

SH 130 Turnpike Project
EXCLUSIVE DEVELOPMENT AGREEMENT

Dated as of June 19, 2002

By and Among

Texas Turnpike Authority,
a Division of the Texas Department of Transportation

and

Lone Star Infrastructure,
a Texas Joint Venture

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**EXCLUSIVE DEVELOPMENT AGREEMENT
(State Highway 130)
(Contract No. 86-2XXP5001)**

This **EXCLUSIVE DEVELOPMENT AGREEMENT** ("**Agreement**") is made and entered into as of June 19, 2002, by and between the **TEXAS TURNPIKE AUTHORITY** (the "**TTA**"), a division of the Texas Department of Transportation ("**TxDOT**"), and **Lone Star Infrastructure**, a joint venture ("**Developer**"), with reference to the following facts:

A. The TTA desires to develop the State Highway 130 (SH 130) turnpike, approximately 91 miles in length, extending from Interstate Highway 35 (IH-35) at State Highway 195 (SH 195), north of Georgetown Texas, to Interstate Highway 10 (IH-10), near Seguin Texas (such roadway and alignment, including its interchanges with other highways and roads, bridges and other facilities, including toll plazas and other toll facilities, as more specifically described in the Scope of Work, are the "**Turnpike**").

B. The Turnpike is an element of the TTA's Central Texas Turnpike Project, a project that also includes the SH 45, Loop 1 and the US 183A.

C. The TTA has determined that it is in the best interests of the State and the public to contract with a single entity to develop, design and construct the Turnpike and certain other improvements as described in Contract Documents (the "**Project**") and, at the option of the TTA, to maintain certain portions of the Project for a term not to exceed 15 years. The Project includes the development of an interim facility in accordance with the Interim Design, as well as certain design and right of way acquisition services for the ultimate facility to be constructed in the future. Construction of the ultimate facility is not included in the scope of the Development Work.

D. Pursuant to Chapters 361 and 362 of the Texas Transportation Code (the "**Act**") and Chapter 54 of the TTA Rules (43 Tex. Admin. Code Sections 54.1 et seq. (the "**Rules**")), the TTA issued a Request for Qualifications on February 21, 2000, as amended (collectively, the "**RFQ**").

E. The TTA received qualification submittals ("**Qs**") from prospective developers in response to the RFQ.

F. On November 14, 2000, the TTA's Board of Directors (the "**Board**"), in accordance with the recommendation of an RFQ evaluation committee comprised of TTA and TxDOT staff, shortlisted four prospective developers based upon their Qs.

G. On August 23, 2001, pursuant to the Act and the Rules, the TTA issued a Request for Proposals ("**RFP**") to the prospective developers shortlisted by the Board.

H. The TTA received three responses to the RFP on February 4, 2002.

I. An RFP evaluation committee comprised of TTA and TxDOT staff determined that Developer was the proposer which best met the selection criteria

contained in the RFP and that its proposal was the one which provided the best value to the State.

J. On April 25, 2002, the Texas Transportation Commission accepted the recommendation of the TTA Director and the RFP evaluation committee and authorized the TTA staff to negotiate this Agreement.

K. The Executive Director of TxDOT has been authorized to enter into this Agreement pursuant to the Act and Minute Order 108873.

L. Developer's team includes: Fluor Daniel, a Division of Fluor Enterprises, Inc., a California corporation; Balfour Beatty Construction, Inc., a Delaware corporation; and T. J. Lambrecht Construction, Inc., an Illinois corporation.

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

N. If Developer fails to complete the Development Work within the time limitations set forth in the Contract Documents, then the TTA will suffer substantial losses and damages which are impracticable and extremely difficult to ascertain. The Contract Documents therefore provide that Developer shall pay the TTA substantial Liquidated Damages in the event such completion is delayed.

O. This Agreement provides for the TTA to authorize performance of certain limited Development Work relating to Segments 1, 2, 3 and 4 pursuant to the issuance of NTP1. The TTA will specify in NTP1 whether it wishes to exercise its option to have Segments 1, 2, 3 and 4 include a single roadbed (base configuration for Segments 1 through 4 without Alternative No. 4). The Development Work relating to eastbound to southbound and southbound to westbound direct connecting ramps at the SH 130/SH 45 North Interchange is to be authorized by the issuance of NTP5. The remainder of the Development Work relating to Segments 1, 2, 3 and 4 is to be authorized by the issuance of NTP2, with the Completion Deadlines and the Acceptance Deadlines for such Segments tied to NTP2. The Development Work relating to Segments 5 and 6 is to be authorized by the issuance of NTP3 and NTP4. The TTA will specify in NTP4 whether it wishes to exercise its option to have Segment 6 include a two lane barrier-divided facility (base configuration for Segment 6 without Alternative No. 5).

P. The Reference Documents include a basic preliminary conceptual design for the Project (the "**Schematic Design**") which is to be the basis for the design to be furnished by Developer. The TTA and Developer both intend for Developer to assume

full responsibility and liability with respect to design of the Project, including correction of any errors, omissions, inconsistencies or other defects in the Schematic Design affecting constructability, and for Developer to indemnify, defend and hold each of the Indemnified Parties harmless with respect to any defects in the Project which may relate to errors, omissions, inconsistencies or other defects in the Schematic Design.

NOW, THEREFORE, in consideration of the sums to be paid to Developer by the TTA, the foregoing promises and the covenants and agreements set forth herein, the Parties hereby agree as follows:

1. CONTRACT COMPONENTS

1.1 Certain Definitions.

Initially capitalized terms not otherwise defined in the body of this Agreement shall have the definitions set forth in Exhibit A of this Agreement.

1.2 Order of Precedence.

Each of the Contract Documents is an essential part of this Agreement, and a requirement occurring in one is as binding as though occurring in all. The Contract Documents are intended to be complementary and to describe and provide for a complete Agreement. In the event of any conflict among the Contract Documents or between the Contract Documents and other documents, the order of precedence shall be as set forth below.

1.2.1 For design standards and requirements, the order of precedence shall be:

- (a) Change Orders and Agreement amendments;
- (b) Agreement (including all exhibits, appendices and the Federal Requirements, but excluding the TxDOT Standards, Scope of Work and Developer Commitments and ATCs);
- (c) Scope of Work (Exhibit B to this Agreement) and Developer Commitments and ATCs (Exhibit P to this Agreement);
- (d) TxDOT Standards;
- (e) AASHTO Guidelines; and
- (f) The Proposal, to the extent that it meets or exceeds the requirements of the other Contract Documents. In other words, if the Proposal includes statements that can reasonably be interpreted as offers to provide higher quality items than otherwise required by the Contract Documents or to perform services in addition to those otherwise required, or otherwise contain terms which are more advantageous to the TTA than the requirements of the other Contract Documents, Developer's obligations hereunder shall include compliance with all such statements, offers and terms.

1.2.2 For construction-related standards, specifications and requirements, the order of precedence shall be:

- (a) Change Orders and Agreement amendments;
- (b) Agreement (including all exhibits, appendices and the Federal Requirements, but excluding the TxDOT Standards, Scope of Work and Developer Commitments and ATCs);
- (c) Design Documents, with specifications contained therein having precedence over plans and excluding any Deviations contained therein which have not been approved in writing by the TTA specifically as a Deviation;
- (d) Scope of Work (Exhibit B to this Agreement) and Developer Commitments and ATCs (Exhibit P to this Agreement);
- (e) TxDOT Standards;
- (f) AASHTO Guidelines; and
- (g) The Proposal, to the extent that it meets or exceeds the requirements of the other Contract Documents.

1.2.3 For all other matters, the order of precedence shall be:

- (a) Change Orders and Agreement amendments;
- (b) Agreement (including all exhibits, appendices and the Federal Requirements, but excluding the TxDOT Standards, Scope of Work and Developer Commitments and ATCs);
- (c) Scope of Work (Exhibit B to this Agreement) and Developer Commitments and ATCs (Exhibit P to this Agreement);
- (d) TxDOT Standards;
- (e) AASHTO Guidelines; and
- (f) The Proposal, to the extent that it meets or exceeds the requirements of the other Contract Documents.

Certain of the Appendices to Exhibit C which are listed as Reference Documents are referenced in the Contract Documents for the purpose of defining requirements of the Contract Documents. Each such Appendix shall be deemed incorporated in the Contract Documents to the extent that it is so referenced, with the same order of priority as the highest level Contract Document in which the reference occurs. Additional details and more stringent requirements contained in a lower priority document will control unless the requirements of the lower priority document present an actual conflict with the requirements of the higher level document. Notwithstanding the order of precedence among Contract Documents set forth in this Section 1.2, in the

event of a conflict within a Contract Document or set of Contract Documents with the same order of priority (including within documents referenced therein), the TTA shall have the right to determine, in its sole discretion, which provision applies. Developer shall request the TTA's determination respecting the order of precedence among such provisions promptly upon becoming aware of any such conflict.

1.3 Referenced Standards

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

1.3.2 In interpreting Referenced Standards:

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

2. GENERAL FRAMEWORK AND OUTLINE OF TRANSACTION

2.1 Public-Private Transaction

This Agreement creates a public-private transaction to develop, design, permit, construct (with quality and durability), insure and, at the option of the TTA, repair and maintain certain portions of the Project.

2.2 Role of Parties to Transaction.

2.2.1 Developer's Role

2.2.1.1 From the date on which the TTA issues NTP1 to Developer through the issuance of NTP2, Developer shall carry out certain financing-related and pre-construction activities, including:

(a) Assisting and cooperating with the TTA, as it may request, in connection with the closing of the Project financing, including Bond financing, the Developer Note and applications for State and federal assistance (including TIFIA credit and other federal or State financial assistance);

(b) Providing the NTP1 Payment Bond and the NTP1 Performance Bond; and

(c) Undertaking the NTP1 Work.

2.2.1.2 From the issuance of NTP2 through Project Final Acceptance, Developer shall complete and manage such portions of the Development Work for which the TTA issues an NTP at a fixed price (with certain limited exceptions thereto set forth in Section 14 of this Agreement) in a manner satisfactory to the TTA and in accordance with the Project Schedule, including:

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

(b) Performing acquisition services with respect to any Final ROW (other than Early Schematic ROW Acquisitions) which has not been acquired as of the date of issuance of NTP2;

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

(d) Obtaining and complying with all necessary Governmental Approvals (except to the extent the TTA has expressly agreed to be responsible therefor under Section 7.6);

- (e) Completing the Development Work in accordance with the Plans and specifications and the Project Schedule;
- (f) Monitoring and ensuring quality completion by all members of the Developer Group of all aspects of the Development Work;
- (g) Providing quality control and quality assurance with respect to the Development Work, subject to TTA oversight, involvement and directives;
- (h) Providing the NTP2 Payment Bond, the NTP2 Performance Bond and the Warranty Bond;
- (i) Maintaining or causing to be maintained in place insurance policies which satisfy the insurance requirements set forth in this Agreement;
- (j) Warranting the Development Work, to the extent required under this Agreement; and
- (k) Subordinating a portion of its fees for Development Work and Change Orders to repayment of certain portions of the Project financing and deferring such amounts in accordance with the terms of the Developer Note.
- (l) Continuing to assist and cooperate with the TTA, as it may request, in connection with the Project financing.

2.2.2 TTA's Role

2.2.2.1 From the date on which the TTA issues NTP1 to Developer through the date on which the TTA issues NTP2, the TTA shall have the right to carry out certain financing-related and pre-construction activities, including:

- (a) Reviewing Major Subcontracts and other contracts, including Utility Adjustment Agreements, relating to the Development Work in accordance with the terms of this Agreement to confirm that they are consistent with this Agreement;
- (b) Overseeing the development of the initial design and the Plans and specifications for general conformity with the Schematic Design and the Environmental Approvals, applicable Law and the Contract Documents;
- (c) Participating in the negotiation of, and approving, the terms and conditions for the issuance of any Bonds and other financing instruments, including all related documents, that may be issued;
- (d) Cooperating with Developer in connection with any Final ROW acquisition services, Utility Adjustment Work and the procurement of Governmental Approvals undertaken by Developer during this period.

2.2.2.2 From the date on which the TTA issues NTP2 through Project Final Acceptance, the TTA shall carry out certain design and construction-related activities, including:

(a) Undertaking and/or completing any of the activities set forth in Section 2.2.2.1 that are not completed as of the date on which the TTA issues NTP2.

(b) Acquiring title to and, as necessary and appropriate, condemning Final ROW in the name of the State, and, if applicable, acquiring easements across navigable waters and railroads;

(c) Overseeing the completion of the Development Work in accordance with this Agreement;

(d) Performing certain quality assurance oversight services in connection with the Development Work;

(e) Applying proceeds of the Bonds and any other Project financing toward, among other things, the payments under this Agreement;

(f) Acknowledging the occurrence of Project Final Acceptance, and for each Segment for which an NTP has been issued, Substantial Completion and Final Acceptance; and

(g) Administering this Agreement.

2.2.2.3 From and after the commencement of tolling operations of each Segment of the Turnpike following Substantial Completion thereof, the TTA shall have the right to carry out certain operations activities, including:

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

(b) Applying toll revenues to the purposes and in the priority set forth in a trust indenture;

(c) Administering this Agreement and, if the maintenance option is exercised, the Maintenance Agreement; and

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

2.3 Partnering

2.3.1 Purpose; Scope

The TTA intends to encourage the foundation of a cohesive public/private partnership with Developer and its Subcontractors. The objectives

include effective and efficient performance and completion of the Development Work within budget, in accordance with the Project Schedule, and in accordance with the Contract Documents. An integral aspect of the public/private partnering is the resolution of issues in a timely, professional and non-adversarial manner. Experience has shown that one of the keys to the success of these major projects is to build trust between the parties through communication and understanding. It is the TTA's belief that a strong partnering program will assist in promoting and maintaining an amicable working relationship.

2.3.2 Schedule; Participation

As soon as possible after execution of this Agreement, the TTA and Developer shall jointly select a third-party facilitator to conduct the partnering meetings. The cost of the facilitator shall be shared equally by the TTA and Developer. Partnering meetings shall be conducted at the office of the TTA or at such location as otherwise agreed upon by the Parties. Persons who should attend the partnering meetings include Key Personnel and executives of the Parties.

2.3.3 Confidentiality

Subject to the requirements of the Public Information Act, neither the language of this Section 2.3 nor any statements made or materials prepared during or relating to partnering meetings, including any statements made or documents prepared by the facilitator, shall be admissible or discoverable in any judicial or other dispute resolution proceeding.

3. SCOPE OF DEVELOPMENT WORK; ROLE OF THE PARTIES AND LOCAL AGENCIES; EFFECT OF TESTS AND INSPECTIONS

3.1 Development Work Scope

The Development Work includes Developer's obligation to furnish a complete design for the Project meeting all requirements of the Contract Documents, to construct the Project as designed and in accordance with all requirements of the Contract Documents and otherwise to comply with all of the requirements in this Agreement. Developer acknowledges that the TTA's designs of certain Project elements have been advanced to different stages of development and are generally conceptual in nature and complete enough to support the FEIS. The Reference Documents are provided as guidelines and programs to assist Developer in performing the Development Work. Developer acknowledges that Developer is not entitled to rely on and has not relied on (i) the Reference Documents or (ii) any other documents or information provided by the TTA, except to the extent specifically permitted in the Contract Documents.

3.2 Project Location and Description

A description of the Project is set forth in Section 1.1.1 of the Scope of Work.

3.3 Project Management Plan

Developer shall plan, schedule, and execute all aspects of the Development Work and shall coordinate its activities with all parties who are directly impacted by the Development Work. Developer shall document and report all Development Work in accordance with the requirements set forth herein and in the approved Project Management Plan. Developer shall submit the Project Management Plan to the TTA for approval within 60 Days after the issuance of NTP1 in accordance with Section 1.2.1 of the Scope of Work.

3.4 TTA's Role

The TTA's role will be limited. The TTA, or its designee, intends to oversee performance of the Development Work for the purpose of confirming that the Development Work meets the requirements of the Contract Documents. Oversight includes design reviews, design and construction oversight, acceptance of the Development Work in accordance with Section 20, and establishment of priorities for the purpose of ensuring timely receipt of revenues. The TTA will also serve as a liaison with regulatory agencies in connection with Developer's application for Environmental Approvals and/or amendments or re-evaluations for which Developer is responsible. The TTA will provide the TTA-Provided Approvals in accordance with the Contract Documents. The TTA, or its designee, will also administer this Agreement, including: Draw Request review and approval for payment; Project Schedule review and approval; performance evaluation; Change Order negotiation; and dispute resolution. The TTA will retain a Program Manager to assist the TTA with the administration and oversight of the Development Work. The Program Manager is not authorized to:

(a) Direct the performance of the Development Work unless continued performance of the Development Work appears imminently likely to (i) result in a violation of any environmental Law or any conditions of any environmental Governmental Approval or otherwise endanger the environment; or (ii) endanger the health, welfare or safety of workers or the public, as determined by the TTA.

(b) Waive any requirements or provisions of this Agreement.

3.5 Local Agency Role

Elements of the Development Work on local roads may be subject to review, approval, inspection, testing, and/or acceptance by local agencies. In addition, certain environmental mitigation measures identified in the FEIS may require coordination with local agencies. Developer shall take such actions as are necessary to obtain all needed local Governmental Approvals and ensure coordination with local agencies, in each case, as required to undertake and complete the Development Work, but Developer shall not make any commitment or enter into any obligations without the written consent of the TTA.

3.6 Developer Obligations

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

3.6.2. Developer shall furnish all design and other services, provide all supervision, labor, equipment and materials and undertake all efforts necessary or appropriate (excluding only those materials, services and efforts which the Contract Documents specify will be undertaken by other Persons) to construct the Project, achieve Substantial Completion of each Segment on or before the applicable Completion Deadline and Final Acceptance of each Segment on or before the applicable Acceptance Deadline and maintain the Development Work during construction. In so doing, Developer shall comply with the requirements of the Contract Documents, the Project Schedule, all Governmental Approvals, the approved Project Management Plan, the approved Design QC/QAP, the approved Construction QC/QAP, the approved Safety and Health Plan and applicable Laws, and shall take into account

the boundaries of the Schematic ROW, the Additional Properties and other physical constraints affecting the Project. Developer shall be responsible for reimbursing Utility Owners for all Adjustments which they perform, excluding Early Adjustments. Developer shall also be responsible for coordinating construction and other activities with Utility Owners, the Railroad and other contractors involved with the Project, including the Systems Integrator, and/or projects adjacent to the Project in order to ensure that each Segment is able to open to the public and commence toll revenue service on or before the applicable Completion Deadline.

3.6.3 Developer shall, at all times, provide a Project Manager approved in writing by the TTA, in its sole discretion, who will have full responsibility for the prosecution of the Development Work and will act as a single point of contact in all matters on behalf of Developer. Developer shall not change the Project Manager without the prior written approval of the TTA, in its sole discretion. If Developer fails to obtain the TTA's approval of a replacement within 30 Days after the existing Project Manager leaves, the TTA shall have the right to withhold payments under this Agreement until such time as an approved replacement has started work. In such event, the provisions of Sections 19.1.4 and 19.1.5 shall also apply.

