	\$	\$	\$
		4th Qtr	\$	\$	\$	\$	\$
Building & Enclosed Facilities	\$	1st Qtr	\$	\$	\$	\$	\$
		2nd Qtr	\$	\$	\$	\$	\$
		3rd Qtr	\$	\$	\$	\$	\$
		4th Qtr	\$	\$	\$	\$	\$
Traffic Management & Sequencing	\$	1st Qtr	\$	\$	\$	\$	\$
		2nd Qtr	\$	\$	\$	\$	\$
		3rd Qtr	\$	\$	\$	\$	\$
		4th Qtr	\$	\$	\$	\$	\$
Mobilization (Cannot exceed 10% of IH 35E Section Construction Costs)	\$	1st Qtr	\$	\$	\$	\$	\$
		2nd Qtr	\$	\$	\$	\$	\$
		3rd Qtr	\$	\$	\$	\$	\$
		4th Qtr	\$	\$	\$	\$	\$
IH 35E Section Construction Costs	\$ (Box C)	1st Qtr	\$	\$	\$	\$	\$
		2nd Qtr	\$	\$	\$	\$	\$
		3rd Qtr	\$	\$	\$	\$	\$
		4th Qtr	\$	\$	\$	\$	\$

DETAILED COSTING FORM—Form P/Part A

ITEM	Total Cost	Post NTP2																															
		Year 1				Year 2				Year 3				Year 4				Year 5															
IH 635 / US 75 Interchange																																	
Roads	\$	1st Qtr	\$			2nd Qtr	\$			3rd Qtr	\$			4th Qtr	\$			1st Qtr	\$			2nd Qtr	\$			3rd Qtr	\$			4th Qtr	\$		
Drainage	\$	1st Qtr	\$			2nd Qtr	\$			3rd Qtr	\$			4th Qtr	\$			1st Qtr	\$			2nd Qtr	\$			3rd Qtr	\$			4th Qtr	\$		
Structures	\$	1st Qtr	\$			2nd Qtr	\$			3rd Qtr	\$			4th Qtr	\$			1st Qtr	\$			2nd Qtr	\$			3rd Qtr	\$			4th Qtr	\$		
Building & Enclosed Facilities	\$	1st Qtr	\$			2nd Qtr	\$			3rd Qtr	\$			4th Qtr	\$			1st Qtr	\$			2nd Qtr	\$			3rd Qtr	\$			4th Qtr	\$		
Traffic Management & Sequencing	\$	1st Qtr	\$			2nd Qtr	\$			3rd Qtr	\$			4th Qtr	\$			1st Qtr	\$			2nd Qtr	\$			3rd Qtr	\$			4th Qtr	\$		
Mobilization (Cannot exceed 10% of IH 635 / US 75 Interchange Construction Costs)	\$	1st Qtr	\$			2nd Qtr	\$			3rd Qtr	\$			4th Qtr	\$			1st Qtr	\$			2nd Qtr	\$			3rd Qtr	\$			4th Qtr	\$		
IH 635 / US 75 Interchange Construction Costs (Box D)	\$ (Box D)	1st Qtr	\$			2nd Qtr	\$			3rd Qtr	\$			4th Qtr	\$			1st Qtr	\$			2nd Qtr	\$			3rd Qtr	\$			4th Qtr	\$		

DETAILED COSTING FORM—Form P/Part A

ITEM	Total Cost						
			Post NTP2				
Right-of-Way Costs			Year 1	Year 2	Year 3	Year 4	Year 5
Right-of-Way (Additional Properties)	\$ (Box E)	1st Qtr	\$	\$	\$	\$	\$
		2nd Qtr	\$	\$	\$	\$	\$
		3rd Qtr	\$	\$	\$	\$	\$
		4th Qtr	\$	\$	\$	\$	\$
Utility Costs							
Utility Relocation (Utility Adjustments)	\$ (Box F)	1st Qtr	\$	\$	\$	\$	\$
		2nd Qtr	\$	\$	\$	\$	\$
		3rd Qtr	\$	\$	\$	\$	\$
		4th Qtr	\$	\$	\$	\$	\$

DETAILED COSTING FORM—Form P/Part A

ITEM	Total Cost							
Other Associated Costs			Year 0	Year 1	Year 2	Year 3	Year 4	Year 5
Quality Assurance/Quality Control	\$	1st Qtr	\$	\$	\$	\$	\$	\$
		2nd Qtr	\$	\$	\$	\$	\$	\$
		3rd Qtr	\$	\$	\$	\$	\$	\$
		4th Qtr	\$	\$	\$	\$	\$	\$
Survey	\$	1st Qtr	\$	\$	\$	\$	\$	\$
		2nd Qtr	\$	\$	\$	\$	\$	\$
		3rd Qtr	\$	\$	\$	\$	\$	\$
		4th Qtr	\$	\$	\$	\$	\$	\$
Insurance	\$	1st Qtr	\$	\$	\$	\$	\$	\$
		2nd Qtr	\$	\$	\$	\$	\$	\$
		3rd Qtr	\$	\$	\$	\$	\$	\$
		4th Qtr	\$	\$	\$	\$	\$	\$
Other Non-reimbursable Costs	\$	1st Qtr	\$	\$	\$	\$	\$	\$
		2nd Qtr	\$	\$	\$	\$	\$	\$
		3rd Qtr	\$	\$	\$	\$	\$	\$
		4th Qtr	\$	\$	\$	\$	\$	\$
Independent Engineer (Cannot exceed 50% of total Independent Engineer cost)	\$	1st Qtr	\$	\$	\$	\$	\$	\$
		2nd Qtr	\$	\$	\$	\$	\$	\$
		3rd Qtr	\$	\$	\$	\$	\$	\$
		4th Qtr	\$	\$	\$	\$	\$	\$
Sub-Total Other Associated Costs \$ (Box G)		1st Qtr	\$	\$	\$	\$	\$	\$
		2nd Qtr	\$	\$	\$	\$	\$	\$
		3rd Qtr	\$	\$	\$	\$	\$	\$
		4th Qtr	\$	\$	\$	\$	\$	\$

Note: Pre NTP2 costs shall not be included in the Total Project Construction Costs shown in Box H of Form P/Part A.

DETAILED COSTING FORM—Form P/Part A

ITEM	Total Cost						
II. Maintenance and Operations Costs							
Maintenance (Routine and Life Cycle)			Year (m)	Year (m+1)	Year (m+2)	Year (m+3)	Year (m+x)
Roads	\$	1st Qtr	\$	\$	\$	\$	\$
		2nd Qtr	\$	\$	\$	\$	\$
		3rd Qtr	\$	\$	\$	\$	\$
		4th Qtr	\$	\$	\$	\$	\$
Drainage	\$	1st Qtr	\$	\$	\$	\$	\$
		2nd Qtr	\$	\$	\$	\$	\$
		3rd Qtr	\$	\$	\$	\$	\$
		4th Qtr	\$	\$	\$	\$	\$
Structures	\$	1st Qtr	\$	\$	\$	\$	\$
		2nd Qtr	\$	\$	\$	\$	\$
		3rd Qtr	\$	\$	\$	\$	\$
		4th Qtr	\$	\$	\$	\$	\$
Building & Enclosed Facilities	\$	1st Qtr	\$	\$	\$	\$	\$
		2nd Qtr	\$	\$	\$	\$	\$
		3rd Qtr	\$	\$	\$	\$	\$
		4th Qtr	\$	\$	\$	\$	\$
Depressed Managed Lanes	\$	1st Qtr	\$	\$	\$	\$	\$
		2nd Qtr	\$	\$	\$	\$	\$
		3rd Qtr	\$	\$	\$	\$	\$
		4th Qtr	\$	\$	\$	\$	\$
Tunnels and Tunnel Ancillary Facilities	\$	1st Qtr	\$	\$	\$	\$	\$
		2nd Qtr	\$	\$	\$	\$	\$
		3rd Qtr	\$	\$	\$	\$	\$
		4th Qtr	\$	\$	\$	\$	\$
Traffic Management & Sequencing	\$	1st Qtr	\$	\$	\$	\$	\$
		2nd Qtr	\$	\$	\$	\$	\$
		3rd Qtr	\$	\$	\$	\$	\$
		4th Qtr	\$	\$	\$	\$	\$
Fleet and Equipment	\$	1st Qtr	\$	\$	\$	\$	\$
		2nd Qtr	\$	\$	\$	\$	\$
		3rd Qtr	\$	\$	\$	\$	\$
		4th Qtr	\$	\$	\$	\$	\$
Sub-Total Maintenance Costs \$ (Box J)		1st Qtr	\$	\$	\$	\$	\$
		2nd Qtr	\$	\$	\$	\$	\$
		3rd Qtr	\$	\$	\$	\$	\$
		4th Qtr	\$	\$	\$	\$	\$