3.6.4 Developer shall obtain and pay the cost of obtaining all Governmental Approvals (except to the extent the TTA has expressly agreed to be responsible therefor under Section 7.6). Prior to beginning any construction activities for any portion of the Project, Developer shall furnish the TTA with fully executed copies of all Governmental Approvals, (other than those the TTA has expressly agreed to be responsible for under Section 7.6), required for such portion of the Project and provide the TTA with all bonds required under this Agreement.

3.6.5 Subject to its right to a Change Order with respect to limited matters described in Section 7.6, Developer shall, at its expense, undertake and properly perform all actions required by, and all actions necessary to maintain in full force and effect, all Governmental Approvals, including performance of all environmental mitigation measures required by the Contract Documents, Environmental Approvals and applicable Law.

3.6.6 Developer shall perform construction inspection, material sampling and testing in accordance with the Contract Documents and Developer's approved Construction QC/QAP.

3.6.7 Developer shall provide and maintain field offices as described in the Scope of Work, which facilities shall be for the joint use of Developer, the TTA, the Program Manager and other Persons reasonably designated by the TTA.

3.6.8 Developer shall cooperate with the TTA and its agents and designated representatives in connection with all matters relating to the Project, including review of the design of the Project and conducting inspections during the construction of the Project.

3.6.9 Developer shall mitigate delay to the Project and mitigate damages due to delay in all circumstances, to the extent reasonably possible, including by resequencing, reallocating or redeploying its forces to other work, and obtaining additional personnel, equipment and materials, as necessary.

3.6.10 Developer shall, at all times, deliver design submittals in accordance with the Scope of Work. At least 12 months prior to the Completion Deadline for a Segment, Developer shall deliver to the TTA a written certification by the DQAM of the Final Design Plans for such Segment and a letter of recommendation for construction by the DQAM in accordance with Section 2.2 of the Scope of Work. If Developer fails to deliver such certification and approval to the TTA within 12 months prior to the Completion Deadline for a Segment, the TTA shall have the right to withhold payments under this Agreement for such Segment until such time as the Final Design Plans have been approved by the DQAM in accordance with Scope of Work Section 2.2.

3.7 Effect of Reviews, Inspections, Tests and Approvals

Developer shall not be relieved of any obligations to perform the Development Work in accordance with the Contract Documents by reviews, tests, inspections or approvals performed by any Persons, or by any failure of any Person to take such action. The reviews, inspections, tests and approvals conducted or provided by the TTA and others do not constitute acceptance of the materials or Development Work reviewed, tested or inspected, and the TTA may reject or accept any Development Work or materials, request modifications or corrective actions, and/or identify additional Development Work which must be done to bring the Project into compliance with the requirements of the Contract Documents at any time prior to Project Final Acceptance, whether or not previous reviews, inspections, tests or approvals were conducted by any such Persons. Notwithstanding any design oversight, construction oversight, environmental oversight or other Project oversight activities by the TTA or any of the Indemnified Parties, the DQAF or the CQAF, Developer shall be solely responsible for the quality, safety and operability of the Project, as well as compliance with the requirements of the Contract Documents, the Governmental Approvals and applicable Law.

4. INFORMATION SUPPLIED TO DEVELOPER; ACKNOWLEDGMENT BY DEVELOPER

4.1 Information Supplied

Exhibit C to this Agreement contains the list of Reference Documents that have been made available to Developer, and Developer acknowledges and agrees that it has reviewed all such documents.

4.2 Acknowledgment by Developer

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

- (a) The Schematic Design is preliminary and conceptual in nature.
- (b) Developer is not entitled to rely on any documents or information provided by the TTA, including the RFP Documents and the Reference Documents, except to the extent expressly provided to the contrary herein.
- (c) Subject to the oversight rights of the TTA under this Agreement, Developer shall correct any errors, inadequacies, inaccuracies, omissions and defects in the Schematic Design which can reasonably be corrected through the design and/or construction process and implement field changes serving the same purpose.
- (d) The TTA shall have no liability for errors, inadequacies, inaccuracies, omissions and defects in the Schematic Design. The foregoing shall not be deemed to limit the TTA's obligations with respect to Differing Site Conditions as set forth in Section 14.9, or Developer's right to receive any available insurance proceeds.
- (e) The Warranties and indemnities hereunder cover errors, omissions and defects in the Project, including those that may be related to errors, inadequacies, inaccuracies, omissions and defects in the Schematic Design.
- (f) Developer has independently determined that the Schematic Design represents a feasible concept for the Project which can and shall be used as the basis for the design to be furnished by Developer, and agrees that it shall have no right to seek additional compensation or a time extension as a result of errors, omissions,

inadequacies or inaccuracies in the Schematic Design, except as specifically permitted by Section 14.

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

(h) The TTA shall not be responsible or liable in any respect for any Loss suffered by any member of the Developer Group by reason of any use of any information contained in the Schematic Design or any action or forbearance in reliance thereon, except to the extent that Section 14 provides for an increase in the Development Price and/or extensions of any Completion Deadline(s) or Acceptance Deadline(s) with respect to such matter. Developer further acknowledges and agrees that (i) if, and to the extent that any member of the Developer Group uses any of said information in any way, such use is made on the basis that Developer, not the TTA, has approved of such use and information and is responsible for said information, (ii) Developer is capable of conducting and is obligated hereunder to conduct any and all studies, analyses and investigations as it deems advisable to verify or supplement said information, and (iii) any use of said information is entirely at Developer's own risk and at its own discretion.

(i) The Schematic Design is hereby incorporated by reference herein to the extent, and only to the extent, that it sets forth the Basic Configuration. Accordingly, in general, Developer may deviate from the Schematic Design as it deems advisable, provided that it must obtain prior written approval by the TTA and/or a Change Order hereunder with respect to any deviation by Developer from the Basic Configuration. Furthermore, Developer's right to deviate from the Schematic Design is subject to Developer's compliance with all applicable requirements of the Contract Documents.

(j) The topography mapping, Utility characteristics (including ownership, types, sizes and locations) and the exploratory geotechnical investigations presented in the Reference Documents may or may not represent the actual subsurface conditions along the present alignment of the Project. Except to the extent that Section 14 provides for an increase in the Development Price and/or extensions of any Completion Deadline(s) and/or Acceptance Deadline(s) with respect to such matter, the TTA accepts no responsibility for the accuracy of the topographical mapping, Utility information or geotechnical information provided, or for information concerning the location or extent of Hazardous Materials, archaeological features, karst features, endangered species or vegetation or Developer's interpretation of any information

provided. Furthermore, Developer acknowledges and agrees that the existing surface conditions, including Utility characteristics as specified above, may have changed or may be different from the surface conditions depicted in the Reference Documents. Except to the extent, if any, that Section 14 provides for an increase in the Development Price and/or extensions of any Completion Deadline(s) and/or Acceptance Deadline(s) with respect to such matter, the TTA accepts no responsibility for the accuracy of any depiction of surface conditions in the Reference Documents or Developer's interpretation of any information provided.

4.3 Changes in Basic Configuration

4.3.1 If a VE results in a material change in Basic Configuration, any cost savings from such VE shall be shared in accordance with Section 21 instead of this Section 4.3.

4.3.2 Developer shall not make any material change in Basic Configuration except as approved by the TTA and authorized by a Change Order. A Change Order is required regardless of the reason underlying the change and regardless of whether the change increases, decreases or has no effect on Developer's costs. Any such Change Order shall be subject to the conditions and requirements contained in this Section 4.3, as well as the conditions and requirements which are generally applicable to Change Orders in Section 14 and subject to the limitations contained in Section 7.6.

4.3.3 Developer shall be responsible for any cost increases and/or delays which affect the duration of a Critical Path resulting from changes in requirements and obligations of Developer relating to the Project due to inaccuracies in the Schematic Design. Any changes in the Basic Configuration shall be the responsibility of Developer with the exception of a TTA-Directed Change involving more than \$10,000 in additional direct costs or involving a delay to a Critical Path.

4.3.4 No Change Order shall be required for any non-material changes in the Basic Configuration which have been approved by the TTA in the design approval process, unless Developer claims that it is entitled to an increase in the Development Price or extension of any Completion Deadline(s) and/or Acceptance Deadline(s) in connection with a proposed change in accordance with Section 14 or unless the proposed change constitutes a VE pursuant to Section 21. Developer acknowledges and agrees that constraints set forth in the TTA-Provided Approvals, TxDOT Standards and other Contract Documents, as well as site conditions and the Schematic Design, will impact Developer's ability to make non-material changes in the Basic Configuration.

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

5.1 Time of Essence

Time is of the essence of this Agreement.

5.2 Guaranteed Completion

5.2.1 Completion Deadlines

5.2.1.1 Developer shall achieve Substantial Completion of Segment 1 within 1481 Days after the start date set forth in NTP2.

5.2.1.2 Developer shall achieve Substantial Completion of Segment 2 within 1300 Days after the start date set forth in NTP2. Provided NTP5 has been issued, such deadline shall apply to the NTP5 Work.

5.2.1.3 Developer shall achieve Substantial Completion of Segment 3 within 1573 Days after the start date set forth in NTP2.

5.2.1.4 Developer shall achieve Substantial Completion of Segment 4 within 1724 Days after the start date set forth in NTP2.

5.2.1.5 Developer shall complete all NTP3 Work within 994 Days after the start date set forth in NTP3.

5.2.1.6 Developer shall achieve Substantial Completion of Segment 6 within 1148 Days after the start date set forth in NTP4.

5.2.1.7 Each deadline for Substantial Completion of a Segment set forth above, as it may be extended hereunder, is referred to herein as the “**Completion Deadline**” for such Segment. The Completion Deadline for NTP3 Work shall be the deadline set forth in Section 5.2.1.5, as it may be extended hereunder.

5.2.2 Acceptance Deadlines

Developer shall achieve Final Acceptance of each Segment within 120 Days after Substantial Completion of the applicable Segment. Each deadline for Final Acceptance of a Segment, as such deadline may be extended hereunder, is referred to herein as the “**Acceptance Deadline**” for such Segment.

5.2.3 No Time Extensions

Except as otherwise specifically provided in Section 14, the TTA shall have no obligation to extend any Completion Deadline or Acceptance Deadline, and Developer shall not be relieved of its obligations to achieve (a) the milestones described in the Project Schedule; (b) Substantial Completion of each Segment for which an NTP

is issued by the applicable Completion Deadline; or (c) Final Acceptance of each Segment for which an NTP is issued by the applicable Acceptance Deadline.

5.3 Project Schedule

The planning, design, construction, development and completion of the Development Work shall be undertaken and completed in accordance with the Project Schedule approved by the TTA in writing, as revised and updated from time to time. The Project Schedule shall be used by the Parties for planning and monitoring the progress of the Development Work and as the basis for determining the amount of monthly progress payments to be made to Developer, subject to the cap on payment shown by the Maximum Payment Curve as discussed in Section 5.7.

5.4 Project Schedule Submittals

Developer shall deliver the Project Schedule submittals described in Section 8 of the Scope of Work.

5.5 Recovery Schedule

5.5.1 A Recovery Schedule is required at the request of the TTA, whenever Developer's actual physical progress is behind schedule when compared to the current Project Schedule or if the Development Work relating to any Segment is delayed on any Critical Path deadline date for a period which exceeds the greater of (a) 30 Days in the aggregate or (b) that number of Days which, in the aggregate, is equal to 5% of the Days remaining until the Completion Deadline for such Segment.^{1/} In such event, Developer shall include, as part of the next Monthly Update revision submittal, a Recovery Schedule demonstrating Developer's program and proposed plan to address Project Schedule delays in order to achieve Substantial Completion of each Segment by the applicable Completion Deadline and Final Acceptance of each Segment by the Acceptance Deadline.

5.5.2 All costs incurred by Developer in preparing and implementing the Recovery Schedule shall be borne by Developer and shall not result in a change to the Development Price, except to the extent permitted in accordance with Section 14.

5.5.3 If a Recovery Schedule would be required in order to achieve Substantial Completion of a Segment by the applicable Completion Deadline as the result of an event described in Section 14 and Developer would be entitled under this Agreement to an increase in the Development Price to implement such Recovery Schedule, the TTA shall have the right, in its sole discretion, to decide whether to allow a time extension (with no extended overhead or other delay or disruption damages

^{1/} For example, if there are 700 Days remaining to the Completion Deadline for a Segment, 5% of that number would be 35 Days. In that case, Developer would be obligated to provide a Recovery Schedule if Developer was behind schedule by more than 35 Days.

payable except as provided in Section 14) or to require implementation of the Recovery Schedule without such time extension. In such event, Developer shall submit to the TTA at least two alternative Change Order forms, one of which shall include a Recovery Schedule and show the proposed Acceleration Costs associated with the Recovery Schedule, and the other of which shall provide for an extension of the applicable Completion Deadline(s) without any increase in the Development Price (except as provided in Section 14). If the TTA elects to implement the Recovery Schedule in lieu of a time extension, the TTA shall issue a Change Order increasing the Development Price to account for and include the additional Acceleration Costs. If it is not feasible to regain the time lost under the Project Schedule so as to meet the applicable Completion Deadline(s) or if Developer believes that the Acceleration Costs associated with such a recovery are prohibitive, then Developer shall recommend a time extension in the Change Order form.

5.5.4 If a Recovery Schedule is required hereunder, Developer shall have no right to receive progress payments until such time as Developer has prepared and the TTA has approved such Recovery Schedule in writing.

5.6 Float

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

5.7 Maximum Payment Curve

The Project Schedule shall provide for payment to be made solely on the basis of progress by Developer, subject to a cap on payments shown on the Maximum Payment Curve established for the Project. The Maximum Payment Curve shall not limit payment for Change Order Development Work unless otherwise specified in the Change Order. In other words, at no time shall Developer's cumulative total progress payments for a Segment (including mobilization payments but exclusive of payments for Change Order Development Work) exceed the cumulative total expenditure permitted by the Maximum Payment Curve for such Segment. The Maximum Payment Curve shall be calculated based on the monthly expenditure rate set forth in Exhibit F hereto (Form M-2), which is based on certain assumptions regarding the dates of issuance of notices to proceed. If Developer and the TTA mutually agree in writing to a different expenditure rate at any time or if an adjustment to the expenditure rate is required due to early issuance of an NTP as evidenced by a Change Order, then such revised rate shall thereafter be the Maximum Payment Curve for the Project. The Maximum Payment Curve shall be revised from time to time thereafter upon request by the TTA or by Developer on its own initiative, as appropriate to account for any changes in the

Development Price as evidenced by Change Orders (including adjustments to the Development Price in accordance with the Contract Documents due to delay in issuance of NTP2 or non-issuance issuance of other NTPs) and/or Agreement amendments (including TTA's exercise of options in accordance with Section 14.1.3). The aggregate amount of progress payments to Developer hereunder shall not exceed the amount allowed by the Maximum Payment Curve at any time without the prior written approval of the TTA and the Bond Trustee, which approval may be withheld in their sole discretion.

6. RIGHT OF WAY SERVICES

6.1 Acquisition of Final ROW

Acquisition of Final ROW shall be undertaken and completed in accordance with the requirements and obligations of the Scope of Work, including Section 7 thereof.

6.2 Costs of Acquisitions

6.2.1 The TTA shall be responsible for the purchase price for all parcels, exclusive of Existing Utility Property Interests, within the Schematic ROW, the Maintenance Site(s), service center sites described in Section 3.7.3 of the Scope of Work and the Mitigation Site(s). Developer shall be responsible for all right of way engineering, administration, acquisition and related services for all such parcels, as described in the Scope of Work, including all costs and expenses of negotiation and, if necessary, support services for condemnation proceedings described in the Scope of Work. If the TTA incurs any such costs and expenses on Developer's behalf, the TTA may submit any invoices for such costs and expenses to Developer, in which case Developer shall pay the invoices prior to delinquency. If the TTA pays any such costs and expenses on Developer's behalf, Developer shall reimburse the TTA within ten Days of the TTA's submittal to Developer of an invoice for such TTA costs and expenses. Alternatively, the TTA may deduct the amount of such costs and expenses from any sums owed by the TTA to Developer pursuant to this Agreement. Notwithstanding the foregoing, the TTA shall be responsible for the legal costs for the State Attorney General counsel or fees for private counsel retained as directed by the State Attorney General in connection with any condemnation actions, except with respect to legal fees and costs for any condemnation actions associated with Developer-Designated ROW.

6.2.2 The TTA shall pay the purchase price of any real property outside the Schematic ROW that must be acquired due to a TTA-Directed Change, subject to the TTA's reasonable determination that the property is necessary, as well as any other costs and expenses incurred by Developer to acquire such real property, subject to the limitations in Section 14.

6.2.3 Developer shall be responsible for all costs and expenses of performing the right of way services described in the Scope of Work in connection with acquiring all Developer-Designated ROW, Existing Utility Property Interests and New Utility Property Interests, including the purchase price, and all costs and expenses of right of way engineering, administration, acquisition and related services. Developer shall pay all costs and expenses of both Developer and the TTA in connection therewith, whether the acquisition is by negotiation or condemnation, including the costs for State Attorney General counsel or fees for private counsel retained as directed by the State Attorney General for such purposes. If the TTA incurs any such costs and expenses on Developer's behalf, the TTA may submit any invoices for such costs and expenses to Developer, in which case Developer shall pay the invoices prior to delinquency. If the TTA pays any such costs and expenses on Developer's behalf, Developer shall

reimburse the TTA within ten Days of the TTA's submittal to Developer of an invoice for such TTA costs and expenses. Alternatively, the TTA may deduct the amount of such costs and expenses from any sums owed by the TTA to Developer pursuant to this Agreement.

6.2.4 Developer shall be responsible for all costs and expenses incurred by Utility Owners in acquiring the New Utility Property Interests as provided in Section 5.20.3.1 of the Scope of Work, excluding any such costs or expense attributable to any Betterments as provided in Section 5.20.3.2 of the Scope of Work.

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

6.3 Limiting Acquisition of Additional Properties

Developer's recommendation regarding the acquisition of Additional Properties shall be subject to the following:

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

6.3.2 Developer shall support any requests for Change Orders for the acquisition of Developer-Designated ROW with such information as may be reasonably required by the TTA. Any cost savings resulting from the acquisition of Developer-Designated ROW (including by avoiding use of retaining walls or other engineering modifications) shall be subject to the Value Engineering provisions set forth in Section 21. Developer shall not be entitled to any time extensions for acquisition of Developer-Designated ROW.

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

6.4 Representations by Developer

No member of the Developer Group shall represent him or herself as an agent of the TTA while communicating with any of the owners or occupants of the Final ROW, any property in which Developer seeks to obtain a temporary right or interest or a permanent right that will not be part of the Final ROW, or at any other time in connection with performing the services described in Section 7 of the Scope of Work. No member of the Developer Group shall appear before any owner or occupant of any Final ROW for the purposes of completing any of the documentation required under Section 7 of the Scope of Work without first presenting to that owner or occupant a letter, executed by the TTA, stating that the Developer Group is working for the TTA for the purposes of the acquisition of the Final ROW; however, that the execution of, and approvals concerning, any relevant documentation shall be made by the TTA. The Developer Group shall not represent itself as an agent for the TTA. Each member of the Developer Group shall at all times conform with applicable Law (including, to the extent applicable, the Uniform Act) in all communications and actions with the owners or the occupants of the Final ROW or any other real property in which Developer seeks to obtain any right or interest.