Note: Provide maintenance and operations costs for each year of the Term of the Agreement (i.e., in the columns above, m = the first year after NTP2 and x = 4, 5, 6,....final year of Term)

DETAILED COSTING FORM—Form P/Part A

ITEM	Total Cost	Year (m)				Year (m+1)				Year (m+2)				Year (m+3)				Year (m+x)					
		1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr		
Toll Operations	\$																						
Customer Service	\$																						
Incident Management	\$																						
Lane Availability Management	\$																						
Tunnel Operations	\$																						
Sub-Total Operations Costs \$ (Box K)																							

Note: Provide maintenance and operations costs for each year of the Term of the Agreement (i.e., in the columns above, m = the first year after NTP2 and x = 4, 5, 6,.... final year of Term)

DETAILED COSTING FORM—Form P/Part A

Expenditure Plan												
ITEM	Total Cost	Pre NTP2				Post NTP2						
		1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Year 0	Year 1	Year 2	Year 3	Year 4	Year 5	
IH 635 Section Construction Costs	\$ (Box A)											
IH 635 / IH 35E Interchange Construction Costs	\$ (Box B)											
IH 35E Section Construction Costs	\$ (Box C)											
IH 635 / US 75 Interchange Construction Costs	\$ (Box D)											
Right-of-Way (Additional Properties)	\$ (Box E)											
Utility Relocation (Utility Adjustments)	\$ (Box F)											
Total Project Construction Costs (Box A+Box B+Box C+Box D+Box E+Box F)	\$ (Box H)											
Other Associated Costs	\$ (Box G)											
Total Project Design-Build Costs (Box G+Box H)	\$ (Box I)											
Total Maintenance and Operations Costs (Box J+Box K)	\$ (Box L)											
Total Project Costs (Box I+Box L)	\$ (Box M)											

Note: Pre NTP2 costs shall not be included in the Total Project Construction Costs shown in Box H of Form P/Part A.

Detailed Costing Form – Form P/Part B

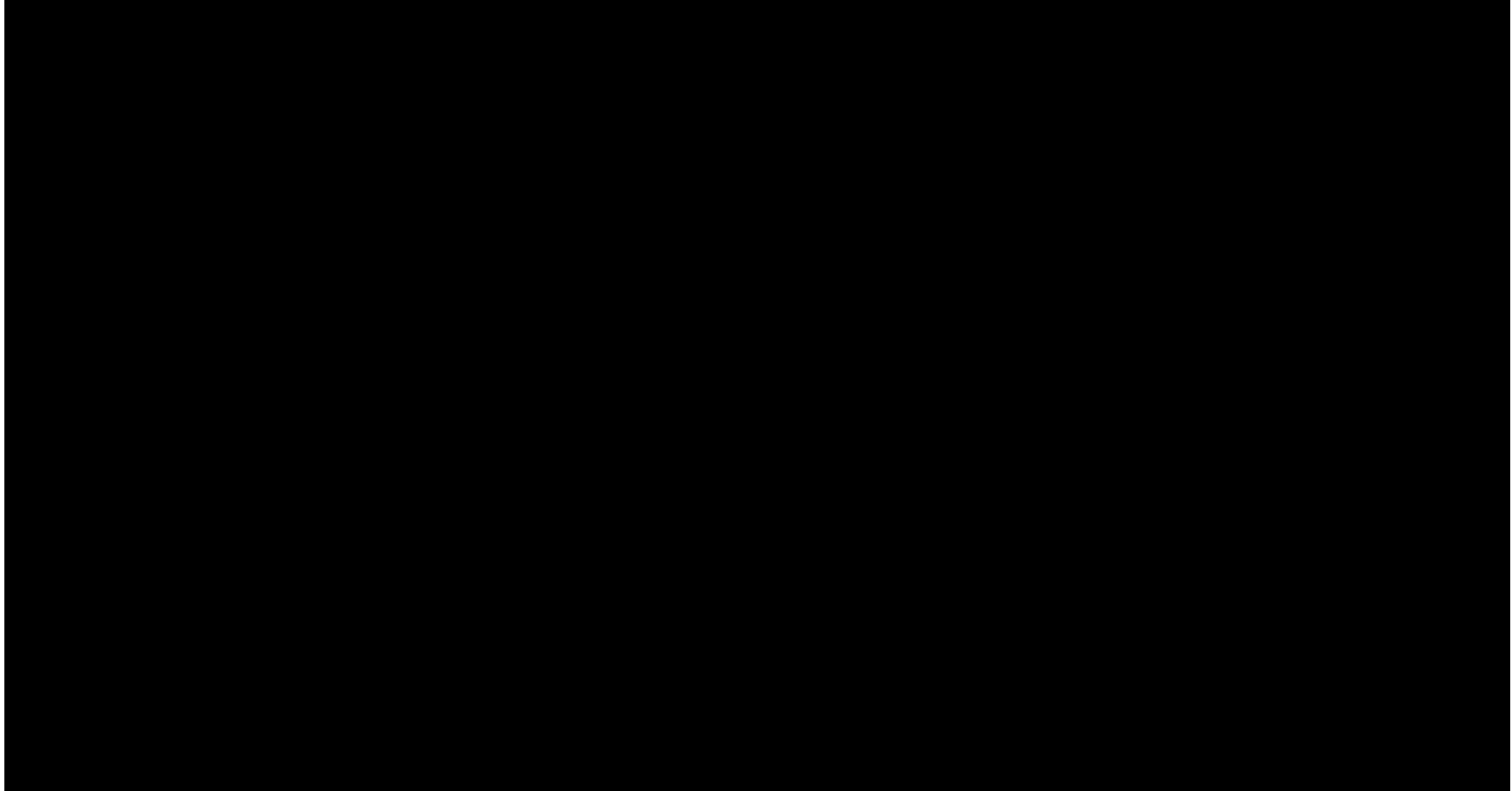
Form P/Part B Instructions for Completion:

Fill out Form P/Part B as follows:

- For all elements of Form P/Part B, the Developer is eligible for reimbursement in accordance with Exhibit 7, Part E of the CDA. The Developer shall separate Federally reimbursable costs, non-Federally reimbursable cost and O&M costs as described below.
- For each line item on page 12, enter the total cost of construction. The total cost of construction shall represent Work that is eligible for reimbursement under Federal Law including costs for project management, administration, design, (including the cost of updating all required plans and submittals for NTP3), contingencies and any allowance for inflation.
- Enter all non-reimbursable costs under Federal Law other than operations and maintenance costs on page 13.
- Include the cost of items to be provided that are within TxDOT right of way but outside the limits of the Project, within the Section that is closest to the proposed location of the items.
- The amount entered into the total cost field shall be sub-divided in the adjacent fields to represent how much is planned to be spent on the specific line item for each quarter.
- Operations and maintenance costs entered in Section II of this Form P/Part B. shall include costs during construction and following each Service Commencement.

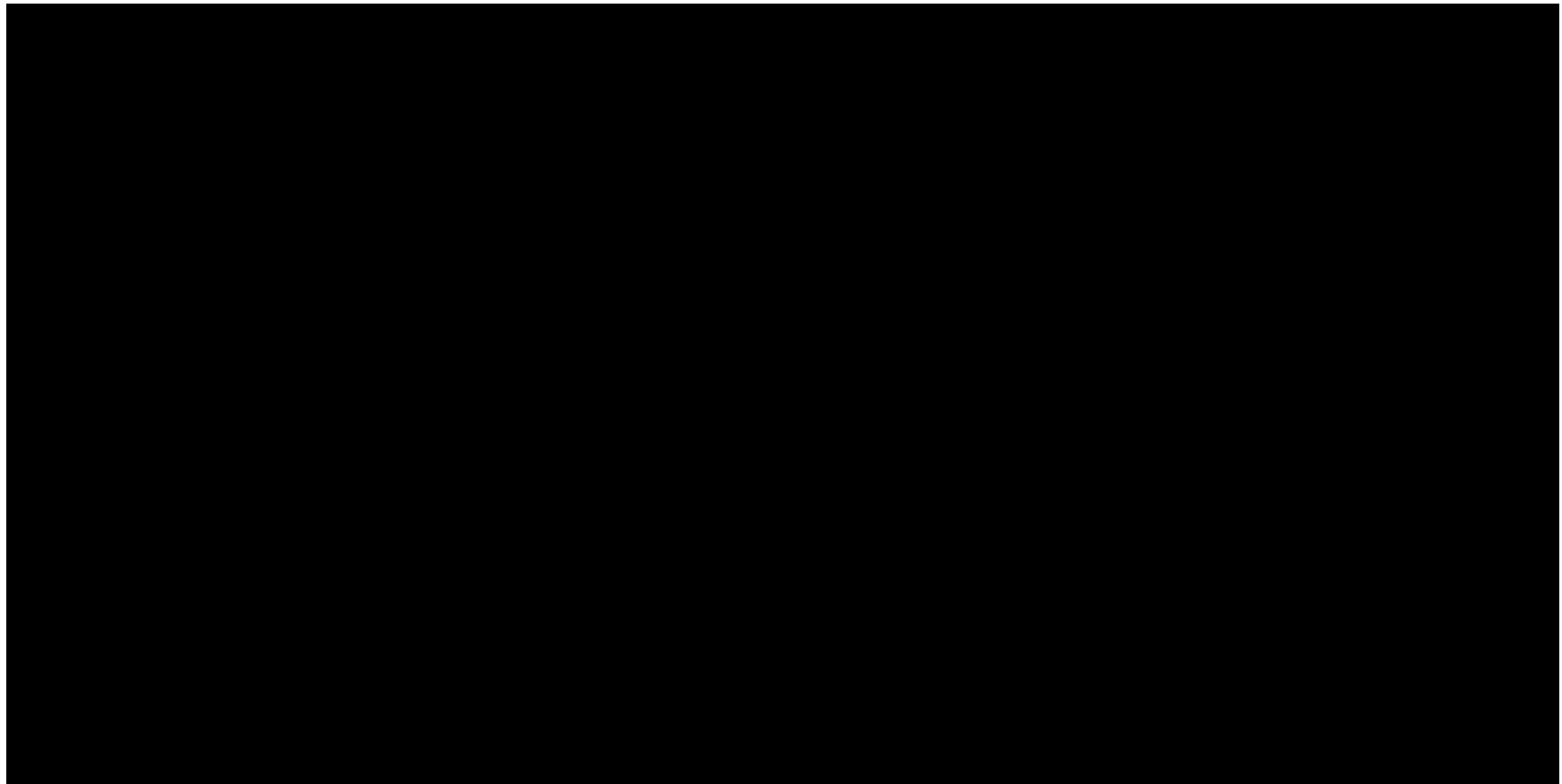
***Note. A sixth year is permitted in the event the Proposal includes an Alternative Technical Concept approved by TxDOT that requires an environmental reevaluation of the IH 635 Section that materially affects the Critical Path based on a Service Commencement Deadline of five years after the date TxDOT issues NTP2.**

DETAILED COSTING FORM—Form P/Part B



Note 1) n = the first year after NTP3

DETAILED COSTING FORM—Form P/Part B



Note 1) n = the first year after NTP3

DETAILED COSTING FORM—Form P/Part B

ITEM	Total Cost						
II. Maintenance and Operations Costs							
Maintenance (Routine and Life Cycle)			Year (n)	Year (n+1)	Year (n+2)	Year (n+3)	Year (n+x)
Roads	\$	1st Qtr	\$	\$	\$	\$	\$
		2nd Qtr	\$	\$	\$	\$	\$
		3rd Qtr	\$	\$	\$	\$	\$
		4th Qtr	\$	\$	\$	\$	\$
Drainage	\$	1st Qtr	\$	\$	\$	\$	\$
		2nd Qtr	\$	\$	\$	\$	\$
		3rd Qtr	\$	\$	\$	\$	\$
		4th Qtr	\$	\$	\$	\$	\$
Structures	\$	1st Qtr	\$	\$	\$	\$	\$
		2nd Qtr	\$	\$	\$	\$	\$
		3rd Qtr	\$	\$	\$	\$	\$
		4th Qtr	\$	\$	\$	\$	\$
Traffic Management & Sequencing	\$	1st Qtr	\$	\$	\$	\$	\$
		2nd Qtr	\$	\$	\$	\$	\$
		3rd Qtr	\$	\$	\$	\$	\$
		4th Qtr	\$	\$	\$	\$	\$
Fleet and Equipment	\$	1st Qtr	\$	\$	\$	\$	\$
		2nd Qtr	\$	\$	\$	\$	\$
		3rd Qtr	\$	\$	\$	\$	\$
		4th Qtr	\$	\$	\$	\$	\$
Sub-Total Maintenance Costs	\$ (Box P)	1st Qtr	\$	\$	\$	\$	\$
		2nd Qtr	\$	\$	\$	\$	\$
		3rd Qtr	\$	\$	\$	\$	\$
		4th Qtr	\$	\$	\$	\$	\$

Note 1) Provide maintenance and operations costs for each year of the Term of the Agreement (i.e., in the columns above, n = the first year after NTP3 and x = 4, 5, 6,....final year of Term)

DETAILED COSTING FORM—Form P/Part B

ITEM	Total Cost						
Operations			Year (n)	Year (n+1)	Year (n+2)	Year (n+3)	Year (n+x)
Toll Operations	\$	1st Qtr	\$	\$	\$	\$	\$
		2nd Qtr	\$	\$	\$	\$	\$
		3rd Qtr	\$	\$	\$	\$	\$
		4th Qtr	\$	\$	\$	\$	\$
Customer Service	\$	1st Qtr	\$	\$	\$	\$	\$
		2nd Qtr	\$	\$	\$	\$	\$
		3rd Qtr	\$	\$	\$	\$	\$
		4th Qtr	\$	\$	\$	\$	\$
Incident Management	\$	1st Qtr	\$	\$	\$	\$	\$
		2nd Qtr	\$	\$	\$	\$	\$
		3rd Qtr	\$	\$	\$	\$	\$
		4th Qtr	\$	\$	\$	\$	\$
Lane Availability Management	\$	1st Qtr	\$	\$	\$	\$	\$
		2nd Qtr	\$	\$	\$	\$	\$
		3rd Qtr	\$	\$	\$	\$	\$
		4th Qtr	\$	\$	\$	\$	\$
Sub-Total Operations Costs	\$ (Box Q)	1st Qtr	\$	\$	\$	\$	\$
		2nd Qtr	\$	\$	\$	\$	\$
		3rd Qtr	\$	\$	\$	\$	\$
		4th Qtr	\$	\$	\$	\$	\$

Note: Provide maintenance and operations costs for each year of the Term of the Agreement (i.e., in the columns above, n = the first year after NTP3 and x = 4, 5, 6,.....final year of Term)

DETAILED COSTING FORM—Form P/Part B
Summary of IH 35 E Capacity Improvement Section Costs

Expenditure Plan							
ITEM	Total Cost		Year (n)	Year (n+1)	Year (n+2)	Year (n+3)	Year (n+x)
IH 35E Capacity Improvement Section Construction Costs	\$ (Box N)	1st Qtr	\$	\$	\$	\$	\$
		2nd Qtr	\$	\$	\$	\$	\$
		3rd Qtr	\$	\$	\$	\$	\$
		4th Qtr	\$	\$	\$	\$	\$
Other Associated Costs	\$ (Box O)	1st Qtr	\$	\$	\$	\$	\$
		2nd Qtr	\$	\$	\$	\$	\$
		3rd Qtr	\$	\$	\$	\$	\$
		4th Qtr	\$	\$	\$	\$	\$
Total IH 35E Capacity Improvement Section Design- Build Costs (Box N+Box O)	\$ (Box R)	1st Qtr	\$	\$	\$	\$	\$
		2nd Qtr	\$	\$	\$	\$	\$
		3rd Qtr	\$	\$	\$	\$	\$
		4th Qtr	\$	\$	\$	\$	\$
Total Maintenance and Operations Costs (Box P+Box Q)	\$ (Box S)						
Total IH 35E Capacity Improvement Section Costs (Box R+Box S)	\$ (Box T)						

Note: Provide maintenance and operations costs for each year of the Term of the Agreement (i.e., in the columns above, n = the first year after NTP3 and x = 4, 5, 6,.... final year of Term)

INTELLECTUAL PROPERTY ESCROW AGREEMENT—Form Q

(TxDOT IH 635 MANAGED LANES PROJECT)

THIS INTELLECTUAL PROPERTY ESCROW AGREEMENT (this “**Agreement**”) is made and entered into as of this _____, 2008, by and between _____, a _____ (“**Developer**”), and _____ (“**Escrow Agent**”), to and for the benefit of the Texas Department of Transportation (“**TxDOT**”), an agency of the State of Texas, with reference to the following facts:

A. TxDOT and the Developer have entered into a Comprehensive Development Agreement (“CDA”) for development, design, construction, finance, operation and maintenance of the IH 635 Managed Lanes Project (the “Project”). Pursuant to the CDA, Developer and/or other Depositors (as defined below) have granted to TxDOT a license or licenses to use the Escrowed Materials (as defined below.) Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the CDA.