6.5 Negotiations and Condemnation Proceedings Relative to the Acquisition of Final ROW

Negotiations for any Final ROW shall be undertaken as set forth in the Scope of Work. Developer shall obtain the TTA's written approval of any offer to be extended to an owner of any interest in Final ROW prior to making such offer, in accordance with Section 7 of the Scope of Work. Developer shall notify the TTA in writing, for its concurrence, of the failure of negotiations with respect to the acquisition of any parcel included in the Final ROW and shall submit to the TTA for approval a condemnation package for the parcel as described in Section 7.4.8(f) of the Scope of Work. The TTA shall have 10 Business Days either to (a) approve the package or (b) provide its comments and/or request for additional information to Developer if the TTA determines that the condemnation package is incomplete or otherwise deficient. Developer shall incorporate any suggested changes and provide any additional information requested by the TTA and shall resubmit the condemnation package to the TTA for review and approval. The TTA shall have 10 Business Days to approve or provide comments to Developer on any resubmittals. Failure of the TTA to provide Developer with its approval or, in the event the condemnation package is incomplete or otherwise deficient, its comments and/or request for additional information, within 10 days of the TTA's receipt of a condemnation packet shall be considered a TTA-Caused Delay. Condemnation proceedings for any Final ROW will be brought by the TTA within a reasonable time following approval by the TTA of a complete condemnation package for the parcel as described in Section 7.4.8(f) of the Scope of Work. At no additional cost to the TTA, Developer shall cooperate in all respects with the TTA and shall cause all expert witnesses, appraisers, surveyors and other consultants utilized by Developer in

connection with the acquisition of the Final ROW subject to condemnation to be available to and assist the TTA in connection with the condemnation proceedings, including discovery, depositions, pre-trial preparation and trial testimony. Counsel engaged for negotiations and/or condemnation proceedings shall be from the State Attorney General or, with the prior written approval of the State Attorney General, a list of private firms approved in advance by the State Attorney General. Delays to the Critical Path due to failure of the TTA to make Schematic ROW available within 300 days of approval of a condemnation packet shall be considered a TTA-Caused Delay. The term "make available", as used herein, shall mean to make available for (a) relocation of occupants and personal property, for occupied parcels, (b) demolition, for unoccupied, improved parcels, or (c) construction, for unoccupied, unimproved parcels.

6.6 Physical Possession of Final ROW

The TTA shall notify Developer of the availability of Final ROW within ten Business Days after the TTA has received access to such Final ROW. Developer shall be responsible for being informed of and complying with any access restrictions that may be set forth in any documents granting access to any Final ROW. Upon obtaining knowledge of any anticipated delay in the dates for acquisition of any Final ROW, the Party obtaining knowledge shall promptly notify the other party in writing. In such event, Developer shall immediately determine whether the delay impacts the Critical Path and, if so, to what extent it might be possible to avoid such delay through alternative construction methods or otherwise. Developer shall promptly meet with the TTA to determine the best course of action and prepare a written report setting forth its recommendations, which recommendations shall be subject to the written approval of the TTA.

6.7 Rights of Early Access

To the extent that Developer has not been provided with access to portions of the Final ROW prior to the date set forth on the Project Schedule, Developer shall work around such Final ROW with the goals of minimizing delay to the completion of the Project. Except for delays caused by the type of event described in clause (b) of the definition of "TTA-Caused Delay" (that is, the failure of the TTA to make Schematic ROW available within 300 days of the TTA's approval of a condemnation package in accordance with Section 6.5), Developer shall not be entitled to any increase in the Development Price or time extension for delays caused by the failure or inability of the TTA to provide Final ROW. Where Developer makes a written request for access or rights of entry for any Final ROW for which access has not yet been acquired, Developer may, with the TTA's written consent, and subject to the provisions of Section 6.6 above and the Scope of Work, negotiate with property owners or occupants for early access or temporary use of land, provided there is no violation of applicable Law, including the Uniform Act. Developer's negotiations with property owners or occupants for early rights-of-entry shall occur only under such terms and conditions as are stipulated by the TTA, with the proviso that the TTA's consent may be withheld or withdrawn at any time, in the TTA's sole discretion. The TTA shall not be bound by the terms and conditions agreed upon by Developer and any property owner or occupant

until such time as the TTA has expressly so indicated in writing (and, then, only to the extent expressly set forth therein).

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

7.1 Commencement of Construction

Developer shall not commence construction of any portion of the Project prior to occurrence of all the following events, except with the prior written approval of the TTA, in its sole discretion:

7.1.1 The TTA shall have approved (a) the Safety and Health Plan; (b) the Hazardous Materials Management Plan; and (c) the Construction QC/QAP.

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

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

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

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

7.1.6 The TTA shall have issued the NTP for such portion of the Project.

7.1.7 Except as otherwise provided in Section 2.3.5 of the Scope of Work regarding Early Start of Construction, the final Design Documents for the applicable portion of the Project shall have been accepted by the TTA in accordance with the Scope of Work and shall have been through the Design QC/QAP process.

7.1.8 Developer shall have met the requirements of Sections 2.3 and Section 9.9 of the Scope of Work.

7.2 Supervision and Construction Procedures

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

7.2.2 Developer shall be solely responsible for implementing, maintaining and supervising the approved Safety and Health Plan. Developer shall take all reasonable precautions and be solely responsible for the safety of, and shall provide protection to prevent damage, injury or loss to: (a) all employees of Developer and its Subcontractors performing the Development Work and other persons who are on the Site or would reasonably be expected to be affected by the Development Work; (b) the Development Work and materials and equipment to be incorporated therein; and (c) all other property within or adjacent to the Site.

7.2.3 Developer shall ensure that all of its activities and the activities of its employees, agents, officers and Subcontractors and all other Persons for whom Developer may be legally or contractually responsible are undertaken in a manner that will minimize the effect on surrounding property and the public.

7.3 Inspection and Testing

7.3.1 Developer shall perform the inspection, sampling and testing necessary to comply with its obligations under the Contract Documents, in accordance with its approved Construction QC/QAP. At all points in performance of the Development Work at which specific inspections or approvals by the TTA are required by the Contract Documents, Developer shall not proceed beyond that point until the TTA has completed such inspection or approval or waived its right to inspect or approve, which waiver shall be in writing.

7.3.2 As part of the TTA's quality assurance oversight role as described in Section 9.1 of the Scope of Work, all materials and each part or detail of the Development Work shall also be subject to inspection and testing by the TTA. When any Governmental Entity, Utility Owner or Railroad is to accept or pay for a portion of the cost of the Development Work, its respective representatives have the right to inspect the work. Such inspection does not make such Person a party to this Agreement nor will it change the rights of the parties hereto. Developer hereby consents to such inspection and testing.

7.3.3 At all times before Project Final Acceptance, Developer shall remove or uncover such portions of the finished construction Development Work as directed by the TTA. After examination by the TTA, Developer shall restore the Development Work to the standard required by the Contract Documents. If the Development Work exposed or examined is not in conformance with the requirements of the Contract Documents, then the cost of uncovering, removing and restoring the Development Work and of recovery of any delay to any Critical Path occasioned thereby shall be at Developer's expense. Furthermore, any Development Work done or materials used without adequate notice to and opportunity for prior inspection by the TTA, as required in Section 9.1.3.2 of the Scope of Work may be ordered uncovered, removed or restored at Developer's expense, even if the Development Work proves acceptable and in conformance after uncovering. Except with respect to Development Work done or materials used as described in the preceding sentence, if Development Work exposed or examined under this Section 7.3.3 is in conformance with the requirements of the Contract Documents, then any delay in any Critical Path from uncovering, removing and restoring

Development Work shall be considered a TTA-Caused Delay, and Developer shall be entitled to a Change Order for the cost of such efforts and recovery of any delay to any Critical Path occasioned thereby, subject to the provisions of Section 14 hereof.

7.4 Correction of Nonconforming Work

7.4.1 Subject to the TTA's right to accept or reject Nonconforming Work, rejected Nonconforming Work shall be removed and replaced so as to be acceptable to the TTA, at Developer's expense; and Developer shall promptly take all action necessary to prevent similar deficiencies from occurring in the future. The fact that the TTA may not have discovered the Nonconforming Work shall not constitute an acceptance of such Nonconforming Work. If Developer fails to correct (or to begin correction of) any Nonconforming Work within ten Days of receipt of notice from the TTA requesting correction, then the TTA may cause the Nonconforming Work to be remedied or removed and replaced and may deduct the cost of doing so from any moneys due or to become due Developer and/or obtain reimbursement from Developer for such cost (plus interest thereon at the maximum rate allowable under applicable Law). The procedures for correction of Nonconforming Work set forth in the Construction QC/QAP shall be consistent with the requirements of this Section 7.4.

7.4.2 The TTA may, but shall not be obligated to, accept any Nonconforming Work without requiring it to be fully corrected. In such event, the TTA shall be entitled to reimbursement of a portion of the Development Price equal to the greater of (a) the diminution in value of the Project attributable to the Nonconforming Work, including the present value of future maintenance and repair costs that the TTA anticipates may be required as a result of the nonconformity, and (b) the difference between the cost of performing the work in question in accordance with the Contract Documents and the actual cost of performing the Nonconforming Work. Such reimbursement by Developer shall be made within ten (10) Days of the TTA's submittal to Developer of an invoice therefor and shall accrue interest at the maximum rate allowable under applicable Law. Alternatively, the TTA may deduct the amount owing from any sum owed by the TTA to Developer pursuant to this Agreement.

7.5 Hazardous Materials Management

7.5.1 Procedures and Compensation for Hazardous Materials Management

7.5.1.1 If during the course of the Development Work, Developer encounters material quantities of Hazardous Materials, Developer shall (a) promptly notify the TTA in writing and advise the TTA of any obligation to notify State or federal agencies under applicable Laws; and (b) take reasonable steps, including design modifications and/or construction techniques, to avoid excavation or dewatering in areas with Hazardous Materials. Where excavation or dewatering of Hazardous Materials is unavoidable, Developer shall utilize appropriately trained personnel and shall select the most cost-effective approach to Hazardous Materials Management, unless otherwise directed by the TTA. Developer's plan for Hazardous Materials Management shall be subject to the prior written approval of the TTA. Wherever feasible and consistent with applicable Laws, contaminated soil and groundwater shall

not be disposed off-site. All Hazardous Materials shall be managed in accordance with applicable Laws, Governmental Approvals, the Hazardous Materials Management Plan, the approved investigative work plan described in Section 4.3.2.3 of the Scope of Work, the approved site investigation report described in Section 4.3.2.3 of the Scope of Work and the Safety and Health Plan.

7.5.1.2 Developer shall afford the TTA the opportunity to inspect sites containing Hazardous Materials before any action is taken which would inhibit the TTA's ability to ascertain the nature and extent of the contamination.

7.5.1.3 Subject to the limitations and exceptions set forth in this Section 7.5, and Section 14, Developer shall be entitled to a Change Order providing for additional compensation and/or a time extension with respect to costs and delays directly attributable to the discovery of Hazardous Materials within the Schematic ROW, Mitigation Site, drainage easements or any parcels added to the Site by a TTA-Directed Change or required due to a Force Majeure Event. The amount of additional compensation or extension of time in any Change Order allowed hereunder shall be determined in accordance with Section 14.8. Entitlement to compensation or a time extension shall be limited to costs of work performed pursuant to Developer's Hazardous Materials Management Plan, investigative work plan and site investigation report for such Hazardous Materials as approved by the TTA, in writing. No compensation or time extension shall be allowed with respect to (a) immaterial quantities of Hazardous Materials, (b) any Hazardous Materials that could have been avoided by reasonable design modifications or construction techniques, (c) any costs that could have been avoided, (d) Hazardous Materials on any other Additional Properties or New Utility Property Interests, or (e) any Hazardous Materials encountered during or in connection with the demolition of buildings, fixtures or other improvements on any parcels within the Site. Utilities (other than Service Lines) shall not be considered "buildings, fixtures or other improvements" for purposes of this Section 7.5. To the extent that any proceeds of insurance are available to pay the cost of any Hazardous Materials Management, Developer shall rely on insurance to provide compensation, in lieu of requesting a Change Order.

7.5.2 Hazardous Material Generator

As between Developer and the TTA, the TTA shall be considered the generator of Hazardous Materials on the Final ROW properties as of the Effective Date; provided, however, that the foregoing shall not preclude or limit any rights or remedies that the TTA may have against third parties and/or prior owners, lessees, licensees and occupants of the Final ROW. Developer shall be considered the generator of any Hazardous Materials which result from (a) Release(s) of Hazardous Material attributable to the negligence, willful misconduct, or breach of applicable Law or contract by any member of the Developer Group; and (b) Release(s) of Hazardous Materials arranged to be brought onto the Final ROW or elsewhere by any member of the Developer Group regardless of the cause of the Release of Hazardous Materials.

7.5.3 Hazardous Material Releases Caused by Developer

Hazardous Materials Management costs, including assessment, containment, and remediation expenses, which result from (a) Release(s) of Hazardous Material attributable to the actions, omissions, negligence, willful misconduct, or breach of applicable Law or contract by any member of the Developer Group; or (b) Release(s) of Hazardous Materials arranged to be brought onto the Final ROW or elsewhere by any member of the Developer Group shall not be compensable to Developer, regardless of the cause of the Release of Hazardous Materials.

7.5.4 Materials Brought to Final ROW by Developer

Developer shall be solely responsible for: (a) compliance with all Laws applicable to Hazardous Materials brought onto the Site by any member of the Developer Group; (b) use, containment, storage, management, transport and disposal of all Hazardous Materials in accordance with this Agreement and all applicable Laws and Environmental Approvals; and (c) payment of all penalties, expenses (including attorneys' fees and costs), costs, suits, judgments, claims, actions, damages (including damages to natural resources, property or Persons), delays and liability associated with, arising out of or related to such Hazardous Materials.

7.5.5 Environmental Approvals Relating to Hazardous Materials

It is the responsibility of Developer to obtain all Governmental Approvals relating to Hazardous Materials Management including federal and State surface water and groundwater discharge permits and permits for recycling or reuse of Hazardous Materials. Developer shall be solely responsible for compliance with such Governmental Approvals and applicable Laws, including those governing the preparation of waste profiles, waste manifests and bills of lading.

7.6 Environmental Compliance

Developer shall be responsible for performance of all environmental mitigation measures (which term shall be deemed to include all requirements of the Environmental Approvals, including the TTA-Provided Approvals and similar Governmental Approvals, regardless of whether such requirements would be considered to fall within a strict definition of the term) for the Project (other than those which the TTA has expressly agreed to perform under the Contract Documents). The Development Price includes compensation for Developer's performance of all such mitigation measures, except to the extent Developer is entitled to a Change Order under Section 7.6.1.

7.6.1 TTA's Responsibility for Approvals

7.6.1.1 The following TTA-Provided Approvals have not yet been obtained: the individual permit under Section 404 of the Clean Water Act, Section 401 certification and Section 10 of the Rivers and Harbors Act of 1899 approvals. Draft mitigation requirements and/or conditions for these approvals, as well as draft mitigation requirements anticipated under the approval for historic structures under Section 106 of

the National Historic Preservation Act (NHPA), are set forth in Appendix C-3 of Exhibit C to the Agreement and compliance therewith is included in the scope of the Development Work. TTA staff shall take the lead on obtaining these approvals. Any failure by the TTA to obtain the foregoing approvals by January 31, 2003 shall be considered a TTA-Caused Delay, to the extent that it delays a Critical Path. In addition, the TTA has not yet obtained archeological clearances under Section 106 of NHPA for certain Schematic ROW parcels as indicated on Appendix C-2i of Exhibit C. Subject to Developer's obligation to work around archeological, paleontological and cultural sites under Section 14.10, failure of the TTA to obtain Section 106 archeological clearance within the times specified herein shall be considered a TTA-Caused Delay, to the extent that it delays a Critical Path. For the Schematic ROW parcels indicated in green or red on Appendix C-2i of Exhibit C, the date for clearance shall be December 31st, 2002, and for the parcels indicated in pink, the date for clearance shall be 90 days after receipt of a valid Developer-provided right of entry permitting the TTA to perform the necessary investigations. The TTA shall be responsible for any Section 7 consultations and permits under Section 9 of the Rivers and Harbors Act of 1899 only to the extent that the Schematic Design of the Project included with the RFP requires such permits to be obtained.

7.6.1.2 All mitigation requirements contained in the final TTA-Provided Approvals shall automatically be deemed included in the scope of the Development Work. If Developer believes the final TTA-Provided Approvals result in a material modification of Developer's obligations hereunder, Developer may submit a PCO Notice in accordance with Section 14.3.2.3 (or, if the requirements of Section 14.3.2.2 are met, a Request for Partnering); provided that Developer shall have 30 Days to deliver the PCO Notice in lieu of the ten Days allowed in Section 14.3.2.4.1. Any change in the activities to be performed by Developer as a result of an alteration in mitigation requirements from the original scope of the Development Work shall be treated as a TTA-Directed Change, provided that Developer complies with the notification and other requirements set forth in this Section 7.6.1 and Section 14. Any Change Order issued for such TTA-Directed Change shall be in accordance with Sections 14.6.2 (for increases in price), 14.6.3 (for credits) or 14.6.4 (for both added and deleted Development Work). Notwithstanding the foregoing, in the event that the final TTA-Provided Approvals incorporate mitigation requirements addressing any modification in the Final Design from the original design concept included in the FEIS, such additional mitigation requirements shall be Developer's responsibility and shall not be considered a TTA-Directed Change or Force Majeure Event.

7.6.1.3 Developer shall be responsible for obtaining any New Environmental Approvals required for the Project, including any 404 permits that may be required in connection with the Final Design. In the event any New Environmental Approval is necessitated by a TTA-Directed Change or Force Majeure Event, Developer shall be responsible for obtaining such New Environmental Approval and/or performing any additional mitigation requirements of such New Environmental Approval only if directed to do so by a Directive Letter or a Change Order. The TTA shall cooperate with Developer and support its efforts to obtain any such New Environmental Approval. Any Change Order covering a TTA-Directed Change or Force Majeure Event shall

include compensation to Developer for additional costs incurred by Developer to obtain the New Environmental Approval and to implement any changes in the Development Work (including performance of additional mitigation measures) resulting from such New Environmental Approvals, as well as any time extension necessitated by the TTA-Directed Change or Force Majeure Event, subject to the conditions and limitations contained in Section 14. Developer shall be fully responsible for all mitigation requirements included in specific 404 permits obtained by Developer, without entitlement to a Change Order.

7.6.2 Approvals To Be Obtained by Developer

If it is necessary to obtain a New Environmental Approval for any reason other than a Force Majeure Event or a TTA-Directed Change, Developer shall be fully responsible, at its sole cost and expense, for obtaining the New Environmental Approval and any other environmental clearances that may be necessary, and for all requirements resulting therefrom, as well as for any litigation arising in connection therewith. If the New Environmental Approval is associated with a VE, the costs of obtaining and complying with the terms of the New Environmental Approval shall be considered in determining the Development Price adjustment under Section 21.

8. DISADVANTAGED BUSINESS ENTERPRISE; CIVIL RIGHTS

8.1 DBE Requirements

8.1.1 The TTA's Disadvantaged Business Enterprise (DBE) Program applicable to federally assisted projects such as the Project is set forth in Exhibit G to this Agreement. The purpose of the DBE Program is to ensure that DBEs shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds. The DBE participation goal with respect to design services included in the Development Work is 12.7% of the Development Price attributable to design services. The DBE participation goal with respect to all other Development Work is 12.7% of the Development Price attributable to such work. Developer shall comply with all requirements set forth in Exhibit G and the DBE Performance Plan. For purposes of this Agreement, the term "construction work" as used in Exhibit G shall mean all Development Work other than design services.