B. Developer wishes to employ the services of Escrow Agent to act as the escrow holder with regard to certain materials that are or may be proprietary to Developer or its Contractors (the “Escrowed Materials”) for the limited purposes set forth below, and Escrow Agent has agreed to serve as such escrow holder, under the terms and conditions provided in this Agreement. Escrowed Materials may include Cost and Pricing Data, and certain Intellectual Property and Source Code information, as set forth in Section 22.5 of the CDA.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Developer hereby irrevocably provides the following escrow instructions to Escrow Agent. These Escrow Instructions, although provided unilaterally, are specifically for the benefit of TxDOT as an intended third party beneficiary and may not be revised, supplemented, waived or withdrawn without the prior written consent of TxDOT’s authorized representative.

1. Designation of Authorized Representatives. Developer hereby designates _____ as its authorized representative. TxDOT may designate an authorized representative by written notice to Developer and Escrow Agent and change its authorized representative at any time by providing written notice to Developer and Escrow Agent. Developer may change its authorized representative at any time by providing written notice to TxDOT and Escrow Agent.

2. Deposits.

a. “Depositor” means each person or entity, including the Developer and its Contractors, that deposits with Escrow Agent any Escrowed Materials to be held by Escrow Agent pursuant to this Agreement. Where Developer makes a deposit of Escrowed Materials on behalf of any Contractor, the Contractor is deemed the “Depositor”.

b. Developer hereby deposits with Escrow Agent the Escrowed Materials listed as Exhibit A.

- c. In accordance with Section 22.5 of the CDA, Developer may from time to time deliver additional materials to be held hereunder together with an acknowledgment signed by the Depositor in the form included in Exhibit A attached hereto that such materials are subject to the terms and provisions of this Agreement and that such Depositor grants to TxDOT the rights in such additional materials provided pursuant to this Agreement, in which event a list identifying the Depositor, date of deposit, and all materials added shall be appended to this Agreement and incorporated herein.
- d. Escrow Agent shall notify TxDOT immediately upon its receipt of any such additional materials and shall verify that TxDOT has received a copy of the list of items delivered.
- e. Escrow Agent hereby acknowledges receipt of the Escrowed Materials, agrees to accept supplemental materials as specified herein, and agrees to hold the Escrowed Materials in safekeeping under the terms and conditions of this Agreement.

3. Manner of Holding of Escrowed Materials.

(a) Escrow Agent shall hold the Escrowed Materials in a designated area on the premises of Escrow Agent located at _____, Austin, Texas, or such other address Austin, Texas, as is specified to TxDOT and the Developer in writing not later than fifteen days prior to the time such Escrowed Materials are to be relocated to such new location or to such other address in the State of Texas as is agreed to in writing by TxDOT and the Developer. The Escrowed Materials shall be stored in a secure area that is locked at all times. The Escrowed Materials shall either be held in a fire safe area on the premises or shall be kept in firesafe boxes or cabinets supplied by the Developer.

(b) During the term hereof, Escrow Agent shall allow access to the Escrowed Materials only to those individuals identified by TxDOT's authorized representative as having need for access. Such access shall include the ready ability of TxDOT to temporarily install and run computerized programs, applications, data and electronic files that are included in the Escrowed Materials on a stand-alone secure personal computer. TxDOT shall provide notice to Escrow Agent at least one business day in advance of its planned review. All reviews shall be conducted during Escrow Agent's business hours. In the event that TxDOT needs to conduct a review of Escrowed Materials at a time other than the Escrow Agent's normal business hours of 8:00 a.m. – 5:00 p.m., Austin, Texas time, Monday through Friday, TxDOT agrees that access to the Escrowed Materials shall be subject to compliance with the procedures of the Escrow Agent described herein, which are designed to ensure proper preparation through advance notice, and to maintain proper control over access to the Escrow Agent's office and any confidential or proprietary information of the Escrow Agent or its customers. In particular, the Escrow Agent will require that two employees of the Escrow Agent (one of which will be an officer) shall be present at all times that Escrowed Materials are being reviewed on its premises. In addition, reviewers will be required to sign-in and sign-out when reviewing Escrowed Materials. Finally, the reviewers will be required to agree to maintain the confidentiality of any proprietary or confidential information of the Escrow Agent or its customers upon signing in to review the Escrowed Materials. No access shall be given to any representative of Developer

unless TxDOT agrees to such access in writing. No third party, including the employees of Escrow Agent, shall be allowed access to the Escrowed Materials, although this shall not preclude employees of Escrow Agent from having access to the locked area for other purposes. The Escrow Agent shall have no duty to supply any computers, printers or other devices necessary to review or verify the Escrowed Materials. In no event shall TxDOT, the Developer, a Depositor or any person or entity selected or appointed by them have the right to access, connect to or otherwise use any computer or other network of the Escrow Agent, other than to have access to electricity.

(c) Escrow Agent shall have the obligation to reasonably protect the safety and security of the Escrowed Materials. Each submitting party is advised to contact its own legal counsel concerning the effect of applicable laws to the submitting party's own circumstances.

(d) In the event of any proceeding or litigation concerning the disclosure of any Escrowed Materials, Escrow Agent shall immediately notify Developer and TxDOT. In such event, the Escrow Agent will be a stakeholder retaining the material until otherwise ordered by a court or such other authority having jurisdiction with respect thereto. The Developer shall be responsible for otherwise prosecuting or defending any action concerning the materials at its sole expense. Except as provided in this Agreement, Escrow Agent shall not disclose, transfer, make available or use the Escrowed Materials. Subject to the provisions of this Section 3(d), Escrow Agent shall not disclose the content of this Agreement to any third party other than Depositors. If Escrow Agent receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Escrowed Materials, Escrow Agent shall immediately notify Developer and TxDOT unless prohibited by law. It shall be the responsibility of Developer to challenge any such order; provided, however, that Escrow Agent does not waive its rights to present its position with respect to any such order. Escrow Agent shall not be required to disobey any order from a court or other judicial tribunal.

4. Deposits of Source Code as Escrowed Materials.

(a) Prior to each delivery of Source Code to Escrow Agent, Depositor shall conspicuously label for identification each document, magnetic tape, disk, or other tangible media upon which the Source Code are written or stored. Additionally, with each delivery Depositor shall complete a modified Exhibit A by listing each such tangible media by the item label description, the type of media and the quantity, and the identity of the owner of the Source Code (whether Depositor or a software supplier). Depositor shall sign each modified Exhibit A and deliver it to Escrow Agent with the Source Code. Such signature shall constitute Depositor's representation and warranty that Exhibit A is true, accurate and complete. Unless and until Depositor makes the initial deposit with Escrow Agent, Escrow Agent shall have no obligation with respect to this Agreement, except the obligation to notify Developer and TxDOT regarding the status of the account as required in Section 4(c) below.

(b) Within three business days after Escrow Agent receives Source Code and a modified Exhibit A, Escrow Agent shall conduct a deposit inspection by visually matching the labeling of the tangible media containing the Source Code to the item descriptions and quantity listed on the modified Exhibit A. In addition to the deposit inspection, TxDOT may elect to cause a verification of the Source Code in accordance with Section 6 below.

(c) Immediately upon completion of each deposit inspection, if Escrow Agent determines that the labeling of the tangible media matches the item descriptions and quantity on the modified Exhibit A, Escrow Agent shall date and sign the modified Exhibit A and mail a copy thereof to Depositor and TxDOT. Immediately upon completion of each deposit inspection, if Escrow Agent determines that the labeling does not match the item descriptions or quantity on the modified Exhibit A, Escrow Agent shall (a) note the discrepancies in writing on the modified Exhibit A; (b) date and sign the modified Exhibit A with the exceptions noted; and (c) mail a copy of the modified Exhibit A to Depositor and TxDOT. Escrow Agent's acceptance of the deposit occurs upon the signing of the modified Exhibit A by Escrow Agent. Delivery of the signed modified Exhibit A to TxDOT is TxDOT's notice that the Source Code have been received and accepted by Escrow Agent.

5. Representations. Developer [and any other Depositor] by depositing any materials pursuant to this Agreement represents and warrants to and for the benefit of TxDOT as follows:

(a) Developer or the other Depositors lawfully possess all of the Escrowed Materials deposited with Escrow Agent;

(b) With respect to all of the Escrowed Materials, Developer has the right and authority to grant to Escrow Agent and TxDOT the rights as provided in this Agreement and Developer [and each other Depositor] hereby grants such rights to TxDOT

(c) The Escrowed Materials are not subject to any lien or other encumbrance that entitles the holder of the lien or encumbrance to terminate this Agreement, withdraw the Escrowed Materials, or prevent or hinder TxDOT's access to the Escrowed Materials or receipt thereof following a Release Condition;

(d) The Escrowed Materials are Proprietary Intellectual Property and constitute Intellectual Property for purposes of 11 U.S.C. § 365(n) and TxDOT's rights pursuant to this Agreement constitute the rights of a licensee pursuant to 11 U.S.C. § 365(n); and

(e) The Escrowed Materials are readable and useable in their current form or, if any portion of the Escrowed Material is encrypted, the decryption tools and decryption keys have also been deposited.

6. Verification. TxDOT shall have the right, without cost to Developer or the Escrow Agent, to cause a verification of any Escrowed Materials. TxDOT shall notify Developer and Escrow Agent of TxDOT's request for verification. Developer shall be solely responsible for notifying the Depositor of the subject Escrowed Materials of TxDOT's request for verification. Developer shall have the right to be present at the verification, and may delegate in writing such right to the Depositor. A verification determines, in different levels of detail, the accuracy, completeness, sufficiency and quality of the Escrowed Materials. If a verification is elected after the Escrowed Materials have been delivered to Escrow Agent, then only TxDOT, or at TxDOT's election an independent person or company selected and supervised by TxDOT and approved by Developer, may perform the verification. Such verification shall determine the relevance, completeness, currency, accuracy and functionality of the Escrowed Materials and whether the Escrowed Materials are all the Escrowed Materials. Any verification shall take place either at Escrow Agent's location or an agreed upon location

during Escrow Agent's regular business hours. If TxDOT elects to have an independent person or company perform the verification, then such entity shall adhere to the confidentiality requirements of the CDA.

7. Removal of Escrowed Material. The Escrowed Material may be removed and/or exchanged only on written instructions signed by Developer, the relevant Depositor and TxDOT, or as otherwise provided in Section 8 of this Agreement.

8. Release of Escrowed Materials. Release of Escrowed Materials is subject to the terms and conditions of this Section 8.

(a) Release Conditions - Developer. As used in this Agreement, "Release Condition" shall mean with respect to Developer and the deposits it makes under this Agreement on its own behalf (but not on behalf of other Depositors) any of the following:

(i) Bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, proceedings under Title 11 of the United States Code, as amended, or other proceedings for relief under any bankruptcy law or similar law for the relief of debtors are instituted by or against Developer (and, if instituted against Developer, are allowed against Developer or are consented to or are not dismissed, terminated or otherwise nullified within 60 calendar days after such institution);

(ii) A custodian, trustee or receiver is appointed for Developer or any substantial part of its assets;

(iii) Developer makes or attempts to make an assignment for the benefit of creditors;

(iv) Developer generally fails to pay its debts when they are due or admits of its inability to pay its debts;

(v) Developer fails to provide necessary and commercially feasible updates and maintenance releases for any software or other Escrowed Materials owned or developed by Developer (but not software or other Escrowed Materials owned or developed by any other Depositor);

(vi) The CDA is terminated because of a Developer Default and/or Termination Compensation is due to Developer by TxDOT;

(vii) Developer is dissolved, liquidated or otherwise ceases to do business in the ordinary course;

(viii) Developer or its successor or representative including any trustee in a bankruptcy proceeding relating to Developer rejects or elects to terminate the CDA including but not limited to a rejection of the CDA pursuant to 11 U.S.C. § 365, or under any state receivership, insolvency or other similar proceeding; or

(ix) Developer (as debtor in possession) or any trustee in a bankruptcy proceeding relating to the Depositor fails to assume the obligations under the CDA on or prior to the deadline for assumption or rejection of executory contracts in such bankruptcy proceeding pursuant to 11 U.S.C. § 365.

(b) Release Conditions – Other Depositors. As used in this Agreement, "Release Condition" shall mean with respect to any Depositor other than Developer and the deposits made by or on behalf of such Depositor under this Agreement (but not items deposited by or on behalf of other Depositors) any of the following:

(i) Bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, proceedings under Title 11 of the United States Code, as amended, or other proceedings for relief under any bankruptcy law or similar law for the relief of debtors are instituted by or against the Depositor (and, if instituted against the Depositor, are allowed against the Depositor or are consented to or are not dismissed, terminated or otherwise nullified within 60 calendar days after such institution);

(ii) The Depositor is dissolved, liquidated or otherwise ceases to engage in the ordinary course of the business of manufacturing or supplying the software, product, part or other item that constitutes or contains the Proprietary Intellectual Property; or

(iii) The Depositor, without lawful excuse of performance, abandons performance or fails or refuses to fully and successfully perform its obligations within the time provided in its Contract; or

(iv) The Depositor or its successor or representative including any trustee in a bankruptcy proceeding relating to Depositor rejects or elects to terminate the agreement pursuant to which the Depositor has licensed the Escrowed Materials to the Developer and/or TxDOT, including but not limited to a rejection of such agreement pursuant to 11 U.S.C. § 365, or under any state receivership, insolvency or other similar proceeding; or

(v) The Depositor (as debtor in possession) or any trustee in a bankruptcy proceeding relating to the Depositor fails to assume the obligations under the agreement pursuant to which the Depositor has licensed the Escrowed Materials to Developer and/or TxDOT on or prior to the deadline for assumption or rejection of executory contracts in such bankruptcy proceeding pursuant to 11 U.S.C. § 365.

(c) Filing For Release. If TxDOT believes in good faith that a Release Condition has occurred with respect to any Depositor, TxDOT may provide to Escrow Agent written notice of the occurrence of the Release Condition and a request for the release of the Escrowed Material to which the Release Condition pertains. TxDOT's notice shall indicate the Depositor to which the Release Condition pertains. Immediately upon receipt of such notice, Escrow Agent shall provide a copy of the

notice to Developer and to the Depositor by commercial express mail. TxDOT shall have the express right to request a release of the Escrowed Materials for the purpose of determining the amount due to Developer with respect to any Termination Compensation, pursuant to the payment terms for Termination Compensation under the CDA.

(d) Contrary Instructions. Each of Developer and the Depositor shall have 14 days from the date it receives Escrow Agent's notice requesting release of the Escrowed Materials to deliver to Escrow Agent contrary instructions ("Contrary Instructions"). Contrary Instructions shall mean and be limited to the written representations and warranties, without qualification, exception or condition, by an authorized officer or authorized delegate of Developer or the Depositor, as applicable, that (i) the person signing for Developer or the Depositor is an authorized officer or authorized delegate of Developer or the Depositor and (ii) a Release Condition respecting the Depositor has not occurred or has been cured. Immediately upon receipt of Contrary Instructions within such 14-day period, Escrow Agent shall send a copy to TxDOT and Developer (if Developer has not itself delivered the Contrary Instruction) by commercial express mail. Additionally, Escrow Agent shall notify Developer, the Depositor and TxDOT that there is a dispute to be resolved. Escrow Agent shall continue to store the Escrowed Materials without release pending (A) joint instructions from the party(ies) that delivered the Contrary Instruction and TxDOT; (B) dispute resolution (pursuant to Section 17.8 of the CDA if it is a dispute between TxDOT and Developer); or (C) order of a court. Contrary Instructions received after such 14-day period shall be automatically null and void, shall have no force or effect, and shall be disregarded by Escrow Agent.

(e) Release of Deposit.

(i) If Escrow Agent does not receive Contrary Instructions within such 14-day period, Escrow Agent is authorized to, and shall, immediately release to TxDOT the Escrowed Materials to which the Release Condition pertains, as well as any Escrowed Materials that lacks identification of ownership on Exhibit A. Any copying expense will be chargeable to Developer. This Agreement shall terminate upon the release of all the Escrowed Materials held by Escrow Agent.

(ii) Escrow Agent shall promptly release to TxDOT all or any part of Escrowed Materials deposited by or on behalf of a Depositor at any time and from time to time upon receipt of written instructions signed by such Depositor authorizing the release.

(iii) Escrow Agent shall also release Escrowed Materials to TxDOT at any time as directed or ordered by the final decision in any dispute resolution proceeding pursuant to Section 17.8 of the CDA. If TxDOT provides to Escrow Agent a written opinion of counsel for TxDOT to the effect that such decision is final and not appealable, Escrow Agent shall proceed with release in accordance with the final decision and may rely on such legal opinion.

9. Rights of Escrow Agent.

(a) If conflicting demands are made or notices serviced upon Escrow Agent with respect to this escrow, the parties hereto expressly agree that Escrow Agent shall have the absolute right at its election to do any of the following:

(i) withhold and stop all further proceedings in, and performance of this escrow;

(ii) file a suit in interpleader in order to obtain an order from the court requiring the parties to interplead and litigate in such court their several claims and rights amongst themselves; or

(iii) deliver all Escrowed Materials with seals intact to another location to be selected by Developer subject to TxDOT approval within 30 days after Escrow Agent delivers notice thereof to TxDOT.

(b) Escrow Agent may act in reliance upon any instruction, instrument, or signature reasonably believed by Escrow Agent to be genuine. Except with respect to a Contrary Instruction that lacks the representation set forth in Section 8(d) of this Agreement, Escrow Agent may assume that any employee of a party to this Agreement who gives any written notice, request or instruction has the authority to do so. Escrow Agent shall not be required to inquire into the truth or evaluate the merit of any statement or representation contained in any notice or document. Escrow Agent shall not be responsible for failure to act as a result of causes beyond the reasonable control of Escrow Agent.