8.1.2 Developer shall include provisions to effectuate this Section 8.1.1 and Exhibit G in every Subcontract (including purchase orders and in every subcontract of any member of the Developer Group for Development Work), and shall require that they be included in all Subcontracts at lower tiers, so that such provisions will be binding upon each Subcontractor.

8.2 Civil Rights

8.2.1 Developer shall not, and shall cause the Subcontractors to not, discriminate on the basis of race, color, national origin or sex in the performance of the Development Work under the Contract Documents. Developer shall carry out, and shall cause the Subcontractors to carry out, applicable requirements of 49 CFR Part 26 in the award and administration of FHWA-assisted agreements. Failure by Developer to carry out these requirements is a material breach of this Agreement, which may result in the termination of the Contract Documents or such other remedy as the TTA deems appropriate.

8.2.2 Developer shall include Section 8.2.1 in every Subcontract (including purchase orders), and shall require that they be included in all Subcontracts at lower tiers, so that such provisions will be binding upon each Subcontractor.

9. PERFORMANCE AND PAYMENT SECURITY

Developer shall deliver to the TTA, and maintain in full force and effect at all times, security for performance of the Development Work as described below (or other assurance satisfactory to the TTA in its sole discretion).

9.1 Proposal Bond; NTP1 Bonds

9.1.1 Developer has provided a Proposal Bond to the TTA in the amount of \$50,000,000. The Proposal Bond shall remain in place as security for performance of Developer's obligations under the Contract Documents during the period prior to issuance of NTP1, including Developer's obligation to provide the NTP1 Performance Bond and NTP1 Payment Bond hereunder. Upon the TTA's receipt of the NTP1 Performance Bond and the NTP1 Payment Bond and all other documents required to be provided to the TTA on or before issuance of NTP1, the TTA shall release the Proposal Bond.

9.1.2 On or before the issuance by the TTA of NTP1, Developer shall deliver to the TTA a performance bond in the amount of \$50,000,000 and in the form attached hereto as Exhibit H-1 (the "**NTP1 Performance Bond**"). The TTA shall provide a written release of the NTP1 Performance Bond to Surety upon issuance of NTP2, provided that: (a) Developer is in compliance with the terms of the Contract Documents and is not in default thereunder; (b) no event has occurred that with the giving of notice or passage of time would constitute a default by Developer hereunder or under the Contract Documents; and (c) the TTA has received the NTP2 Payment Bond and NTP2 Performance Bond under Section 9.2. In the event Developer terminates this Agreement for failure to issue NTP2 in accordance with Section 13.2.2.2, the NTP1 Performance Bond shall be released upon the date of such termination provided that: (a) Developer is in compliance with the terms of the Contract Documents and is not in default thereunder; and (b) no event has occurred that with the giving of notice or passage of time would constitute a default by Developer hereunder or under the Contract Documents.

9.1.3 On or before the issuance by the TTA of NTP1, Developer shall deliver to the TTA a payment bond in the amount of \$50,000,000 and in the form attached hereto as Exhibit H-1 (the "**NTP1 Payment Bond**"). The TTA shall provide a written release of the NTP1 Payment Bond to Surety upon issuance of NTP2, provided that: (a) Developer is in compliance with the terms of the Contract Documents and is not in default thereunder; (b) no event has occurred that with the giving of notice or passage of time would constitute a default by Developer hereunder or under the Contract Documents; and (c) the TTA has received the NTP2 Payment Bond and NTP2 under Section 9.2. In the event Developer terminates this Agreement for failure to issue NTP2 in accordance with Section 13.2.2.2, the TTA shall provided a written release of the NTP1 Payment Bond to Surety (a) one year after such termination, provided that Developer has delivered to the TTA (i) evidence satisfactory to the TTA that all Persons performing the Development Work have been fully paid, (ii) unconditional waivers of claims in form and substance satisfactory to the TTA, executed by all of such Persons,

and (iii) expiration of the statutory period for Subcontractors to file a claim against the bond.

9.2 NTP2 Performance Bond

On or before the issuance by the TTA of NTP2, Developer shall deliver to the TTA a performance bond in the amount of \$250,000,000 and in the form attached hereto as Exhibit H-2 (the “**NTP2 Performance Bond**”). After Final Acceptance of each Segment, the TTA shall provide a written release of the NTP2 Performance Bond with respect to such Segment, provided that and upon such date after Final Acceptance of such Segment that all of the following have occurred: (a) Developer is in compliance with the terms of the Contract Documents and is not in default thereunder; (b) no event has occurred that with the giving of notice or passage of time would constitute a default by Developer hereunder or under the Contract Documents; (c) the TTA has received the Warranty Bond (and, as applicable, rider adding such Segment thereto); and (d) if the TTA has issued Maintenance NTP1 (as defined and within the timeframe specified in the Maintenance Agreement), the Maintenance Contractor has delivered the payment and performance bonds required under the Maintenance Agreement. If the Development Price is increased in connection with a Change Order, the TTA may, in its sole discretion, require a corresponding proportionate increase in the amount of the NTP2 Performance Bond. In such event, Developer shall be entitled to reimbursement of any increased premiums resulting from such increase in bond amount.

9.3 NTP2 Payment Bond

On or before the issuance by the TTA of NTP2, Developer shall deliver to the TTA a labor and material payment bond in the amount of \$250,000,000 and in the form attached hereto as Exhibit I-2 (the “**NTP2 Payment Bond**”). The TTA shall provide a written release of the NTP2 Payment Bond with respect to each Segment (a) one year after Final Acceptance of the Segment, provided that Developer has delivered to the TTA (i) evidence satisfactory to the TTA that all Persons performing the Development Work on such Segment have been fully paid, (ii) unconditional waivers of claims in form and substance satisfactory to the TTA, executed by all of such Persons, and (iii) the Warranty Bond (and, as applicable, rider adding such Segment thereto); or (b) expiration of the statutory period for Subcontractors to file a claim against the bond for Development Work on such Segment, provided that the TTA has received the Warranty Bond (and, as applicable, rider adding such Segment thereto). If the Development Price is increased in connection with a Change Order, the TTA may, in its sole discretion, require a corresponding proportionate increase in the amount of the NTP2 Payment Bond. In such event, Developer shall be entitled to reimbursement of any increased premiums resulting from such increase in bond amount.

9.4 Warranty Bond

After Final Acceptance of each Segment and subject to the requirements herein, Developer may obtain a release of the Performance and Payment Bonds for such Segment by providing a warranty bond which shall guarantee performance of the Development Work required to be performed during the Warranty period for each

Segment and which shall also constitute a payment bond guaranteeing payment to Persons performing such Development Work ("**Warranty Bond**"). The Warranty Bond shall be in the amount of \$65,327,746.00 and shall be in the form attached hereto as Exhibit J. Initially, the Warranty Bond shall apply to the first Segment to reach Final Acceptance. Upon Final Acceptance of each subsequent Segment, Developer may provide a rider to the Warranty Bond adding the remaining Development Work for such Segment to the scope of the Warranty Bond, provided that the penal sum shall not change.

9.5 Surety Financial Requirements

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

9.6 Performance by Surety or Guarantor

Performance by a Surety or a Guarantor of any of the obligations of Developer shall not relieve Developer of any of its obligations hereunder.

9.7 Guarantee

9.7.1 Fluor Corporation is the Guarantor of the Developer's obligations under the Contract Documents in accordance with that certain guarantee executed by Fluor Corporation and delivered to the TTA concurrently with the execution of this Agreement.

9.7.2 If at any time during the course of the Agreement the total combined Tangible Net Worth of Developer, its equity members and any Guarantors, if any, is less than \$350,000,000 (excluding Tangible Net Worth in excess of any applicable limit of liability stated in the guarantee), Developer shall provide one or more guarantees making up the difference. Each such guarantee shall be in the form attached to the Instructions to Proposers as Form P together with appropriate evidence of authorization thereof, and the total liability thereunder shall be equal to or greater than the difference between \$350,000,000 and such total combined Tangible Net Worth. Each guarantee must be provided by (a) a parent corporation or a shareholder of Developer, or (b) a parent corporation or a shareholder of an equity member of Developer.

10. INSURANCE

Developer shall purchase and continuously maintain in full force and effect through Project Final Acceptance, or such longer time as may be specifically provided below, the insurance coverages specified in this Section 10. The insurance provided hereunder shall be available for the benefit of the TTA and Developer with respect to covered claims, but shall not be interpreted to relieve Developer of any obligations hereunder. All insurance required hereunder shall be procured from insurance or indemnity companies with an A.M. Best and Company rating level of A- or better, Class VIII or better, or as otherwise approved by the TTA and authorized or approved to do business in the State. All limits of liability set forth below are in U.S. dollars.

10.1 Insurance During NTP1 Period

During the period commencing on the date on which NTP1 is issued by the TTA and continuing through and until the date on which NTP2 is issued by the TTA, Developer shall provide and maintain insurance as appropriate to cover potential liability arising out of any Development Work and any other activities which it may perform during such period, including site investigations; provided that the insurance coverages and limits during such period shall meet the minimum requirements set forth in the TxDOT Standards. Such insurance shall include commercial general liability, motorized vehicle liability, worker's compensation and professional liability insurance. The parties anticipate that this requirement will be met through existing policies held by Developer and its Subcontractors performing Development Work, provided that the TTA may require Developer to secure additional insurance if it deems existing coverage to be inadequate to adequately protect the TTA during the period prior to the issuance of NTP2. Each of the Indemnified Parties shall be named as an additional insured to the commercial general and business automobile liability policies.

10.2 Insurance After Issuance of NTP2

During the period commencing with the date on which the TTA issues NTP2 and ending at Project Final Acceptance (unless otherwise specified herein), Developer shall provide and maintain insurance as specified in this Section 10.2.

10.2.1 Commercial General Liability Insurance

Developer shall provide commercial general liability coverage (for bodily injury, property damage, personal injury and advertising injury) during the period starting on the date on which the TTA issues NTP2 and ending on the date of Project Final Acceptance, using an ISO-1988 occurrence form (or equivalent), specifically including coverage for contractual liability, premises operations, independent contractors, products and completed operations, broad form property damage and hazards commonly referred to as "XCU," with limits of \$50,000,000 per occurrence and \$50,000,000 annual aggregate; provided, however, that if the Warranties are applicable, such coverage shall be maintained until the expiration of the Warranties. The policy shall include products and completed operations extended coverage for five years after

the date of Project Final Acceptance. The policy deductibles shall be subject to the TTA's approval. If Developer's commercial general liability insurance or other form with a general aggregate limit and completed operations aggregate limit is used, then the aggregate limits shall apply separately to the Project, or Developer may obtain separate insurance to provide the required limit which shall not be subject to depletion because of claims arising out of any other project or activity of Developer; any such excess insurance shall be at least as broad as Developer's primary insurance. Developer shall be the named insured and each of the Indemnified Parties shall be additional insureds with respect to liability arising out of the acts or omissions of any member of the Developer Group, whether occurring on or off of the Site. The required limits can be satisfied by a combination of a primary policy and an excess or umbrella policy.

10.2.2 Workers' Compensation Insurance and Employer's Liability Insurance

During the period commencing on the date on which the TTA issues NTP2 and ending on the date of Project Final Acceptance, Developer shall provide worker's compensation insurance in conformance with applicable Law and employer's liability insurance (for bodily injury or disease) with limits of \$5,000,000 per accident for all of its employees involved with the performance of the Development Work. Developer shall be the named insureds on these policies. The worker's compensation coverage will contain the following endorsements:

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

10.2.3 Business Automobile Liability Insurance

Developer shall provide comprehensive business automobile liability insurance, commencing on the date on which the TTA issues NTP2 and ending upon the date of Project Final Acceptance, covering the ownership, maintenance or use of all owned/leased, non-owned and hired vehicles used in the performance of the Development Work, including loading and unloading, with limits of not less than \$50,000,000, combined single limit for bodily injury and property damage liability; provided, however, that such coverage shall be maintained for vehicles used in performance of Warranty work until the expiration of the Warranties. Developer shall be the named insureds and the Indemnified Parties shall be additional insureds with respect to liability arising out of the acts or omissions of any member of the Developer Group, whether occurring on or off of the Site. The policy deductibles shall be subject to the TTA's approval. The required limits can be satisfied by a combination of a primary policy and an excess or umbrella policy.

10.2.4 Professional Liability Insurance

Developer shall provide professional liability coverage with limits not less than \$10,000,000 per claim and aggregate. The professional liability coverage shall protect against any negligent act, error or omission arising out of design or engineering activities with respect to the Project, including coverage for acts or omissions by any member of the Developer Group. The policy shall have a retroactive date no later than the date on which the RFP Documents are issued and shall have a five-year extended reporting period from the date of Project Final Acceptance with respect to events which occurred but were not reported during the term of the policy. The coverage shall include each of the Indemnified Parties, Developer and the Subcontractors (including design subconsultants) of any tier. The policy shall not contain any provision or exclusion (including any so-called 'insured versus insured' exclusion or 'cross-liability' exclusion) the effect of which would be to prevent, bar, or otherwise preclude any insured or additional insured under the policy from making a claim which would otherwise be covered by such policy on the grounds that the claim is brought by an insured or additional insured against an insured or additional insured under the policy.

10.2.5 Builder's Risk

Developer shall procure and maintain builder's risk insurance for the Project as specified below. The insureds shall be Developer, all Subcontractors (excluding those solely responsible for design Development Work) of any tier, and each of the Indemnified Parties, as their interests may appear. The insurance shall be maintained during the period starting on the date of commencement of construction and ending on the date of Project Final Acceptance; provided that Developer shall not be required to maintain property insurance for any Segment following Substantial Completion and transfer of control to the TTA.

(a) Minimum Scope: A blanket builder's risk insurance policy on an "all risk" basis for the entire Project including: (1) coverage for any ensuing loss from faulty workmanship, Nonconforming Work materials, omission or deficiency in design or specifications; (2) coverage against damage or loss caused by earth movement, flood, fire, theft, vandalism and malicious mischief and machinery accidents and operational testing; (3) coverage for removal of debris, and insuring the buildings, structures, machinery, equipment, facilities, fixtures and all other properties constituting a part of the Project; (4) transit coverage, including ocean marine coverage (unless insured by the supplier), with sub-limits sufficient to insure the full replacement value of any key equipment item; and (5) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the Site. Such insurance shall be on a form acceptable to the TTA and shall have a limit equal to the probable maximum loss to replace the completed Project or \$80,000,000, whichever is greater plus "soft cost expense cover" (including attorneys' fees and fees and other costs associated with such damage or loss and with any Governmental Approvals) and shall include earthquake insurance with an \$80,000,000 minimum annual aggregate limit and flood insurance with an \$80,000,000 minimum annual aggregate limit. There shall be no coinsurance penalty

provision in any such policy. Deductibles or self-insured retentions shall be subject to the TTA's approval.

10.2.6 TTA Delayed Opening Insurance

Developer shall procure and maintain Delayed Opening Insurance protecting the interests of the TTA and the Bond Trustee, as their interests may appear, against debt service (net of any net revenues or other recoveries) up to the maximum amounts set forth in (a) – (e) below for delays in opening a Segment for full revenue service beyond the original Completion Deadline (for such Segment) for which a Change Order extending the Completion Deadline was issued, except for such delays that were within the TTA's control. The policy shall have a waiting time of 45 days and a limit of liability of 365 days of debt service coverage for each Segment and a maximum aggregate limit of liability of \$50,000,000 for all Segments, following the end of the waiting period up to the following amounts:

- (a) \$55,200 per day for delays in opening Segment 1.
- (b) \$71,700 per day for delays in opening Segment 2.
- (c) \$78,900 per day for delays in opening Segment 3.
- (d) \$38,500 per day for delays in opening Segment 4.
- (e) \$48,200 per day for delays in opening Segment 6.

Delayed Opening Insurance will not be maintained with respect to any Segment after opening of such Segment for full revenue service.

10.2.7 Railroad Protective

Developer shall provide any coverage as may be required by the Railroad as a condition of the Railroad's consent for entry onto railroad facilities or property. Said policy shall be effective during the period any Development Work is being performed within 50 feet of any railroad right of way.

10.2.8 Valuable Papers

Developer shall provide valuable papers insurance with a limit of not less than \$200,000 each loss. Such insurance shall assure the restoration of any Plans, drawings, computations, field notes, or other similar data relating to the Development Work and/or the Project the event of loss or destruction until all such items and data are turned over to the TTA.

10.3 General Insurance Requirements

10.3.1 Premiums, Deductibles and Self-Insured Retentions

Developer shall be responsible for payment of premiums for all insurance required under this Section 10. The TTA will be responsible for any deductibles under the Delayed Opening Insurance. Developer shall be solely responsible for all other deductibles and self-insured retentions hereunder. Developer further agrees that for each claim, suit or action made against insurance provided hereunder, with respect to all matters for which Developer is responsible hereunder, Developer shall be solely responsible for amounts in excess of the coverage provided. With respect to all matters for which the TTA is responsible hereunder, the TTA shall remain fully responsible for amounts in excess of the coverage provided.

10.3.2 Verification of Coverage

(a) Developer Policies. Concurrently with the date on which coverage is required to be procured under this Section 10, Developer will deliver to the TTA original certificates of insurance, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s) must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the TTA. The TTA shall have no duty to pay or perform under this Agreement until such certificate(s) shall have been delivered to the TTA. Upon the TTA's request, certified duplicate copies of each of the insurance policies required under Section 10 shall be provided to the TTA.

(b) Renewal Policies. Not less than 30 Days prior to the expiration date of any policy of insurance required by this Section 10, Developer shall deliver to the TTA a binder or certificate of insurance with respect to each renewal policy, bearing a notation evidencing payment of the premium therefor, or accompanied by other proof of payment satisfactory to the TTA. If requested by the TTA from time to time, certified duplicate copies of the renewal policy shall also be provided.

10.3.3 Subcontractor Insurance Requirements

Developer shall cause each Subcontractor to provide insurance that complies with requirements for Developer-provided insurance set forth in this Section 10 in circumstances where the Subcontractor is not covered by Developer-provided insurance and provided that Developer shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors, which determination shall be made in accordance with reasonable and prudent business practices. Developer shall cause each such Subcontractor to include each of the Indemnified Parties as additional insureds under such Subcontractor's general liability and motorized vehicle liability insurance policies. Developer shall require each such Subcontractor to require that its insurer agree to waive any subrogation rights the insurers may have against the

Indemnified Parties. The TTA shall have the right to contact the Subcontractors directly in order to verify the above coverage.

10.3.4 Endorsements and Waivers

All insurance policies required to be provided by Developer hereunder shall contain or be endorsed to contain the following provisions, provided that, for the workers' compensation policy, only the following clause (d) shall be applicable:

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

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

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

(d) Each policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, modified or reduced in coverage or in limits except after 30 days' prior written notice by certified mail, return receipt requested, has been given to the TTA and Developer. Such endorsement shall not include any limitation of liability of the insurer for failure to provide such notice.

(e) All endorsements adding additional insureds to required policies shall be on form CG-20-10 (1985 edition) or an equivalent form providing additional insureds with coverage for "completed operations".

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

10.3.5 Waivers and Subrogation

The TTA and Developer waive all rights against each other, against each of their agents and employees and against Subcontractors and their respective members, directors, officers, employees, agents and consultants for any claims, but only to the extent covered by insurance obtained pursuant to this Section 10, except such rights as they may have to the proceeds of such insurance and provided further that, Developer shall not be entitled to additional compensation or time extension under

this Agreement to the extent compensated by any insurance specified herein. Developer shall cause all Subcontractors to provide similar waivers in writing each in favor of all other parties enumerated above. Each policy, including workers' compensation, shall include a waiver of any right of subrogation against the additional insureds (and their respective members, directors, officers, employees, agents and consultants).

10.3.6 Changes in Requirements

The TTA shall notify Developer in writing of any changes in the requirements applicable to insurance required to be provided by Developer. Pursuant to a Change Order, any additional cost from such change shall be paid by the TTA and any reduction in cost shall reduce the Development Price.

10.3.7 No Recourse

There shall be no recourse against the TTA for payment of premiums or other amounts with respect to the insurance required to be provided by Developer hereunder.

10.3.8 Support of Indemnifications

The insurance coverage provided hereunder by Developer is not intended to limit Developer's indemnification obligations under Section 23.

10.3.9 Commercial Unavailability of Required Coverages

If, in the future, through no fault of Developer, any of the coverages required in this Section 10 (or any of the required terms of such coverages, including policy limits) become unavailable as determined under a commercial reasonableness standard, the TTA will work with Developer to find commercially reasonable alternatives to the required coverages that are acceptable to the TTA.

10.4 TTA's Right to Remedy Breach by Developer

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

10.5 Other Conditions

10.5.1 Minimum Safety Compliance Requirements

Developer shall be solely responsible for safety on the Site, and shall comply in all respects with the Safety and Health Plan. Each Subcontractor, before performing any Development Work, shall agree in writing to, and shall when performing any Development Work, comply with the requirements of the Safety and Health Plan. Any suspension of Development Work by the TTA related to safety concerns, including the failure of any member of the Developer Group to comply with the Safety and Health Plan, shall be considered a suspension for cause under Section 15.2.

10.5.2 Due Care Required

Nothing contained in this Section 10 shall relieve Developer or any Subcontractors of its obligation to exercise due care in the performance of the Development Work and to complete the Development Work in strict compliance with this Agreement.

10.6 Prosecution of Claims

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

10.7 Commencement of Development Work

Developer shall not commence NTP1 Work or NTP2 Work under this Agreement until it has obtained the applicable insurance required under this Section 10 and such insurance has been approved by the TTA. Developer shall not allow any Subcontractor to commence work under its Subcontract until the insurance required of the Subcontractor has been obtained and approved by Developer. If the insurance provided by Developer fails to comply with the requirements listed herein, or if Developer fails to maintain such insurance, then the TTA maintains the right to suspend Developer's right to proceed until the TTA receives satisfactory evidence that the required insurance coverage has been procured in accordance with the terms hereof.

10.8 Disclaimer

Developer and each Subcontractor have the responsibility to make sure that their insurance programs fit their particular needs, and it is their responsibility to arrange for

and secure any insurance coverage which they deem advisable, whether or not specified herein.

10.9 Insurance During Warranty Period

During the period following Final Acceptance of any Segment and prior to expiration of Developer's Warranty for such Segment, Developer shall maintain in full force and effect all insurance as specified in Section 10.1 excluding professional liability insurance.

11. SITE SECURITY; RESPONSIBILITY FOR LOSS OR DAMAGE

11.1 Site Security

Developer shall provide appropriate security for the Site, and shall take all reasonable precautions and provide protection to prevent damage, injury, or loss to the Development Work and materials and equipment to be incorporated therein, as well as all other property at or on the Site, whether owned by Developer, the TTA, or any other Person.

11.2 Risk of Loss or Damage; Maintenance and Repair of Development Work

The Development Work includes maintenance of each Segment of the Project constructed by the Developer throughout the entire period from NTP2 until Substantial Completion thereof and maintenance of all other portions of the Project until Project Final Acceptance. Developer, at no additional cost to the TTA, shall maintain, rebuild, repair, restore or replace all Development Work, including Design Documents, Construction Documents, materials, equipment, supplies and maintenance equipment which are purchased for permanent installation in, or for use during construction of, each Segment of the Project that is injured or damaged prior to Substantial Completion of such Segment, regardless of who has title thereto under the Contract Documents and regardless of the cause of the damage or injury, except to the extent that (a) the TTA is responsible for such costs in accordance with the terms of this Agreement, (b) control of such improvements has transferred to third parties in accordance with Section 5.16.5.1 of the Scope of Work, or (c) Developer retains responsibility for loss and control of certain elements of the Project beyond Project Final Acceptance, such as the Mitigation Site(s). Developer, at its cost, shall also have sole responsibility during such periods for rebuilding, repairing and restoring all other property within the Final ROW whether owned by Developer, the TTA or any other Person. If insurance proceeds with respect to any loss or damage are paid to the TTA, then the TTA shall arrange for such proceeds to reimburse Developer as repair or replacement work is performed by Developer to the extent that the TTA has not previously paid for such repair or replacement work; provided, however, that release of such proceeds to Developer shall not be a condition precedent to Developer's obligation to perform such replacement or repair work or indicate that such replacement or repair work has been approved and accepted by the TTA.

12. WARRANTIES

12.1 Warranties

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

12.1.1.1 Developer warrants that for design Development Work:

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

(b) the Project shall be free of defects (including design errors, omissions, inconsistencies and other defects), and shall be free of Deviations not previously approved by the TTA in accordance with the Contract Documents;

(c) the Development Work shall be fit for use for the intended function and shall not require significant or unusual maintenance, including landslide/rock removal, drainage repair and mud removal due to erosion;

(d) the Development Work shall meet all of the requirements of the Contract Documents.

12.1.1.2 Developer warrants for construction Development Work:

(a) Items nos. 1-36 below shall meet the applicable criteria set forth in the following table (provided that Developer shall not be responsible for damage caused solely by third parties through no fault of Developer);

No.	Item	Criteria
1.	Embankment and cut slopes	No washouts, slumping, or similar failures greater than 100 square feet in plan area or greater than 6-inches in depth. Repairs shall be made as specified in <u>Section 3.2.6</u> of the Maintenance Agreement.
2.	Irrigation system	Fully operational and functional for intended purpose
3.	Roadside planting and establishment	In accordance with <u>Section 3.9.10</u> of the Scope of Work.

No.	Item	Criteria
4.	Asphaltic concrete and concrete pavement	No displacement greater than 1/4-inch in a 10-foot length longitudinally and 1/2-inch in a 10-foot length transversely or defects greater than specified in <u>Section 3.2.2</u> of the Maintenance Agreement. No ponded water on pavement surface longer than 10 minutes after a rainstorm. No scaling or spalling.
5.	Structure approach slabs	No displacement greater than 1/4-inch in a 10-foot length in any direction. No cracks wider than 1/8-inch. No vertical joint separations greater than 1/4-inch. No scaling or spalling.
6.	Structure foundations	No discernible movement of bridge or sign support foundations. No differential movement greater than 1/2-inch for toll plazas and other building structures.
7.	Retaining and noise/sound walls	No cracks wider than 1/16-inch. No differential movement greater than 1/2-inch in 20 feet. No discernible erosion of backfill through joints. Plumb within 3/4 inch per 10 feet of wall height.
8.	Surface finishes for concrete structures	No scaling, spalling, peeling, or similar distress for concrete surfaces.
9.	Joint sealants and fillers	No debonding, tearing, or splitting of joint sealants.
10.	Bearing devices	No discernible signs of distress.
11.	Bridge expansion joints	No discernible signs of distress.
12.	Galvanized coatings	No more than 1 percent failure associated with abrasions, scratches, or holidays in the coating.
13.	Painted coatings on steel elements	No discernible fading. No more than 1 percent failure associated with abrasions, scratches, or holidays in the coating film.
14.	Bridge deck	No cracks wider than 1/32-inch. No scaling or spalling of deck surface.
15.	Prestressed concrete bridge beams	No cracks wider than 1/64-inch. No scaling or spalling of surfaces.
16.	Riprap	No discernible distress. Joints in cast-in-place concrete riprap free of vegetation.
17.	Box culverts	No cracks wider than 1/16-inch. No silting greater than 10 percent of the clear height of the box culvert.

No.	Item	Criteria
18.	Storm sewers and sanitary sewers	No cracks wider than 1/16-inch. No differential movement greater than 0.05 percent of the inside diameter of the pipe, per foot of pipe length, in no case to exceed 15 percent of the inside diameter of the pipe. No silting greater than 1/5 of the inside diameter of the pipe.
19.	Manholes, vaults, and pull boxes	No cracks wider than 1/16-inch. No movement greater than 1/2-inch with respect to adjacent paved surfaces. No discernible erosion of backfill into manholes, vaults, or pull boxes.
20.	Inlets	No cracks wider than 1/16-inch. No movement greater than 1/2-inch with respect to adjacent paved surfaces. No discernible erosion of backfill into inlet.
21.	Ditches	No erosion greater than 100 square feet in plan area or greater than 6-inches in depth due to a storm up to the design-year event.
22.	Erosion control devices; water quality, retention, and detention facilities	Must be capable of maintaining a minimum of 80 percent of the design volume capacity of the particular device or facility.
23.	Concrete curb, gutter and combined curb and gutter	No displacement greater than 1/2-inch in a 10-foot length. No cracks wider than 1/8-inch. No vertical joint separations greater than 1/2-inch. No scaling or spalling of concrete surfaces.
24.	Driveways and turnouts	No displacement greater than 1/2-inch in a 10-foot length in any direction. No cracks wider than 1/8-inch. No vertical joint separations greater than 1/2-inch. No scaling or spalling.
25.	Sidewalks	No displacement greater than 1/2-inch in a 10-foot length in any direction. No cracks wider than 1/8-inch. No vertical joint separations greater than 1/2-inch. No scaling or spalling.
26.	Metal beam guard fence	Horizontal and vertical alignment of metal beam guard fence within 1-inch in a 25-foot length.
27.	Fences	Posts within 1/2-inch of plumb. No discernible loss of tension in fencing material.
28.	Pipe underdrains	Functional
29.	Roadway illumination	Functional
30.	Conduit and duct banks	No separations or blockages
31.	Electrical services	Functional and code compliant

No.	Item	Criteria
32.	Signs	No discernible fading of original colors. Reflectivity equal to or greater than 95 percent of the specified value for new signs.
33.	Delineator and object marker assemblies	Reflectivity equal to or greater than 95 percent of the specified value for new items.
34.	Pavement markings, symbols and raised pavement markers	Pavement markings, symbols, and raised pavement markers are in their specified locations. Reflectivity equal to or greater than 95 percent of the specified value for new items.
35.	Traffic signals and controllers	Functional with heads aligned, vertical clearances maintained and detectors operational.
36.	Toll plaza booths, tunnels, and buildings	All tunnels, roofing, windows, doors, and exterior cladding leak-free. All electrical, plumbing, mechanical, and environmental systems operational and adequate for their intended purpose.

(b) the Development Work shall meet all of the requirements of the Contract Documents.

12.1.2 The Warranties for each Segment of the Project shall commence upon Substantial Completion of the Segment and shall remain in effect until one year after the date of Final Acceptance of the Segment, except that an extended three-year warranty term and special warranty requirements shall apply with respect to plant establishment and certain landscape elements for each Segment, in accordance with Section 3.9.10 of the Scope of Work. Notwithstanding anything to the contrary in this Section 12.1.2, the term of the warranty for all elements of the Development Work which will be owned by Persons other than the TTA (such as Utility Owners) shall commence as of the date of acceptance thereof by such Persons and shall end one year thereafter. If the TTA determines that any of the Development Work has not met the standards set forth in this Section 12.1 at any time during the warranty period for such Development Work, then Developer shall correct such Development Work as specified below, even if the performance of such corrective work extends beyond the stated warranty period.

12.1.3 Within seven Days of receipt by Developer of notice from the TTA specifying a failure of any of the Development Work to satisfy the Warranties, Developer and the TTA shall mutually agree when and how Developer shall remedy such violation; provided, however, that in case of an emergency requiring immediate curative action, Developer shall implement such action as it deems necessary and shall immediately notify the TTA in writing of the emergency. Developer and the TTA shall promptly meet in order to agree on a remedy. If Developer does not use its best efforts to effectuate such remedy within the agreed time, or if Developer and the TTA fail to reach such an agreement within such seven-Day period, or immediately, in the case of emergency conditions, then the TTA shall have the right to perform or have performed by third

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

12.1.4 All costs of repairing, replacing or correcting Development Work pursuant to the Warranties, including additional testing and inspections, shall be deemed included in the Development Price. Developer shall reimburse the TTA for all expenses, direct and indirect, incurred by the TTA as a result of such Warranty work, including any costs incurred by the TTA for independent quality assurance and/or quality control with respect to the Warranty work, within ten Days after Developer's receipt of invoices therefor (including, subject to the limitations in Section 18.3, any lost revenue arising from or relating to such repair, replacement or corrective work) with interest thereon from the date such costs are incurred by the TTA until payment is received by the TTA at the lesser of (i) 12% per annum or (ii) the maximum amount allowable under applicable Law. Alternatively, the TTA may, at its option, deduct such sums from any moneys due or to become due Developer. Any dispute relating to this Section 12.1.4 shall be subject to the dispute resolution provisions contained in Section 25 of this Agreement, provided that Developer shall proceed as directed by the TTA pending resolution of the dispute.

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

12.2 Applicability of Warranties to Repaired, Replaced or Corrected Development Work

The Warranties shall apply to all Development Work repaired, replaced or corrected pursuant to the terms of this Agreement. The Warranties for repaired, replaced or corrected Development Work shall extend beyond the original warranty period if necessary to provide at least a one year warranty period following acceptance by the TTA of the repair, replaced or corrected Development Work, but not to exceed three years after the date that Project Final Acceptance is achieved.

12.3 Subcontractor and Extended Warranties

12.3.1 Without in any way derogating the Warranties and Developer's other obligations with respect to the Development Work, Developer shall obtain from all Subcontractors and cause to be extended to the TTA, for periods at least coterminous with the Warranties, appropriate representations, warranties, guarantees and obligations with respect to design, materials, workmanship, equipment, tools, supplies and other aspects of the Development Work furnished by such Subcontractors. All representations, warranties, guarantees and obligations of Subcontractors (a) shall be written so as to survive all inspections, tests and approvals hereunder, and (b) shall run directly to and be enforceable by Developer, the TTA and/or their respective successors

and assigns. Developer assigns to the TTA all of Developer's rights and interest in all extended warranties for periods exceeding the applicable Warranty period which are received by Developer from any of its Subcontractors. To the extent that any Subcontractor warranty or guaranty would be voided by reason of Developer's negligence in incorporating material or equipment into the work, Developer shall be responsible for correcting such defect.

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

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

12.4 Effect of the TTA or Maintenance Contractor Activities on Warranties

Developer acknowledges and agrees that the TTA, TxDOT, the Maintenance Contractor and their respective agents may perform certain maintenance work during the period in which the Warranties are in effect and agrees that the Warranties shall apply notwithstanding such activities; provided that, the foregoing shall not be deemed to require Developer to repair, replace or correct problems to the extent caused by defective maintenance.

12.5 No Limitation of Liability

The Warranties are in addition to all rights and remedies available under the Contract Documents or applicable Law or in equity, and shall not limit Developer's liability or responsibility imposed by the Contract Documents or applicable Law or in equity with respect to the Development Work, including liability for design defects, latent construction defects, strict liability, breach, negligence, willful misconduct or fraud; provided, however, that upon expiration of the Warranties, Developer shall have no further liability to the TTA for patent construction defects, and further provided that any

lawsuit by the TTA arising out of latent defects must be commenced within 10 years of Project Final Acceptance.

12.6 Damages for Breach of Warranty

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

12.7 Warranty Beneficiaries

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

13. PAYMENT

13.1 Development Price

Subject to Sections 13.2 and 13.5, as full compensation for the Development Work and all other obligations to be performed by Developer under the Contract Documents, the TTA shall pay to Developer a lump sum of \$1,306,554,920.00. Such sum, as it may be adjusted from time to time to account for Change Orders, is referred to herein as the “**Development Price**”.

13.1.1 The Development Price shall be paid in accordance with Section 13.3 and may be changed only by a Change Order issued in accordance with Section 14, a Value Engineering adjustment made in accordance with Section 21 or as a result of an Incentive Payment under Section 13.5. Developer acknowledges and agrees that, subject only to Developer's rights under Section 14, the Development Price includes (a) all designs, equipment, materials, labor, insurance and bond premiums, home office, jobsite and all other overhead, profit and services related to Developer's performance of its obligations under the Contract Documents, including all Development Work, equipment, materials, labor and services provided by Subcontractors and all intellectual property rights necessary to perform the Development Work; (b) performance of each and every portion of the Development Work; (c) the cost of obtaining all Governmental Approvals and compliance with such Governmental Approvals and applicable Law; and (d) payment of any duties and other fees, costs and/or royalties imposed with respect to the Development Work and any equipment, materials, labor or services included therein.

13.1.2 The Development Price includes an electronic communications allowance in the amount of \$2,000,000 which shall be used as directed by the TTA to pay costs of equipment and services as provided in Scope of Work Section 2.7.4. The TTA shall have the right at any time to reduce the Development Price by an amount equal to that portion of the electronic communications allowance that the TTA has determined it will not use. If funds remain available in such allowance following achievement of Project Final Acceptance, the Development Price shall be reduced by an amount equal to such remaining allowance amount.

13.2 NTP Work Payments; Delay in Issuance of NTP2; Early Issuance of NTPs

13.2.1 NTP Work Payments

13.2.1.1 Developer acknowledges and agrees that the amount of funds available to pay for Development Work and costs of Final ROW acquisition prior to issuance of NTP2 is limited to \$30,000,000. The TTA has no obligation to make any payments to Developer in excess of the difference between \$30,000,000 and the costs of Final ROW acquisition (which Final ROW acquisition costs are not part of the Development Price) until such time (if any) as NTP2 is issued.

13.2.1.2 Developer acknowledges and agrees that the amount of funds available to pay for Development Work authorized by NTP1 and NTP2 is limited to \$973,797,350.00.

13.2.1.3 Developer acknowledges and agrees that the amount of funds available to pay for NTP3 Work is limited to \$12,634,337.00. The TTA has no obligation to make any payments to Developer for NTP3 Work until such time (if any) as NTP3 is issued. If the TTA does not issue NTP3, the Development Price will be reduced by such amount.

13.2.1.4 Developer acknowledges and agrees that the amount of funds available to pay for NTP4 Work is limited to \$307,599,006.00. The TTA has no obligation to make any payments to Developer for NTP4 Work until such time (if any) as NTP4 is issued. If the TTA does not issue NTP4, the Development Price will be reduced by such amount.

13.2.1.5 Developer acknowledges and agrees that the amount of funds available to pay for NTP5 Work is limited to \$12,524,227.00. The TTA has no obligation to make any payments to Developer for NTP5 Work until such time (if any) as NTP5 is issued. If the TTA does not issue NTP5, the Development Price will be reduced by such amount.