(c) Developer and each other Depositor agree to indemnify, defend and hold harmless Escrow Agent from any and all claims, actions, damages, arbitration fees and expenses, costs, attorney's fees and other liabilities ("Liabilities") incurred by Escrow Agent relating in any way to this escrow arrangement except to the extent such Liabilities are finally determined to have been primarily caused by the gross negligence or willful misconduct of Escrow Agent or its breach of this Agreement. The obligations of the parties set forth in this Section 9(c) shall survive the resignation or removal of the Escrow Agent or the termination of this Agreement.

10. Term of Agreement.

(a) The term of this Agreement shall continue in effect unless and until this Agreement is terminated in accordance with the terms of this Section 10. This Agreement shall be terminated in the event (i) Developer and TxDOT jointly instruct Escrow Agent in writing that the Agreement is terminated; or (ii) Escrow Agent instructs Developer and TxDOT in writing that the Agreement is terminated for nonpayment in accordance with Section 10(b) or by resignation in accordance with Section 10(c).

(b) In the event fees owed to Escrow Agent are not paid when due, Escrow Agent shall provide written notice of delinquency to Developer and TxDOT. Developer or TxDOT shall have the right to make the payment to Escrow Agent to cure the default. If the past due payment is not received in full by Escrow Agent within one month of the date of such notice, then Escrow Agent shall have the right to terminate this Agreement at any time thereafter by sending written notice of termination to Developer and TxDOT. Escrow Agent shall have no obligation to take any action under

this Agreement so long as any undisputed payment due to Escrow Agent remains unpaid and delinquent, except action to hold and safeguard the Escrowed Materials and transfer or dispose of the Escrowed Materials following termination as provided in this Section 10.

(c) Escrow Agent reserves the right to terminate this Agreement, for any reason, by providing Developer and TxDOT with 90-days' written notice of its intent to terminate this Agreement. Within the 90-day period, the Developer shall use diligent efforts to enter into a substantially similar agreement with another entity acceptable to TxDOT and willing and able to perform the functions of Escrow Agent hereunder and thereupon shall provide Escrow Agent with joint written instructions authorizing Escrow Agent to forward the Escrowed Materials to another escrow company and/or agent or other designated recipient. Escrow Agent shall transfer and dispose of the Escrowed Materials in accordance with any such joint written instruction. If Escrow Agent does not receive said joint written instructions within 90 days of the date of Escrow Agent's written termination notice, then Escrow Agent shall have no obligation to take any action under this Agreement, except action to hold and safeguard the Escrowed Materials and transfer or dispose of Escrowed Materials following termination as provided in this Section 10.

(d) Upon termination of this Agreement, Escrow Agent shall destroy, return, or otherwise deliver the Escrowed Materials in accordance with Developer's and TxDOT's joint written instructions. If there are no such joint written instructions, Escrow Agent may, at its sole discretion, commence legal action interpleading Developer and TxDOT, deposit the Escrowed Materials with the court in such action and otherwise handle and dispose of the Escrowed Materials in accordance with court order. In no event shall Escrow Agent have the right to destroy the Escrowed Materials or return them to Developer absent joint written instructions to such effect or final order of a court of competent jurisdiction.

11. Disclaimer. Escrow Agent hereby disclaims and relinquishes any title to or ownership of Escrowed Materials deposited with Escrow Agent under this Agreement.

12. Fees. Developer shall pay all fees and expenses in connection with Escrow Agent's obligations under this Agreement, as set forth in Exhibit B attached hereto.

13. Notices. Any communication, notice or demand of any kind whatsoever under this Agreement shall be in writing and delivered by personal service (including express or courier service), by electronic communication, whether by facsimile or electronic-mail (if confirmed in writing sent by registered or certified mail, postage prepaid, return receipt requested), or by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to the Developer:

Attention: _____
Telephone: () _____
Facsimile: () _____
Email: _____

If to TxDOT:

Texas Department of Transportation
Texas Turnpike Authority Division
125 E. 11th Street
Austin, TX 78701
Attention: John Hudspeth, P.E.
Telephone: ((512) 936-0980
Facsimile: (512) 936-0970
Email: jhudsp1@dot.state.tx.us

With copies to:

Texas Department of Transportation
Office of General Counsel
125 East 11th Street
Attention: General Counsel
Telephone: (512) (512) 463-8630
Facsimile: (512) (512) 475-3070

If to the Escrow Agent:

Attention: _____
Telephone: () _____
Facsimile: () _____
Email: _____

or to such other addresses and such other places as any party hereto may from time to time designate by written notice to the others.

It shall be the responsibility of each Depositor to notify in writing TxDOT, Developer and the Escrow Agent of its address for notice, including telephone, facsimile and email information, and of any change in the Depositor's address. The parties and TxDOT shall have the right to rely on the last known address of the other parties, of TxDOT and of each Depositor.

All notices and other communications required or permitted under this Agreement which are addressed as provided in this Section 13 are effective upon delivery, if delivered personally or by overnight mail, and, are effective five (5) days following deposit in the United States mail, postage prepaid if delivered by mail.

14. Representations. Escrow Agent represents and warrants that it has no financial or other interest or relation with Developer, its principals or officers, except that it may be the depository for accounts maintained by such entities, or a lender or other provider of financial services in the normal course of business to such entities. Escrow Agent further represents, warrants and covenants that the employees of Escrow Agent who have access to the Escrowed Materials also have no such interest or relation with Developer, its principals or officers.

15. Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto and TxDOT. However, Escrow Agent shall have no right to assign this Agreement or delegate its duties hereunder without the prior written consent of Developer and TxDOT; and Escrow Agent shall have no obligation in performing this Agreement to recognize any successor or assign of Developer, any other Depositor or TxDOT unless Escrow Agent receives and acknowledges written notice of such assignment.

16. Counterparts. This Agreement may be executed in one or more counterparts, all of which together shall be deemed an original.

17. Headings. The title headings of the respective paragraphs of this Agreement are inserted for convenience only, and shall not be deemed to be part of this Agreement or considered in construing this Agreement.

18. Governing Law. The laws of the State of Texas shall govern this Agreement.

19. Right of Use Following Release. TxDOT has the right under this Agreement to use the Escrowed Materials for the sole purpose of continuing the benefits afforded to TxDOT by the CDA following a release thereof to TxDOT in accordance with this Agreement.

20. Liability of Escrow Agent.

(a) The Escrow Agent shall have only those duties as are specifically provided herein, which shall be deemed purely ministerial in nature, and shall under no circumstance be deemed a fiduciary for any of the parties to this Agreement or any other person. The Escrow Agent shall neither be responsible for, nor chargeable with, knowledge of the terms and conditions of any other agreement, instrument or document, including without limitation any Proposal or any CDA. This Agreement sets forth all matters pertinent to the escrow contemplated hereunder, and no additional obligations of the Escrow Agent shall be inferred from the terms of this Agreement or any other agreement. IN NO EVENT SHALL THE ESCROW AGENT BE LIABLE, DIRECTLY OR INDIRECTLY, FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL LOSSES OR DAMAGES OF ANY KIND WHATSOEVER (INCLUDING WITHOUT LIMITATION LOST PROFITS), EVEN IF THE ESCROW AGENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES AND REGARDLESS OF THE FORM OF ACTION.

(b) Escrow Agent shall place the Escrowed Materials in a vault or such other secure location so as to satisfy the requirements of Section 3 above. The Escrow Agent, however, does not insure that the Escrowed Materials will not be damaged or destroyed due to temperature, humidity, fire, smoke, electrical interference or other environmental factors, and the Escrow Agent is only required to take the same precautions to control the environment in which the Escrowed Materials will be stored as it would normally take in the storage of paper documentation.

21. Court Orders. In the event that any escrow property shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment or decree shall be made or entered by any court order affecting the property deposited under this Agreement, Escrow Agent shall provide TxDOT and Developer with written notice within 10 days after the occurrence of such event. The Escrow Agent is hereby expressly authorized, in its sole discretion, to obey and comply with all writs, orders or decrees so entered or issued, which it is advised by legal counsel of its own choosing is binding upon it, whether with or without jurisdiction, and in the event that the Escrow Agent obeys or complies with any such writ order or decree it shall not be liable to any of the parties hereto or to any other person, firm or corporation, by reason of such compliance notwithstanding such writ, order or decree by subsequently reversed, modified, annulled, set aside or vacated.

22. Advice of Counsel. The Escrow Agent shall have the right, but not the obligation, to consult with counsel of choice and shall not be liable for action taken or omitted to be taken by Escrow Agent either in accordance with the advice of such counsel or in accordance with any opinion of counsel addressed and delivered to the Escrow Agent. The Escrow Agent shall have the right to perform any of its duties hereunder through its agents, attorneys, custodians or nominees.