13.2.2 Delay in Issuance of NTP2; Escalation

13.2.2.1 The TTA shall issue NTP2 on or about the Finance Closing Date, which will authorize Developer to proceed with the remaining Development Work for Segments 1 through 4 on a date certain. The TTA shall have no right to require Developer to perform Development Work costing in excess of the sum of \$30,000,000 until such time as the Finance Closing Date has occurred. If NTP2 has not been issued by the TTA as of 270 Days after the Proposal Date, due to no fault of any member of the Developer Group, this Agreement shall remain in full force and effect, without any modification to the terms and conditions hereof, provided that Developer shall be entitled to an adjustment in the Development Price for the Development Work authorized by NTP2 (DP), based on the Engineering News Record Construction Cost Index, from a base date commencing as of the expiration of such 270 Day period and until the date of issuance of NTP2 calculated as follows:

Adjusted DP = (Proposal DP for Segments 1-4 less NTP1 price) x (ENR CCI)/(BI)

The Base Index (BI) is the Engineering News Record Construction Cost Index for the calendar month which occurs 270 days after the Proposal Date. The ENR CCI is the Engineering News Record Construction Cost Index for the month in which NTP2 is issued. The escalation provided for in this Section 13.2.2.1 shall not be applied to the extent the Development Price has been escalated in accordance with Section 3.10 of the Instructions to Proposers.

13.2.2.2 If NTP2 has not been issued as of 635 Days after the Proposal Date due to no fault of any member of the Developer Group, Developer may seek to negotiate a Change Order, including an extension in time for issuance of NTP2 and an increase in the Development Price mutually acceptable to Developer and the TTA, provided that any extension in time for issuance of NTP2 beyond 450 Days after the Proposal Date shall be subject to the concurrence of Surety. In the event Surety does not provide its concurrence to an extension of issuance of NTP2 beyond 450 Days, Developer may seek to negotiate a Change Order, which shall be limited to issues relating to security for the Development Work. If Developer does not wish to seek a Change Order as provided above after 635 Days after the Proposal Date or the TTA fails to issue a Change Order acceptable to Developer, then Developer's sole remedy shall be to terminate this Agreement by delivery of notice of termination to the TTA, and to receive payment for Development Work performed as specified in Sections 16.6 through 16.9. Developer acknowledges that the TTA has no obligation to make any payment to Developer in excess of the amounts set forth in Section 13.2.1 until such time (if any) as NTP2 is issued. If Developer performs any Development Work costing in excess of the amount specified in Section 13.2.1, it does so at its own risk.

13.2.2.3 The portion of the Development Price allocable to NTP3 Work shall be adjusted commencing as of 270 Days after the Proposal Date and until the issuance of NTP3. The portion of the Development Price allocable to NTP4 Work shall be adjusted commencing as of 270 Days after the Proposal Date and until the issuance of NTP4. The portion of the Development Price allocable to NTP5 Work shall be adjusted commencing as of 270 Days after the Proposal Date and until the issuance of NTP5. The adjustments shall be calculated as follows, where "Adjusted DP" is the adjusted Development Price for the NTP3 Work, NTP4 Work or NTP5 Work, as applicable, "Proposal DP" is the Development Price set forth in the Proposal for the NTP3 Work, NTP4 Work or NTP5 Work, as applicable, "ENR CCI" is the Engineering News Record Construction Cost Index for the month in which NTP3, NTP4 or NTP5 is issued, as applicable, and "BI" is the is the Engineering News Record Construction Cost Index for the calendar month which occurs 270 days after the Proposal Date:

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

The escalation provided for in this Section 13.2.2.3 shall not be applied to the extent the Development Price has been escalated in accordance with Section 3.10 of the Instructions to Proposers or Section 13.2.2.1 above.

13.2.3 Early Issuance of NTP2

The TTA has scheduled issuance of NTP2 for 180 Days after issuance of NTP1. If NTP2 is issued less than 180 Days after issuance of NTP1, the Completion Deadlines for Segments 1 through 4 shall be extended by the number of Days remaining in such 180 Day period (i.e. the difference between 180 Days and the number of Days that NTP2 is issued after NTP1). In no event shall Developer be entitled to an increase of the Development Price on account of such early issuance of NTP2.

13.2.4 Early Issuance of NTP3

The TTA has scheduled issuance of NTP3 for 730 Days after issuance of NTP2. If NTP3 is issued less than 550 Days after issuance of NTP2, the Completion Deadline for the NTP3 Work shall be extended by the number of Days remaining in such 550 Day period (i.e. the difference between 550 Days and the number of Days that NTP3 is issued after NTP2). In no event shall Developer be entitled to an increase of the Development Price on account of such early issuance of NTP3.

13.2.5 Early Issuance of NTP4

The TTA has scheduled issuance of NTP4 for 1095 Days after issuance of NTP2. If NTP4 is issued less than 915 Days after issuance of NTP2, the Completion Deadline and Acceptance Deadline for Segment 6 shall be extended by the number of Days remaining in such 915 Day period (i.e. the difference between 915 Days and the number of Days that NTP4 is issued after NTP2). In no event shall Developer be entitled to an increase of the Development Price on account of such early issuance of NTP4.

13.3 Payments

Payment to Developer of the Development Price shall be made in accordance with the procedures set forth in this Section 13.3.

13.3.1 Delivery of Draw Request

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

13.3.2 Contents of Draw Request

Each Draw Request must contain the following items:

- (a) Draw Request cover sheet;
- (b) Monthly progress report as described in Section 8.3.2 of the Scope of Work;

(c) Certification by the Design Quality Assurance Manager and the Construction Quality Assurance Manager that all Development Work which is the subject of the Draw Request fully complies with the requirements of the Contract Documents subject to any exceptions identified in the certification;

(d) Monthly report of personnel hours;

(e) Draw Request data sheet(s) and supporting documents, as required by the TTA to support and substantiate the amount requested (based on quantities and unit prices for unit priced Development Work, based on time and materials for Time and Materials Change Orders, based on actual costs as evidenced by invoices for items to be paid from an allowance, and based on the Project Schedule for all other Development Work) and showing the maximum amount payable based on the Maximum Payment Curve;

(f) DBE utilization report in a format reasonably satisfactory to the TTA;

(g) Cash flow curves and comparison to the Maximum Payment Curve;

(h) An approved and updated Project Schedule; and

(i) Such other items as the TTA reasonably requests.

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

13.3.3 Draw Request Cover Sheet Contents

The Draw Request cover sheet shall include the following:

(a) Project number and title;

(b) Request number (numbered consecutively starting with "1");

(c) Total amount earned to date for the Project as a whole and for each Segment in order to allow the TTA to calculate, withhold, deposit, or release Retainage on each segment in accordance with the terms hereof; and

(d) Authorized signature, title of signer, and date of signature.

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

With each Draw Request, Developer shall submit a certificate in the form attached hereto as Exhibit K and signed and sealed by the Design Quality Control Manager and Construction Quality Assurance Manager, certifying that:

(a) All Development Work, including that of designers, Subcontractors, including Suppliers and fabricators, which is the subject of the Draw Request has been checked and/or inspected by the Design QC/QA Team and the Construction Quality Assurance Firm;

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

(c) The Design QC/QAP and the Construction QC/QAP and all of the measures and procedures provided therein are functioning properly and are being followed in all respects; and

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

13.3.5 Report of Personnel Hours

With each Draw Request, Developer shall report the total monthly labor hours for design, construction and maintenance personnel used in connection with the Development Work.

13.3.6 Draw Request Data Sheets

Draw Request data sheets shall be subdivided into Developer-designated Project segments and shall be attached to a Project-wide report and Draw Request data sheet. It is the intent of the TTA to base payments on a mutually agreed estimate of percentage of Development Work completed, not on measured quantities, except that cost plus or unit price Change Order work or items to be paid from an allowance may be paid based upon measured quantities. Developer's designation of activities, phases and Project segments and their representation on the final approved Project Schedule and the corrected monthly progress reports shall facilitate this basis of determining periodic payments. Where progress is measured by percentage complete and days remaining, the percentage shall be calculated using Primavera P3. Developer may present the format of the Draw Request data sheets for

TTA approval at least 20 Business Days prior to the submittal of the first Draw Request. Once the Draw Request format has been approved by the TTA, the format shall not change without prior written approval of the TTA.

13.3.7 Payment by the TTA

Within ten Business Days after the TTA's receipt of a complete Draw Request, the TTA will review the Draw Request and all attachments and certificates thereto for conformity with the requirements of the Contract Documents, and shall notify Developer of the amount approved for payment and the reason for disapproval of any remaining invoiced amounts or of any other information set forth in the Draw Request. Developer may include such disapproved amounts in the next month's Draw Request after correction of the deficiencies noted by the TTA. All such disapproved amounts shall be deemed in dispute unless otherwise agreed. Within five Business Days after the approval by the TTA of a Draw Request, the TTA shall pay Developer the amount of the Draw Request approved for payment less any applicable Retainage and less any amounts which the TTA is otherwise entitled to withhold or deduct. In no event shall Developer be entitled to (a) payment for any activity in excess of the value of the activity times the completion percentage of such activity (for non-unit priced Work), or (b) aggregate payments hereunder in excess of [i] the overall completion percentage for the Project times the Development Price (for non-unit-priced Work) or [ii] the Maximum Payment Curve plus amounts allowed by Change Orders.

13.3.8 Payment to Subcontractors

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

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

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

The inspection and approval of a Subcontractor's work does not eliminate or impair the Developer's responsibility for the Development Work under this Agreement. Any delay or postponement of payments to Subcontractors from the above-referenced time frames may occur only for good cause following written approval by the TTA. Developer shall, by appropriate agreement with each Subcontractor,

require each Subcontractor to make payments to sub-subcontractors in a similar manner. The TTA shall have no obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by Law. Interest on late payments to Subcontractors shall be Developer's responsibility, and shall not be a part of the Development Price.

13.3.9 Continued Performance During Disputes.

Failure by the TTA to pay any amount in dispute shall not postpone, alleviate, diminish, release, alter or modify in any respect Developer's obligation to perform under the Contract Documents, including Developer's obligation to achieve Substantial Completion of each Segment by the applicable Completion Deadline, to achieve Final Acceptance of each Segment by the applicable Acceptance Deadline and to complete all Development Work in accordance with the Contract Documents, and Developer shall not cease or slow down its performance under the Contract Documents on account of any such dispute. Any dispute regarding such payment shall be resolved pursuant to Section 25 of this Agreement. Upon resolution of any such dispute, subject to the limitations specified in this Section 13, the TTA shall promptly pay to Developer any amount identified through the dispute resolution process as owing to Developer. If payment of disputed amounts is made after the 30th Day following the proper submission of a complete Draw Request, then the payment shall, subject to the limitations specified in this Section 13, include interest on the amount owing, from the date that the payment was due (based on the agreement of the Parties or the decision of the judge) until the date of payment, which shall accrue at the rate equal to the lesser of (i) 12% per annum or (ii) the maximum rate allowable under applicable Law. Any interest payable in accordance with this Section 13.3.9 shall not be subject to or applied against the Maximum Payment Curve.

13.3.10 Retainage

13.3.10.1 The TTA shall withhold funds (the "**Retainage**") from each payment to be made to Developer for the Development Work relating to each Segment until such time as Substantial Completion of such Segment is achieved, at which time the TTA shall cease withholding Retainage from future payments. The Retainage shall be an amount equal to 5% of the amount owing.

13.3.10.2 The Retainage for Development Work for a Segment, subject to reduction as specified below, shall be held by the TTA until 60 Days after Final Acceptance of such Segment. At such time, and provided that Developer is not in breach or default hereunder, the TTA shall release to Developer all Retainage withheld in connection with such Segment Development Work other than amounts applied to the payment of Losses or which the TTA deems advisable, in its sole discretion, to retain to cover any existing or threatened claims, Liens and stop notices relating to the Project, including claims by Utility Owners and the Railroad, the cost of any uncompleted Development Work and/or the cost of repairing any Nonconforming Work for such Segment. Final payment of such Retainage not applied to Losses shall be made upon Developer's showing, to the TTA's satisfaction, that all such matters have been resolved, including delivery to the TTA of a certification representing and warranting that

there are no outstanding claims of Developer or any claims, Liens or stop notices of any Subcontractor or laborer with respect to the Development Work pertaining to the applicable Segment.

13.3.10.3 The TTA agrees to release up to 50% of the Retainage withheld in connection with payments for the Development Work for each Segment 60 Days after achievement of Substantial Completion of the applicable Segment, subject to the following terms and conditions. The amount to be released shall be reduced by any amounts which the TTA deems advisable, in its sole discretion, to retain to cover, any uncompleted Development Work, including correction of Nonconforming Work, any Warranty work for which notice has been provided to Developer, any Losses which the TTA anticipates may be payable and any existing or threatened claims, Liens or stop notices relating to the applicable Segment. In addition, no portion of the Retainage shall be released unless and until (a) Developer shall have applied in writing for such release; and (b) such release shall have been approved in writing by each Surety and any Guarantor.

13.3.10.4 Prior to the release of any Retainage by the TTA pursuant to the terms hereof, such amounts shall be held in the Construction Fund and invested in the manner permitted by, and undertaken pursuant to, the Project Finance Documents. Upon the release of any Retainage, Developer shall additionally be entitled to and shall be paid any interest income that has accrued upon the amounts of Retainage released to Developer.

13.3.10.5 Developer shall have the right to substitute a letter of credit for all or any portion of the Retainage, provided that the letter of credit shall (a) be a direct pay letter of credit payable immediately upon presentation by the TTA, issued by a financial institution approved by the TTA and the Bond Trustee in their sole discretion, (b) be in the amount of 100% of the required Retainage amount, (c) be in a form approved by the TTA and the Bond Trustee in their sole discretion, and (d) name the TTA and the Bond Trustee as joint payees.

13.3.11 Deductions

In addition to the deductions provided for above, the TTA may deduct from each payment to Developer under this Agreement the following:

(a) Any TTA or third party claims or Losses or any Liquidated Damages which have accrued as of the date of payment, except to the extent an insurance claim therefor has been accepted by the insurer without any reservation of rights to deny coverage;

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

(c) Any existing or threatened claims, Liens and stop notices of Subcontractors, laborers, Utility Owners and other third parties against Developer or against the TTA as a result of the actions or failure to act by Developer, relating to the Project; and

(d) Any other sums which the TTA is entitled to recover from any member of the Developer Group under the terms of this Agreement.

The failure by the TTA to deduct any of these sums from a payment to Developer shall not constitute a waiver of the TTA's right to recover such sums or to deduct such funds from future payments.

13.3.12 Unincorporated Materials

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

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

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

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

13.3.12.4 Payment for material furnished and delivered as indicated in this Section 13.3.12 will not exceed the amount paid by Developer as evidenced by a

bill of sale supported by paid invoice. The TTA shall withhold Retainage from such payment as specified in Section 13.3.10.

13.3.13 Mobilization

Developer shall be entitled to mobilization payments in accordance with this Section 13.3.13. Payment for the cost of NTP1 mobilization shall not exceed \$3,000,000. Payment will be made within ten Business Days after the TTA verifies to its satisfaction that the Project office has been established in accordance with the Contract Documents. Payment for the cost of NTP2 mobilization shall not exceed \$60,000,000. Payment for such mobilization will be made as follows, but in no event earlier than the first progress payment after the issuance by the TTA of NTP2: (a) \$ 15,000,000 will be paid with the first progress payment after the issuance by the TTA of NTP2; (b) \$30,000,000 will be paid when at least 10% of the Development Price allocable to NTP2 Work (less mobilization) is earned; and (c) \$15,000,000 will be paid when at least 25% of the Development Price allocable to NTP2 Work (less mobilization) is earned. Developer acknowledges and agrees that the costs of mobilization for the NTP3 Work and the NTP5 Work are included in the NTP1 and NTP2 mobilization payments and no additional mobilization payments shall be due or paid with respect to the NTP3 Work or the NTP5 Work. Payment for the cost of NTP4 mobilization shall not exceed \$5,000,000 and shall be paid in three equal installments with the first three progress payments after issuance of NTP4.

13.3.14 Equipment

The TTA will not pay for direct costs of equipment. Payment for equipment, whether new, used or rented, shall be allocated to and paid for as part of the mobilization payments allowed hereunder and/or as part of the compensation allowed for the activities with which the equipment is associated. The total amount payable for equipment shall not exceed the greater of the actual cost of the equipment or the amount that would be compensable for use thereof based on the methodology set forth in Section 14.7.3.

13.3.15 Bond and Insurance Premiums

The amount payable to Developer for bond and insurance premiums shall be a dollar-for-dollar passthrough of Developer's costs (not to exceed the line item for such premiums set forth in the Proposal), with any excess portion of the line item for such premiums set forth in the Proposal to be paid upon achievement of Substantial Completion of the last Segment to be opened to traffic.

13.4 Developer Note

13.4.1 The Developer Note shall be delivered by the TTA to Developer in substantially the form set forth in Exhibit M pursuant to the terms and provisions of the Project Finance Documents, and shall represent payment of the final installments of the Development Price. The TTA shall have the option to pay cash in lieu of delivering the Developer Note. Delivery of the Development Note by the TTA shall be subject to the

approval of (a) the State Attorney General pursuant to Chapter 1201 and 1202 of the Texas Government Code and (2) Bond counsel for consistency with the Project Finance Documents. The principal amount of the Developer Note shall be an amount not to exceed \$2,000,000 plus 50% of the dollar amount of each approved Change Order excluding Change Orders implementing material changes in the Basic Configuration directed by the TTA. In no event shall the principal amount exceed \$10,000,000 in the aggregate. If the Development Note is increased as the result of a Change Order, Developer shall nevertheless be entitled to receive payments for the Development Work which is the subject of the Change Order as it is performed, subject to any Retainage requirements hereunder and subject to the requirement that Developer accept the Developer Note for the final payments of the Development Price hereunder. The Developer Note shall accrue interest from the date that is 30 Days after the date of the first approved Draw Request to be paid with the Developer Note. If the Developer Note involves multiple Draw Requests, each Draw Request submitted following original issuance of the Developer Note shall be accompanied by a blank endorsement to the Developer Note reflecting an increase in the principal balance thereof, executed by Developer, with the date and amount left blank and including a signature block for the TTA. The TTA will date the endorsement as of 30 days after the date of the approved Draw Request, will fill in the approved amount and will deliver it to Developer. Interest shall accrue on the unpaid principal balance of the Developer Note at the rate of 6.5% per annum. Payments shall be due and owing as specified in the Project Finance Documents. The maturity date of the Developer Note will be no later than the average life of the First Tier Obligations in accordance with the Project Finance Documents.

13.4.2 The Developer Note shall be secured by and payable from the Project revenues deposited in the First Tier Debt Service Fund established by and held under the Project Finance Documents. The TTA shall execute and deliver such documents as may be required by applicable Law to perfect such security interest.

13.4.3 If Developer is in default under this Agreement, the TTA will have the right to withhold all or a portion of the payment due with respect to the Developer Note; provided that the foregoing right to withhold payment shall not apply to any bona fide purchaser for value who is not an Affiliate of Developer.

13.4.4 Interest on the Developer Note shall be excludable from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended.

13.4.5 If, prior to issuance of NTP2, revisions to the form of the Developer Note become necessary or reasonably advisable due to financing requirements for the Project, the Parties agree to negotiate in good faith such changes; provided, however, that neither Party is required to agree to any changes that would materially alter its obligations hereunder.