IN WITNESS WHEREOF, the parties hereto, each intending to be legally bound by this writing, have caused this Agreement to be executed the date first above written.

DEVELOPER

By: _____

Name: _____

Title: _____

The escrow provided for in this Agreement is hereby
accepted by Escrow Agent.

By: _____

Title: _____

EXHIBIT A

LIST OF ESCROWED MATERIALS

<u>Title of Escrowed Document</u>	<u>Depositor</u>	<u>Date</u>
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		

ANNEX 1 TO EXHIBIT A

LIST OF SUPPLEMENTAL ESCROWED MATERIALS AND ACKNOWLEDGEMENT

The Undersigned hereby acknowledges delivery of the below-described materials to Escrow Agent pursuant to that certain Intellectual Property Escrow Agreement between [Developer] and [Escrow Agent] to and for the benefit of the Texas Department of Transportation, an agency of the State of Texas (TxDOT”), dated as of _____, 200[] (the “Agreement”), as provided for in that certain Comprehensive Development Agreement between Developer and TxDOT dated as of _____, 200[] (“CDA”), and acknowledges and confirms that the same are subject to the terms and provisions of the Agreement and the CDA and that such Depositor grants to TxDOT the rights in such additional materials provided pursuant to the Agreement.

<u>Title of Escrowed Document</u>	<u>Depositor</u>	<u>Date</u>
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		

The foregoing list shall be appended to and supplement Exhibit A to the Agreement and is incorporated by reference therein.

DEPOSITOR

By: _____
Its: _____
Date: _____

CERTIFICATION REGARDING NTTA COMMUNICATIONS – FORM R

(IH 635 MANAGED LANES PROJECT)

Pursuant to ITP Exhibit B, Section 3.2.12, the Proposer hereby certifies, represents and warrants to TxDOT that from December 21, 2006 through the Proposal Due Date, it has not had any communications with NTTA regarding the IH 635 Managed Lanes Project, including the procurement and services potentially to be provided by NTTA, except as expressly authorized by and in accordance with the procedures set forth in Section 2.2.3 of the ITP.

The statements, representations, warranties and certification set forth herein shall survive the submittal of the Proposal on the Project, any cancellation of this procurement, any conditional award, and, if conditional award is not made to Proposer, the execution of any comprehensive development agreement with the successful Proposer in connection therewith.

Executed as of _____, 2008

_____ [Proposer]

By: _____
Title: _____

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION – FORM S

[To be executed by the Proposer, Major Participants and proposed subcontractors]

The undersigned certifies on behalf of _____, that:
(Name of entity making certification)

[check one of the following boxes]

- It has developed and has on file at each establishment affirmative action programs pursuant to 41 CFR Part 60-2 (Affirmative Action Programs).
- It is not subject to the requirements to develop an affirmative action program under 41 CFR Part 60-2 (Affirmative Action Programs).

[check one of the following boxes]

- It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.
- It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President’s Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature: _____

Title: _____

Date: _____

If not Proposer, relationship to Proposer: _____

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1)), and must be submitted by Proposers and proposed subcontractors only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts that are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally, only contracts or subcontracts of \$10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Proposers, Major Participants and proposed subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

REVENUE PAYMENT TABLES – FORM T – 4 SECTIONS

TABLE 1:

Band	Band Floor	Band Ceiling*	Revenue Payment
1	0	Cumulative Toll Revenues (15.0%)	0%
2	Band 1 Ceiling + \$0.01	Cumulative Toll Revenues (18.0%)	12.5%
3	Band 2 Ceiling + \$0.01	Cumulative Toll Revenues (21.0%)	25.0%
4	Band 3 Ceiling + \$0.01	Cumulative Toll Revenues (23.0%)	50.0%
5	Band 4 Ceiling + \$0.01	N/A	75.0%

*“Cumulative Toll Revenues (X%)” means the level of gross toll revenues received to date for the 4 Sections which is representative of a blended, nominal, after-tax internal rate of return over the full Term (excluding potential extensions of the Term) of X% for equity, as calculated in Proposer’s Initial Financial Model. Table 2 will be updated for inclusion in the executed CDA to reflect Developer’s Base Case Financial Model, pursuant to Section 6.1 of Exhibit C.

The middle two columns of the above table are only intended to guide Proposers in how to complete the table on the following pages; they will be removed from the table that will rest in the final version of the document.

Proposers shall factor in the amount of the revenue payment to TxDOT in defining the thresholds in the following table.

To the extent the different return percentages driving the ceiling revenues per the above definition are not equal to the Proposer’s blended, nominal, after-tax equity internal rate of return, the Proposer shall multiply its base case revenues by a constant coefficient, and hold all other variables constant except for dividends, to target the relevant return level per the above table. As a clarification, any such increase in revenue should not lead to an increase in taxes, revenue collection costs or any other cost variable.

TxDOT will, as part of its evaluation, check that the toll revenue amounts Proposers provide in the following table generate the appropriate return levels as per the above table.

TABLE 2:

Year of Operations	Band 1 Floor: Cumulative Toll Revenues from:	Band 1 Ceiling : Cumulative Toll Revenues to and including:	Band 2 Floor: Cumulative Toll Revenues from:	Band 2 Ceiling : Cumulative Toll Revenues to and including:	Band 3 Floor: Cumulative Toll Revenues from:	Band 3 Ceiling : Cumulative Toll Revenues to and including:	Band 4 Floor: Cumulative Toll Revenues from:	Band 4 Ceiling : Cumulative Toll Revenues to and including:	Band 5 Floor: Cumulative Toll Revenues from:
1	\$0								
2	\$0								
3	\$0								
4	\$0								
5	\$0								
6	\$0								
7	\$0								
8	\$0								
9	\$0								
10	\$0								
11	\$0								
12	\$0								
13	\$0								
14	\$0								
15	\$0								
16	\$0								
17	\$0								
18	\$0								
19	\$0								
20	\$0								

Year of Operations	Band 1 Floor: Cumulative Toll Revenues from:	Band 1 Ceiling : Cumulative Toll Revenues to and including:	Band 2 Floor: Cumulative Toll Revenues from:	Band 2 Ceiling : Cumulative Toll Revenues to and including:	Band 3 Floor: Cumulative Toll Revenues from:	Band 3 Ceiling : Cumulative Toll Revenues to and including:	Band 4 Floor: Cumulative Toll Revenues from:	Band 4 Ceiling : Cumulative Toll Revenues to and including:	Band 5 Floor: Cumulative Toll Revenues from:
21	\$0								
22	\$0								
23	\$0								
24	\$0								
25	\$0								
26	\$0								
27	\$0								
28	\$0								
29	\$0								
30	\$0								
31	\$0								
32	\$0								
33	\$0								
34	\$0								
35	\$0								
36	\$0								
37	\$0								
38	\$0								
39	\$0								
40	\$0								
41	\$0								
42	\$0								
43	\$0								

Year of Operations	Band 1 Floor: Cumulative Toll Revenues from:	Band 1 Ceiling : Cumulative Toll Revenues to and including:	Band 2 Floor: Cumulative Toll Revenues from:	Band 2 Ceiling : Cumulative Toll Revenues to and including:	Band 3 Floor: Cumulative Toll Revenues from:	Band 3 Ceiling : Cumulative Toll Revenues to and including:	Band 4 Floor: Cumulative Toll Revenues from:	Band 4 Ceiling : Cumulative Toll Revenues to and including:	Band 5 Floor: Cumulative Toll Revenues from:
44	\$0								
45	\$0								
46	\$0								
47	\$0								
48	\$0								
49	\$0								
50	\$0								
[51]	[\$0]								
[52]	[\$0]								
[53]	[\$0]								

REVENUE PAYMENT TABLES – FORM T – 5 SECTIONS

TABLE 1:

Band	Band Floor	Band Ceiling*	Revenue Payment
1	0	Cumulative Toll Revenues (15.0%)	0%
2	Band 1 Ceiling + \$0.01	Cumulative Toll Revenues (18.0%)	12.5%
3	Band 2 Ceiling + \$0.01	Cumulative Toll Revenues (21.0%)	25.0%
4	Band 3 Ceiling + \$0.01	Cumulative Toll Revenues (23.0%)	50.0%
5	Band 4 Ceiling + \$0.01	N/A	75.0%

*“Cumulative Toll Revenues (X%)” means the level of gross toll revenues received to date for the 5 Sections which is representative of a blended, nominal, after-tax internal rate of return over the full Term (excluding potential extensions of the Term) of X% for equity, as calculated in Proposer’s NTP3 Financial Model. If NTP3 is issued, the Base Case Financial Model in the CDA will be updated with the NTP3 Financial Model, as more particularly set forth in the CDA.

The middle two columns of the above table are only intended to guide Proposers in how to complete the table on the following pages; they will be removed from the table that will rest in the final version of the document.

Proposers shall factor in the amount of revenue payment to TxDOT in defining the thresholds in the following table.

To the extent the different return percentages driving the ceiling revenues per the above definition are not equal to the Proposer’s blended, nominal, after-tax equity internal rate of return, the Proposer shall multiply its base case revenues by a constant coefficient, and hold all other variables constant except for dividends, to target the relevant return level per the above table. As a clarification, any such increase in revenue should not lead to an increase in taxes, revenue collection costs or any other cost variable.

TxDOT will, as part of its evaluation, check that the toll revenue amounts Proposers provide in the following table generate the appropriate return levels as per the above table.

TABLE 2:

Year of Operations	Band 1 Floor: Cumulative Toll Revenues from:	Band 1 Ceiling : Cumulative Toll Revenues to and including:	Band 2 Floor: Cumulative Toll Revenues from:	Band 2 Ceiling : Cumulative Toll Revenues to and including:	Band 3 Floor: Cumulative Toll Revenues from:	Band 3 Ceiling : Cumulative Toll Revenues to and including:	Band 4 Floor: Cumulative Toll Revenues from:	Band 4 Ceiling : Cumulative Toll Revenues to and including:	Band 5 Floor: Cumulative Toll Revenues from:
1	\$0								
2	\$0								
3	\$0								
4	\$0								
5	\$0								
6	\$0								
7	\$0								
8	\$0								
9	\$0								
10	\$0								
11	\$0								
12	\$0								
13	\$0								
14	\$0								
15	\$0								
16	\$0								
17	\$0								
18	\$0								
19	\$0								
20	\$0								

Year of Operations	Band 1 Floor: Cumulative Toll Revenues from:	Band 1 Ceiling : Cumulative Toll Revenues to and including:	Band 2 Floor: Cumulative Toll Revenues from:	Band 2 Ceiling : Cumulative Toll Revenues to and including:	Band 3 Floor: Cumulative Toll Revenues from:	Band 3 Ceiling : Cumulative Toll Revenues to and including:	Band 4 Floor: Cumulative Toll Revenues from:	Band 4 Ceiling : Cumulative Toll Revenues to and including:	Band 5 Floor: Cumulative Toll Revenues from:
21	\$0								
22	\$0								
23	\$0								
24	\$0								
25	\$0								
26	\$0								
27	\$0								
28	\$0								
29	\$0								
30	\$0								
31	\$0								
32	\$0								
33	\$0								
34	\$0								
35	\$0								
36	\$0								
37	\$0								
38	\$0								
39	\$0								
40	\$0								
41	\$0								
42	\$0								
43	\$0								

Year of Operations	Band 1 Floor: Cumulative Toll Revenues from:	Band 1 Ceiling : Cumulative Toll Revenues to and including:	Band 2 Floor: Cumulative Toll Revenues from:	Band 2 Ceiling : Cumulative Toll Revenues to and including:	Band 3 Floor: Cumulative Toll Revenues from:	Band 3 Ceiling : Cumulative Toll Revenues to and including:	Band 4 Floor: Cumulative Toll Revenues from:	Band 4 Ceiling : Cumulative Toll Revenues to and including:	Band 5 Floor: Cumulative Toll Revenues from:
44	\$0								
45	\$0								
46	\$0								
47	\$0								
48	\$0								
49	\$0								
50	\$0								
[51]	[\$0]								
[52]	[\$0]								
[53]	[\$0]								

FINANCIAL SUMMARY
Form U

Proposer Name: _____

NOTE: THE INFORMATION IN THIS FORM U IS SUBJECT TO PUBLIC DISCLOSURE IN ACCORDANCE WITH SECTION 2.6 OF THE INSTRUCTIONS TO PROPOSERS.

A. Provide the following information in Table U-1, below:

- Nominal amount of Public Funds Request (from Form K, Box 1) and net present value of Public Funds Request (from Form K, Box 2), if applicable;
- Nominal amount of Offer of Payment to TxDOT, (from Form K, Box 3), if applicable;
- Nominal amount of Capacity Improvement Funds Request (from Form K, Box 4) and net present value of Capacity Improvement Funds Request (from Form K, Box 5);
- Nominal amount of Capacity Improvement Concession Payment to TxDOT, (from Form K, Box 6) and net present value of Capacity Improvement Concession Payment (from Form K, Box 7), if applicable;
- Nominal amount of total development costs, showing breakdown for initial design costs, construction costs, ROW and ROW acquisition costs, and utilities adjustment costs;
- Net present value of total operation and maintenance costs, showing breakdown for toll operation costs, routine and capital maintenance costs, and Capacity Improvements) as of the Base Price Date using a 5% discount rate;
- Amount of Equity (all Developer contributions for the project at risk) and Quasi-Equity contributions for each one of the Equity Participants; and
- Expected Nominal Equity IRR.

Table U-1

Public Funds Request <ul style="list-style-type: none"> • Nominal amount • Net present value amount 	\$ _____ (from Form K, Box 1) \$ _____ (from Form K, Box 2)
Concession Payment to TxDOT	\$ _____ (from Form K, Box 3)
Capacity Improvement Funds Request <ul style="list-style-type: none"> • Nominal amount • Net present value amount 	\$ _____ (from Form K, Box 4) \$ _____ (from Form K, Box 5)
Capacity Improvement Concession Payment <ul style="list-style-type: none"> • Nominal amount • Net present value amount 	\$ _____ (from Form K, Box 6) \$ _____ (from Form K, Box 7)
Total development cost (Sections 1 – 4) <ul style="list-style-type: none"> • Design costs • Construction costs • ROW and ROW acquisition costs • Utilities adjustments costs • Other (Identify) 	Total Development Costs: \$ _____ (Sections 1 – 4) <ul style="list-style-type: none"> • \$ _____ • \$ _____ • \$ _____ • \$ _____ • \$ _____

<p>Total development cost (Capacity Improvement Section)</p> <ul style="list-style-type: none"> • Design costs • Construction costs • ROW and ROW acquisition costs • Utilities adjustments costs • Other (Identify) 	<p>Total Development Costs: \$ _____ (IH 35E Capacity Improvement Section)</p> <ul style="list-style-type: none"> • \$ _____ • \$ _____ • \$ _____ • \$ _____ • \$ _____
<p>Total operation and maintenance costs (NPV) (Sections 1 – 4)</p> <ul style="list-style-type: none"> • Toll operation costs (NPV) • Routine and capital maintenance costs (NPV) • Capacity Improvements (NPV) 	<p>Total O&M Costs: \$ _____ (Sections 1 – 4)</p> <ul style="list-style-type: none"> • \$ _____ • \$ _____ • \$ _____
<p>Total operation and maintenance costs (NPV) (Capacity Improvement Section)</p> <ul style="list-style-type: none"> • Toll operation costs (NPV) • Routine and capital maintenance costs (NPV) • Capacity Improvements (NPV) 	<p>Total O&M Costs: \$ _____ (IH 35E Capacity Improvement Section)</p> <ul style="list-style-type: none"> • \$ _____ • \$ _____ • \$ _____
<p>Amount of Developer Equity and Quasi-Equity contributions for each Equity Participant</p>	<p>A. Total for all Equity Participants (Sections 1 -4) \$ _____</p> <ul style="list-style-type: none"> • \$ [Equity Participant] • \$ [Equity Participant] • \$ [Equity Participant] <p>B. Total for all Equity Participants (IH</p>

	35E Capacity Improvement Section) \$ _____ <ul style="list-style-type: none"> • \$ [Equity Participant] • \$ [Equity Participant] • \$ [Equity Participant]
Nominal Equity IRR	

B. Provide the nominal amounts for the sources and uses of funds for the construction period for Sections 1 -4 of the Project, as shown in Table U-2, below.

Table U-2

Sources of Funds	
• Equity	
• Subordinated debt	
• Bank debt	
• TIFIA	
• PABs	
• Bond	
• Other (identify specifics)	
Total Sources of Funds	
Uses of Funds	
• Design costs	
• Construction costs	
• ROW and ROW acquisition costs	
• Utilities adjustments costs	
• Other costs (identify specifics)	
Total Uses of Funds	

C. Provide the nominal amounts for the sources and uses of funds for the construction period for the IH 35E Capacity Improvement Section of the Project, as shown in Table U-3, below.

Table U-3

Sources of Funds	
• Equity	
• Subordinated debt	
• Bank debt	
• TIFIA	
• PABs	
• Bond	
• Other (identify specifics)	
Total Sources of Funds	
Uses of Funds	
• Design costs	
• Construction costs	
• ROW and ROW acquisition costs	
• Utilities adjustments costs	
• Other costs (identify specifics)	
Total Uses of Funds	