13.5 Compensation for Early Completion

As an inducement to Developer to achieve, for each Segment, Substantial Completion in advance of the original Completion Deadline, the TTA agrees to pay

Developer a bonus for early completion of the Project or any portion thereof which has attained Substantial Completion prior to the original Completion Deadline (the “**Incentive Payment**”), as follows:

13.5.1 If Developer achieves Substantial Completion of a Segment in accordance with Section 20.1 prior to the original Completion Deadline for such Segment, Developer shall be entitled to receive the following amounts up to an aggregate amount of \$2,000,000 for all Incentive Payments payable for the Project.

(a) \$10,000 for each Day after Substantial Completion for Segment 1 through the date of the original Completion Deadline for Segment 1.

(b) \$7,500 for each Day after Substantial Completion for Segment 2 through the date of the original Completion Deadline for Segment 2.

(c) \$7,500 for each Day after Substantial Completion for Segment 3 through the date of the original Completion Deadline for Segment 3.

(d) \$10,000 for each Day after Substantial Completion for Segment 4 through the date of the original Completion Deadline for Segment 4.

(e) \$5,000 for each Day after Substantial Completion for Segment 6 through the date of the original Completion Deadline for Segment 6.

13.5.2 Within 60 days after the end of each month during which Incentive Payments under Section 13.5.1 have accrued, the TTA shall deliver to Developer a check payable to Developer in the amount owing; provided that the TTA shall have the right to offset any amounts owing from Developer to the TTA against amounts payable under this Section 13.5.

13.5.3 If the Completion Deadline for a Segment has been extended beyond the original deadline, and Developer achieves Substantial Completion of such Segment prior to said extended Completion Deadline, Developer shall be entitled to receive an Incentive Payment for Substantial Completion prior to such extended deadline and after the original Completion Deadline for such Segment. The amount of such payment shall be calculated in accordance with Section 13.5.1 (replacing references to the “original Completion Deadline” therein with references to the “extended Completion Deadline”) and shall be subject to the other provisions of this Section 13.5.

13.6 Final Payment

Final Payment for each Segment will be made as follows:

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

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

13.6.3 If the Final Draw Request lists any existing or threatened claims, Liens and stop notices of Subcontractors, laborers, Utility Owners or railroads against Developer or against the TTA, or if any is thereafter filed, in addition to the amount of the Developer Note, the TTA may withhold from the payment of the amounts set forth on the approved Final Draw Request such amount as the TTA deems advisable to cover any amounts owing to the TTA by Developer, including costs to complete or remediate uncompleted Development Work or Nonconforming Work, and the amount of any existing or threatened claims, Liens and stop notices of Subcontractors, laborers, Utility Owners and railroads against Developer or against the TTA.

13.6.4 The executed release from Developer shall be from any and all claims arising from the Development Work, and shall release and waive any claims against the Indemnified Parties, excluding only those matters identified in any PCO Notices listed as outstanding in the Final Draw Request. The release shall be accompanied by an affidavit from Developer certifying:

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

(b) that Developer has resolved any claims made by Subcontractors, Utility Owners, the Railroad and others against Developer or the Project;

(c) that Developer has no reason to believe that any Person has a valid claim against Developer or the Project which has not been communicated in writing by Developer to the TTA as of the date of the certificate; and

(d) that all guarantees, Warranties and the NTP2 Payment Bond and the NTP2 Performance Bond are in full force and effect.

Said release and the affidavit shall survive Final Payment.

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

13.6.6 The TTA will review Developer's proposed Final Draw Request, and changes or corrections will be forwarded to Developer for correction within 15 Business Days. The TTA shall pay any undisputed amounts, less any Losses that have accrued as of the date of the Final Payment, within 30 Days after its approval of such amounts on the application for Final Payment, but not earlier than the date of Final Acceptance of the applicable Segment. If no changes or corrections are required, the TTA will accept the Final Draw Request and make such payment, less the principal amount of the Developer Note, within 30 Days after its acceptance thereof. All or a portion of the Final Payment may be made through issuance of the Developer Note or one or more endorsements thereto.

13.7 Taxes

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

13.7.2 Developer acknowledges that it is exempt from paying sales tax on Expendable Materials and equipment purchases within the State. If material and equipment purchases for the Development Work are not wholly used or expended on the Project, Developer shall be responsible for applicable sales taxes.

14. CHANGES IN THE DEVELOPMENT WORK

This Section 14 sets forth the requirements for obtaining all Change Orders under this Agreement. Developer acknowledges and agrees that the Development Price constitutes full compensation for performance of all Development Work, subject only to those express exceptions specified in this Section 14, and that the TTA is subject to constraints which limit its ability to increase the Development Price or to extend contractual deadlines for performance. Developer unconditionally and irrevocably waives the right to any claim for a time extension or for any monetary compensation in addition to the Development Price and other compensation specified in this Agreement for the Development Work, except as expressly set forth in this Section 14. To the extent that any other provision of this Agreement expressly provides for a Change Order to be issued, such provision is incorporated into and subject to this Section 14.

14.1 Change Orders

14.1.1 Definition of and Requirements Relating to Change Orders

14.1.1.1 Change Orders

The term “**Change Order**” shall mean a written amendment to the terms and conditions of the Contract Documents issued in accordance with this Section 14. The TTA may issue unilateral Change Orders as specified in Section 14.2 and may issue Change Orders relating to the electronic communications allowance described in Scope of Work Section 2.7.4.2. Change Orders may be requested by Developer only pursuant to Section 14.3. Change Orders may be issued for the following purposes (or combination thereof):

- (a) to modify the scope of the Development Work;
- (b) to revise a Completion Deadline or an Acceptance
Deadline;
- (c) to revise the Development Price; and
- (d) to revise other terms and conditions of the Contract
Documents.

Upon the TTA's approval of the matters set forth in the Change Order form, whether it is initiated by the TTA or Developer, the TTA shall execute such Change Order form.

14.1.1.2 Issuance of Directive Letter

The TTA may, at any time, issue a letter to Developer in the event of any desired change in the Development Work or in the event of any dispute regarding the scope of the Development Work to be performed by Developer (a

“Directive Letter”). The Directive Letter will describe the Development Work in question and will state the basis for determining compensation, if any. Developer will proceed immediately with the Development Work as directed in the Directive Letter, pending the execution of a formal Change Order or, if the Directive Letter states that the Development Work is within the original scope of the Development Work, Developer will proceed with the Development Work as directed, but shall have the right to submit the question of entitlement to a Change Order and the amount of allowable additional compensation and time to dispute resolution in accordance with Section 25 of this Agreement.

14.1.1.3 Prerequisites for Change Orders for Work Outside of Scope

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

14.1.1.4 Additional Provisions Concerning Directive Letters

In addition to provision of a PCO Notice and subsequent Change Order request pursuant to Section 14.3.2, receipt of a Directive Letter from the TTA shall be a condition precedent to Developer’s right to make a Claim that a TTA-Directed Change has occurred. The fact that a Directive Letter was issued by the TTA shall not be considered evidence that a TTA-Directed Change has occurred. The determination as to whether a TTA-Directed Change has occurred shall be based on an analysis of the original requirements of the Contract Documents and a determination whether the Directive Letter constituted a change in those requirements. The foregoing requirements do not require that a Directive Letter be issued by the TTA in order for Developer to have the right to receive compensation for Development Work within the original scope of the Development Work (such as certain types of Utility Adjustment Work) for which additional compensation is specifically allowed under this Section 14.

14.1.2 Right of the TTA to Issue Change Orders

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

14.1.3 Options

14.1.3.1 The TTA may, at its sole discretion, exercise its option to have the Development Work for Segments 1, 2, 3 and 4 not include Alternative No. 4 by indicating its intent to exercise such option in NTP1. If the TTA exercises such option, the Development Price shall be decreased by \$33,541,650.00.

14.1.3.2 The TTA may, at its sole discretion, exercise its option to have the Development Work for Segment 6 not include Alternative No. 5 by indicating its intent to exercise such option in NTP4. If the TTA exercises such option, the Development Price shall be decreased by \$61,760,980.00, plus escalation thereon calculated in accordance with Section 13.2.2.3.

14.2 Procedure for Issuance of Change Orders by the TTA

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

14.2.1 Request for Change Proposal

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

14.2.1.2 Within five Business Days after Developer's receipt of a Request for Change Proposal, the TTA and Developer shall arrange an initial consultation (at no charge to the TTA) concerning the estimated cost and time impacts. Developer shall provide data regarding such matters as requested by the TTA.

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

14.2.1.4 If so requested, Developer shall, within ten Business Days after receipt of the notification described in Section 14.2.1.3 (as such deadline may be extended by the TTA), prepare and submit to the TTA a Change Order form, complying with all applicable requirements of Section 14.6.1 and incorporating and fully reflecting all requests made by the TTA. If Developer determines that it cannot meet the time allowed, Developer shall notify the TTA in writing of Developer's proposed deadline for providing the Change Order form, which deadline shall be subject to approval in writing by the TTA. Development of the cost estimate and scope, including any modifications thereto requested by the TTA, shall be made at Developer's cost and expense, except that costs of design and engineering work required for preparation of plans or exhibits necessary to the Change Order form shall be included in the Change Order as reimbursable items.

14.2.1.5 If the Parties agree that a change in the requirements relating to the Development Work has occurred, but disagree as to whether the change justifies additional compensation or time or disagree as to the amount of any increase to be made to the Development Price or extension of time, the TTA may, in its sole discretion, order Developer to proceed with the performance of the Development Work in question notwithstanding such dispute. Such order may, at the TTA's option, be in the form of: (a) a Time and Materials Change Order as provided in Section 14.7 or (b) a Directive Letter under Section 14.1.1.2.

14.2.1.6 Issuance of NTP2 by the TTA shall be deemed to constitute a Request for Change Proposal with respect to any delay in issuance of NTP2 or early issuance of NTP2 entitling Developer to a Change Order in accordance with Section 13.2. Issuance of NTP3 or NTP4 by the TTA shall be deemed to constitute a Request for Change Proposal with respect to any early issuance of NTP3 or NTP4 entitling Developer to a Change Order in accordance with Section 13.2.

14.2.2 Unilateral Change Orders for TTA-Directed Changes

The TTA may issue a Change Order for a TTA-Directed Change at any time, regardless of whether it has issued a Request for Change Proposal. Any such Change Order shall state that Developer shall be entitled to compensation in accordance with Section 14.7 for the additional Development Work required thereby.

14.2.3 Options

The TTA's issuance of an NTP with any options under Section 14.1.3 shall be a direction to the Developer to prepare a Change Order which shall change the scope of the Development Work for the price reductions set forth in Section 14.1.3.

14.3 Developer-Requested Change Orders

14.3.1 Eligible Changes

14.3.1.1 Developer may request a Change Order to extend a Completion Deadline or an Acceptance Deadline only for delays directly attributable to (a) TTA-Caused Delays; (b) Force Majeure Events; (c) delays in completion of Early Adjustments, to the extent specified in Section 14.12.4; (d) Utility Owner Delays, to the extent specified in Section 14.12.5, or (e) Developer's inability to complete activities caused solely by the Systems Integrator as described in Section 27.4 (subject in all cases to a requirement to show that the delay actually extended the duration of a Critical Path so as to delay Substantial Completion or Final Acceptance beyond the applicable deadline).

14.3.1.2 Developer may request a Change Order to increase the Development Price, subject to strict compliance with the requirements of this Section 14 and Section 13, only for increased costs of the Development Work as follows:

(a) Additional costs directly attributable to additional Development Work resulting from TTA-Directed Changes for which the TTA has not submitted a Change Order or a Request for Change Proposal;

(b) Additional costs directly attributable to TTA-Caused Delays;

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

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

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

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

14.3.2 Notification Requirements as Conditions Precedent

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

14.3.2.1 Delivery of Requests for Partnering and PCO Notices

Developer acknowledges the importance of providing prompt notification to the TTA upon occurrence of any event or thing entitling Developer to a Change Order under Section 14.3.1. Among other things, such notification serves the purpose of allowing the TTA to take action to mitigate adverse impacts. Such notification must be delivered as promptly as possible after the occurrence of such event or situation, through either (a) a PCO Notice as described in Section 14.3.2.3 or (b) if permitted by Section 14.3.2.2, a Request for Partnering followed by a PCO Notice if appropriate. Developer understands that it shall be forever barred from recovering against the TTA unless it gives such written notice(s) and, thereafter, files a request for Change Order with the TTA and complies with the remaining requirements of this Section 14.3.2.

14.3.2.2 Requests for Partnering

The term "**Request for Partnering**" shall mean a notice delivered by Developer requesting that the TTA enter into partnering discussions with Developer with regard to an event or situation that has occurred within the scope of Section 14.3.1.2. The Request for Partnering shall reference this Section 14.3.2.2 and shall describe the event or situation as well as action which Developer would like to take with respect thereto. The parties shall promptly meet and confer for the purpose of

determining what action should be taken and also to determine whether the parties are in agreement as to entitlement to a Change Order. Either party may at any time terminate partnering discussions by delivery of written notice to the other, and partnering discussions shall automatically terminate 60 days after delivery of the Request for Partnering unless both parties agree in writing to an extension. Within two Business Days after termination of partnering discussions, if TTA has not issued either a Directive Letter or Change Order, Developer must submit a PCO Notice in order to preserve its right to pursue a Change Order. The foregoing process is not available for events or situations involving a delay to the Critical Path. With regard to any such events or situations, Developer must submit a PCO Notice as provided in Section 14.3.2.3.

14.3.2.3 PCO Notices

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

14.3.2.3.1 The PCO Notice shall: (a) state in detail the facts underlying the claim for a Change Order, the reasons why Developer believes additional compensation or time will or may be due and the date of occurrence, (b) state the name, title, and activity of each TTA representative knowledgeable of the facts underlying the claim for a Change Order, (c) identify, and include copies of, any documents and the substance of any oral communication involved in the claimed change, (d) state in detail the basis for any claim of the necessity to accelerate schedule performance, (e) state in detail the basis for any claim that work is not required by the Contract Documents, (f) identify particular elements of performance for which additional compensation may be sought under this Section 14, (g) identify any potential Critical Path impacts, (h) provide an estimate of the time within which a response from the TTA to the PCO Notice is required to minimize cost, delay, or disruption of performance; and (i) to the degree possible, address price element(s) that have been or may be affected by the claimed change and provide a budget.

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

14.3.2.3.3 Within 15 Business Days after receipt of a complete PCO Notice that meets the requirements of this Section 14.3.2.3, the TTA will respond in writing to Developer to: (a) confirm that a change has occurred; (b) deny that a change has occurred or (c) advise Developer that the necessary information has not been submitted to decide which of the above alternatives applies, and indicate the needed information and date by which it is to be received for further review. Failure of

the TTA to respond shall not affect Developer's obligation to provide a request for Change Order within the time periods specified in this Section 14. Any adjustments made to this Agreement shall not include increased costs or time extensions for delay resulting from Developer's failure to provide a complete PCO Notice or requested additional information under this Section 14.3.2.3.

14.3.2.4 Waiver

14.3.2.4.1 If any PCO Notice is delivered later than ten Days after Developer first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence which is described therein, or if it is delivered later than two Business Days following termination of partnering discussions, Developer shall be deemed to have waived (a) the right to collect any costs incurred prior to the date of delivery of the Request for Partnering (if applicable) or PCO Notice (if no Request for Partnering was submitted or if the PCO Notice was not timely submitted following termination of partnering discussions) and (b) the right to seek an extension of any deadline hereunder with respect to any delay in any Critical Path which accrued prior to the date of delivery of the PCO Notice. Furthermore, if the PCO Notice concerns any condition or material described in Section 7.5.1 or Section 14.10, Developer shall be deemed to have waived the right to collect any costs incurred in connection therewith if the TTA is not afforded the opportunity to inspect such material or condition before it is disturbed.

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

14.3.2.5 Delivery of Requests for Change Orders

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

14.3.2.6 Incomplete Change Orders

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

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

Developer shall furnish, when requested by the TTA, such further information and details as may be required to determine the facts or contentions involved. Developer agrees that it shall give the TTA access to any and all of Developer's books, records and other materials relating to the Development Work, and shall cause its Subcontractors to do the same, so that the TTA can investigate the basis for such proposed Change Order. Developer shall provide the TTA with a monthly update to all outstanding incomplete requests for Change Order, describing the status of all previously unfulfilled requirements and stating any changes in projections previously delivered to the TTA, time expenditures to date and time anticipated for completion of the activities for which the time extension is requested. The TTA may reject Developer's request at any point in the process. Once a complete request for Change Order is provided, the TTA's failure to respond thereto within 15 Business Days of receipt of the request shall be deemed a rejection of such request. Although the TTA

intends to review incomplete Change Orders for the purposes described in this Section 14.3.2.6, the TTA shall have no obligation to review the back-up associated with any request for Change Order until a complete Change Order is provided.

14.3.2.7 Subcontractor Claims

Prior to submission by Developer of any request for a Change Order which is based in whole or in part on any facts alleged in a submittal by any Subcontractor to Developer, Developer shall review all such Subcontractor claims and determine in good faith whether the claims are justified as to both entitlement and amount, and Developer's request for a Change Order shall include only those items which Developer has determined are so justified and which otherwise meet all requirements hereunder for Developer-requested Change Orders. Developer shall include with its request for Change Order a summary of its analysis of all Subcontractor claims components.

14.3.3 Submission of Request for Change Order

Developer shall initiate each request for a Change Order, after satisfaction of all conditions precedent set forth above, by submitting a Change Order form and supporting documentation to the TTA for its review and approval. If Developer submits a request for Change Order requesting a time extension, as permitted by Section 14.3, then Developer shall also provide an alternative Change Order form including a Recovery Schedule in accordance with Section 5.5.3. Change Orders may be prepared and submitted electronically in accordance with Section 2.7 of the Scope of Work.

14.3.4 Performance of Disputed Development Work

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

14.4 Contents of Change Orders

14.4.1 Form of Change Order

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

14.4.2 Contents of Change Order

Developer shall prepare a scope of work, cost estimate, delay analysis and other information as required by this Section 14.4.2 for each Change Order, other than Change Orders issued unilaterally by the TTA.

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

14.4.2.2 The cost estimate shall set out the estimated costs in such a way that a fair evaluation can be made. It shall include a breakdown for labor, materials, equipment, overhead (which includes all indirect costs) and profit, unless the TTA agrees otherwise. The estimate shall include costs allowable under Section 14.5.3, if any. If the work is to be performed by Subcontractors and if the work is sufficiently defined to obtain Subcontractor quotes, Developer shall obtain quotes (with breakdowns showing cost of labor, materials, equipment, overhead and profit) on the Subcontractor's stationery and shall include such quotes as back-up for Developer's estimate. No mark-up shall be allowed in excess of the amounts allowed under Sections 14.5 and 14.7. Developer shall identify all conditions with respect to prices or other aspects of the cost estimate, such as pricing contingent on firm orders being made by a certain date or the occurrence or non-occurrence of an event.

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

14.4.2.4 Developer shall provide such other supporting documentation as may be required by the TTA.

14.4.3 Justification

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

14.4.4 Developer Representation

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

14.4.5 Maintenance Changes

Each Change Order form shall be signed by the Maintenance Contractor as well as by Developer, and shall state whether a change order is also required under the Maintenance Agreement.

14.5 Limitations on Change Orders

14.5.1 Exclusion from Price Increase

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

14.5.2 Delay Damages and Acceleration Costs

14.5.2.1 No Acceleration Costs or other delay or disruption damages shall be compensable hereunder under any circumstances, except in the case of TTA-Caused Delays.

14.5.2.2 Before Developer may obtain any increase in the Development Price to compensate for additional or extended overhead, Acceleration Costs or other damages directly attributable to the TTA-Caused Delays, Developer shall be required to demonstrate to the TTA's satisfaction that:

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

(b) the change, occurrence, event or situation which is the subject of the request for Change Order has caused or will result in an identifiable

and measurable disruption of the Development Work which has or will impact a Critical Path item; and

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

In addition, as a condition to any Acceleration Costs or delay or disruption damages, Developer shall provide detailed documentation of such costs satisfactory to the TTA. Additional maintenance expenses shall be determined as specified in Section 14.5.3.4.

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

14.5.3 Limitation on Time Extensions

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

14.5.4 Development Work Performed Without Direction

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

14.5.5 Options

If the TTA exercises any option contained in the Proposal by the applicable date specified in Section 14.1.3, the TTA will not allow any time extension, Acceleration Costs or other delay damages in connection therewith.

14.6 Pricing of Change Orders

The TTA and Developer (on its own behalf and on behalf of its Subcontractors) shall endeavor to negotiate, in good faith, a reasonable cost for each Change Order, provided that unilateral Change Orders are not subject to negotiations. In general the price of a Change Order shall be negotiated in accordance with this Section 14.6 or shall be based on time and materials records pursuant to Section 14.7.

14.6.1 Contents

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

14.6.2 Added Work

When the Change Order adds work to Developer's scope, the increase in the Development Price shall be negotiated based on estimated costs of labor, material and equipment, or shall be based on actual costs in accordance with Section 14.7. For negotiated Change Orders, mark-ups for profit and overhead shall be consistent with Section 14.7, and risk associated with the work described in the Change Order shall be addressed through the assumptions contained therein regarding the scope of such work.

14.6.3 Deleted Work

When the Change Order deletes work from Developer's scope (including deletion of any work described in the Scope of Work that is found to be unnecessary by the TTA, in its sole discretion, and including any recharacterization of any Utility Adjustment Work as Early Adjustment Work), the amount of the reduction in the Development Price shall be based upon an estimate including a bill of material, a breakdown of labor and equipment costs and overhead and profit associated with the deleted work. When a deduction is involved, documented cancellation and restocking charges may be included in costs and subtracted from the price deduction. If the scope of the deleted work cannot be definitely determined, the amount of risk associated with such Development Work as of the Proposal Date shall be considered in determining the mark-up for the deduction.

14.6.4 Work Both Added and Deleted

When the Change Order includes both added and deleted Development Work, Developer shall prepare a statement of the cost of labor, material and equipment for both added and deleted work.

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

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

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

14.6.5 All-Inclusive Change Orders

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

14.7 Time and Materials Change Orders and Cost Data

The TTA may, at its discretion, issue a Time and Materials Change Order at any time. The Time and Materials Change Order shall instruct Developer to perform work as specified therein, indicating expressly the intention to allow compensation therefor, and setting forth the kind, character, and limits of the work in question insofar as they can be ascertained, the terms under which changes to the Development Price will be determined and the estimated total change in Development Price anticipated thereunder. Upon final determination of the allowable costs, the TTA shall issue a modified Change Order setting forth the final adjustment to the Development Price. The following costs and mark-ups (and no others) shall be used for calculating the change in the Development Price:

14.7.1 Labor Costs

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

(a) For construction-related labor, (1) the actual cost for direct labor; plus (2) the actual cost of workers' compensation and liability insurance required under this Agreement, health, welfare and pension benefits and Social Security deductions or

55% of the actual direct labor cost, whichever is less; plus (3) 25% of the total of the amounts set forth in clauses (1) and (2) for profit and overhead.

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

14.7.2 Material Costs

Material costs for Change Order work shall be the actual cost of all materials to be used in the performance of construction work including normal wastage allowance as per industry standards, less salvage value, plus 15% for profit and overhead. The material prices shall be supported by valid quotes and invoices from the suppliers. The cost shall include applicable sales taxes, freight and delivery charges and any allowable discounts.

14.7.3 Equipment

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

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

(b) The equipment rental rates shall be those tabulated in the most recent version of the *Rental Rate Blue Book* (published by Dataquest, Inc.; 1290 Ridder Park Drive; San Jose, California, 95131). The rental rates to be used shall be the published monthly rate divided by 150 to yield an hourly rate, which hourly rate shall be further adjusted by multiplying by the *Rental Rate Blue Book* adjustment rate for the year the equipment was manufactured and by a factor of 0.85 and adding to that product the *Rental Rate Blue Book* estimated hourly operating cost rate.

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

14.7.3.2 Costs for machinery, trucks, power tools or other similar equipment that are required for Change Order work rented from any commercial enterprises routinely offering equipment and tools for rent or lease to the public will be

allowed in an amount equal to the direct rental rate for the equipment without any additional mark-up or increase for overhead and profit.

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

14.7.4 Subcontracted Work

To the extent that any Change Order is intended to compensate Developer for the cost of work performed by Subcontractors, the Change Order shall provide for compensation equal to (1) the actual cost to Developer of such work (which shall be charged by the Subcontractor on a time and materials basis in accordance with this Section 14.7, unless otherwise approved in writing by the TTA), plus (2) 5% of such cost.

14.7.5 Work Performed by Utility Owners

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

14.7.6 Other Direct Costs

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

14.7.7 Items Included in Mark-Ups

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

14.7.8 Change Order Data

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

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

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

14.8 Hazardous Materials Management

14.8.1 Basis for Compensation

If compensation is payable to Developer pursuant to Section 7.5 with respect to Hazardous Materials Management, the amount of the Change Order shall either be a negotiated amount acceptable to the Parties, or an amount equal to 100% of the Reimbursable Hazardous Materials Costs for the work in question.

14.8.2 TTA Right to Inspect

Developer shall be deemed to have waived the right to collect from the TTA any and all costs incurred in connection with any Hazardous Materials Management if the TTA is not afforded the opportunity to inspect sites containing Hazardous Materials before any action is taken which would inhibit the TTA's ability to ascertain, based on a site inspection, the nature and extent of the Hazardous Materials.

14.8.3 Insurance Proceeds

If the cost of any Hazardous Materials Management is covered by the insurance described in Section 10, Developer shall be entitled to reimbursement of Reimbursable Hazardous Materials Costs from proceeds of insurance and self-insurance, up to the limits of the applicable policy, less any deductibles which shall be Developer's responsibility. To the extent that such proceeds are available, Developer shall not be entitled to payment hereunder on any other basis for such Hazardous Materials Management.

14.8.4 Reimbursement from Third Parties

To the extent that Developer incurs Hazardous Materials Management costs in connection with remediation of Hazardous Materials which are not eligible for a Change Order hereunder but which are eligible for reimbursement from a third party outside of the Developer Group, the TTA agrees to assign to Developer any causes of action held by the TTA against such third party for reimbursement of costs, subject to the TTA's prior written approval of any such action in each instance. Developer shall be responsible for identifying any potentially responsible parties. Unless the TTA otherwise informs Developer in writing, all costs associated with any action to recover Hazardous Materials Management costs from third parties will be borne by Developer. If Developer wishes to obtain such an assignment from the TTA, it shall deliver a notice requesting the same, and shall provide the TTA with a form of assignment acceptable to the TTA.

14.8.5 Time Extensions

If Developer encounters Hazardous Materials for which Developer is entitled to compensation, and Hazardous Materials Management of such Hazardous Materials results in delays to the Critical Path ("**Hazardous Materials Delay**"), then Developer shall bear 100% of the risk of such Hazardous Materials Delay up to an amount of 30 days per location and up to an aggregate amount of 120 days for all locations in each Segment. If a Hazardous Materials Delay exceeds 30 days in any location, then the risk of such Hazardous Materials Delay in excess of 30 days for that location shall be borne by the TTA. If aggregate Hazardous Materials Delays in any Segment exceed 120 days, then the risk of Hazardous Materials Delay in excess of 120 days for that Segment shall be borne by the TTA. If a Hazardous Materials Delay is concurrent with another delay which is Developer's responsibility hereunder, then such Hazardous Materials Delay shall be borne 100% by Developer. If a Hazardous Materials Delay at one location is concurrent with another Hazardous Materials Delay at another location, the 120-day period of Developer's responsibility for the delays shall run concurrently. The foregoing shall not preclude Developer from obtaining a time extension with respect to any Hazardous Material which qualifies as a Force Majeure Event. Notwithstanding anything to the contrary contained in this Section 14.8.5, if Developer is prohibited from working at a particular location on a Segment due to the discovery of Hazardous Materials for which Developer is entitled to a Change Order during the last 12 months prior to the Completion Deadline for such Segment, then Developer shall be entitled to an extension of the applicable Completion Deadline for any Critical Path delays resulting from such discovery of Hazardous Materials.

14.9 Differing Site Conditions

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

14.9.1.1 Developer shall be fully responsible for, and thus shall not receive a Change Order with respect to, the first \$5,000,000 in aggregate additional costs incurred directly attributable to changes in Developer's obligations relating to the Development Work resulting from the existence of Differing Site Conditions.

14.9.1.2 The TTA shall be fully responsible for any additional costs incurred in excess of \$5,000,000 directly attributable to changes in Developer's obligations relating to the Development Work resulting from the existence of Differing Site Conditions, and a Change Order shall be issued to compensate Developer for such additional costs.

14.9.2 During progress of the Development Work, if Differing Site Conditions are encountered, Developer shall immediately notify the TTA thereof telephonically or in person, to be followed immediately by written notification. Developer shall be responsible for determining the appropriate action to be undertaken, subject to concurrence by the TTA. In the event that any Governmental Approvals specify a procedure to be followed, Developer shall follow the procedure set forth in the Governmental Approvals. If the discovery of Differing Site Conditions necessitates a change in the design of the Project, such change shall be submitted to the TTA for concurrence in accordance with Section 3 of the Scope of Work.

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

14.10 Force Majeure Events

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

14.10.1 Notwithstanding the foregoing, Developer shall be fully responsible for, and thus shall not receive a Change Order with respect to, any delays of up to 120 Days per location or an aggregate amount of 360 days per Segment for all such delays, resulting from the need to work around locations impacted by the type of event described in clause (c) of the definition of "Force Majeure Event" (that is, the discovery of previously unknown archeological, paleontological or cultural resources on the Site). The TTA shall not be responsible for any Acceleration Costs or other costs attributable to any delays relating to such event or situation, other than any Acceleration Costs and other incremental costs directly attributable to the portion of the type of delay described above in excess of 120 Days per location or in excess of an aggregate amount of 360 days per Segment for all such delays; provided that, Developer shall be entitled to a Change Order only for delays to the Critical Path after expiration of such 120 day work-around period. If a delay resulting from the need to work around a previously unknown archeological, paleontological or cultural resource is concurrent with another delay which is Developer's responsibility hereunder, then such delay shall be borne 100% by Developer and shall not be counted towards the 360-day aggregate cap per Segment. If a delay resulting from the need to work around a previously unknown archeological, paleontological or cultural resource is concurrent with another delay resulting from the need to work around another previously unknown archeological, paleontological or

cultural resource, only one of the delays shall be applied to the 120-day period of Developer's responsibility or the 360-day aggregate cap per Segment. The foregoing shall not be deemed to preclude Developer from obtaining a Change Order with respect to any requirement that it perform mitigation measures relating to any such resources or materials which are not otherwise its responsibility under the terms of the Contract Documents.

14.10.2 Developer shall be fully responsible for, and thus shall not receive a Change Order with respect to, any delays of up to 45 Days per feature or an aggregate amount of 135 days for all such delays, resulting from the need to cooperate and coordinate with the TTA and to work around locations impacted by the type of event described in clause (j) of the definition of "Force Majeure Event" (that is, imposition of temporary no-work restrictions resulting from the discovery within the Site of any karst features requiring investigation under Section 4.3.5.2 of the Scope of Work). The TTA shall not be responsible for any Acceleration Costs or other costs attributable to any delays relating to such event or situation, other than any Acceleration Costs and other incremental costs directly attributable to the portion of the type of delay described above in excess of 45 Days per location or in excess of an aggregate amount of 135 Days for all such delays; provided that, Developer shall be entitled to a Change Order only for delays to the Critical Path after expiration of such 45 day work-around period. If a delay resulting from the need to work around a previously unknown karst feature is concurrent with another delay which is Developer's responsibility hereunder, then such delay shall be borne 100% by Developer and shall not be counted towards the 135-day aggregate cap. If a delay resulting from the need to work around a previously unknown karst feature is concurrent with another delay resulting from the need to work around another previously unknown karst feature, only one of the delays shall be applied to the 45-day period of Developer's responsibility or the 135-day aggregate cap. The foregoing shall not be deemed to preclude Developer from obtaining a Change Order entitling Developer to additional compensation and/or an extension of time for any event described in clause (d) of the definition of "Force Majeure Event" (that is, the discovery of any species listed as threatened or endangered under the federal or state endangered species act or similar Law), which shall be deemed to have occurred at the time of discovery of such species.

14.11 Eliminated Development Work

Deletion of any Development Work shall not invalidate this Agreement or the bonds required under Section 9.

14.12 Utility Adjustment Work

Developer agrees that (a) the Development Price (as it may be increased pursuant to this Section 14.12) covers all of the Utility Adjustment Work and payments which are Developer's responsibility pursuant to Section 5 of the Scope of Work and/or in this Section 14.12, (b) it is feasible to obtain and/or perform all necessary Utility Adjustments within the time deadlines of the Contract Documents, and (c) the Development Price includes contingencies deemed adequate by Developer to cover the possibility that the Reference Documents do not accurately identify all Utilities impacted

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

14.12.1 Inaccuracies in Existing Utility Information

Except as otherwise provided in Section 14.10 with regard to New Utilities, the parties' entitlement to Change Orders on account of inaccuracies in the Existing Utility Information shall be determined in accordance with this Section 14.12.1.

14.12.1.1 Developer shall be entitled to an increase in the Development Price in connection with certain increases in the cost of the Development Work due to Unidentified Utilities within the Schematic ROW. Such increase shall be determined on a facility-by-facility basis, and shall apply for a particular Unidentified Utility facility only if the Cost Differential for that facility is greater than \$50,000. The amount of the Development Price increase in any Change Order issued under this Section 14.12.1.1 for each such Unidentified Utility facility shall be equal to the Cost Differential for that facility, less \$50,000. Notwithstanding the foregoing, the following aggregate caps shall apply to the total amount of such \$50,000 "deductibles" that are Developer's responsibility: (a) Developer shall be responsible for no more than \$1,000,000 of such \$50,000 deductibles for Utility Adjustment Work authorized by issuance of NTP2, and (b) Developer shall be responsible for no more than \$750,000 of such \$50,000 deductibles for Utility Adjustment Work authorized by issuance of NTP4. In determining whether either of the foregoing caps has been reached, Adjustments of Unidentified Utilities with Cost Differentials of less than \$50,000 shall not be counted. If either (or both) of the foregoing aggregate caps is reached, then the amount of the Development Price increase in any Change Order thereafter issued under this Section 14.12.1.1 for Adjustment of any Unidentified Utility

with a Cost Differential in excess of \$50,000 authorized by the applicable notice shall be equal to the Cost Differential for that facility. In no event shall Developer be entitled to a Change Order for increased costs due to Adjustments for Unidentified Utilities with a Cost Differential of \$50,000 or less, regardless of whether either (or both) of the aggregate caps is reached.

14.12.1.2 Except as otherwise provided in Section 14.10 with regard to New Utilities, no time extension will be allowed on account of any delays attributable to any inaccuracy(ies) in the Existing Utility Information.

14.12.1.3 The TTA shall be entitled to a credit against the Development Price in connection with certain reductions in the cost of the Development Work due to certain differences between actual conditions within the Schematic ROW and the conditions shown in the Existing Utility Information, with respect to (a) Unidentified Utilities, and (b) any Utilities shown on the Existing Utility Information which do not actually exist (based on the results of Developer's investigations pursuant to Scope of Work Section 5.15.1). Such credit shall be determined on a facility-by-facility basis, and shall apply for a particular facility only if the Cost Differential for that facility is greater than \$50,000. The amount of the credit in any Change Order issued under this Section 14.12.1.3 for each such Utility facility shall be equal to the Cost Differential for that facility, less \$50,000.

14.12.1.4 All Cost Differential calculations submitted by Developer shall be supported by detailed cost proposals and supporting documentation (for all estimates used in such calculations) meeting the requirements of Section 14.6 of this Agreement. The TTA shall have the right to require that any or all of the information submitted by Developer in the EPDs be used in evaluating the cost proposals.

14.12.1.5 The \$50,000 threshold and deduction described in Sections 14.12.1.1 and 14.12.1.3 shall be applied separately to each Utility facility for all purposes under this Section 14.12.1.

14.12.1.6 Developer shall use its best efforts to minimize costs for which Developer is entitled to compensation pursuant to this Section 14.12.1. Generally, such efforts will require avoidance of an Unidentified Utility where feasible rather than its removal and/or reinstallation in a new location; however, Developer may, upon the TTA's prior approval, remove and/or reinstall an Unidentified Utility in a new location even if avoidance is feasible, if the burden imposed on Developer by such avoidance would be unreasonable in light of the benefits to the TTA and the Project which would result therefrom. The provisions of this Section 14.12.1.6 are in all cases subject to Developer's obligation to comply with all applicable requirements of the Contract Documents, including the Utility Accommodation Policy and the other requirements described in Scope of Work Section 5.5.

14.12.1.7 In case of any discrepancy between the information provided by the Utility Strip Maps and the information provided by the Utility Summary (which together constitute the Existing Utility Information), only the more accurate information shall be relevant for all purposes under this Section 14.12.1.

14.12.2 Utility Enhancements

Utility Enhancements shall be addressed as provided in this Section 14.12.2 and in Scope of Work Section 5.3.

14.12.2.1 If a Utility Owner requests that Developer design and/or construct a Betterment, then subject to Section 14.12.2.4, Developer shall use its best efforts to negotiate in good faith an agreement with the Utility Owner providing for Developer to perform such work at the Utility Owner's expense, with payments to be made directly by the Utility Owner to Developer. Any such agreement shall be set forth in the applicable Utility Adjustment Agreement. Any such Betterment shall be deemed added to the scope of the Development Work upon execution by the Utility Owner and Developer and approval by the TTA of a Utility Adjustment Agreement or Utility Adjustment Agreement Amendment identifying and providing for performance of such Betterment. Any change in the scope of the Development Work pursuant to this Section 14.12.2.1 shall not be treated as a TTA-Directed Change. Except as otherwise set forth in this Section 14.12.2 or in Scope of Work Section 5.3, all the terms and conditions of the Contract Documents which apply to the Utility Adjustment Work being performed by Developer shall apply to any Betterment added to the Development Work pursuant to this Section 14.12.2.1.

14.12.2.2 The Development Price shall not be increased on account of any Betterment added to the Development Work. Instead, Developer shall have the right to collect payment for such work directly from the Utility Owner, subject to the provisions of the applicable Utility Adjustment Agreement. The amount of compensation payable by the Utility Owner to Developer for a Betterment shall be determined pursuant to the process set forth in the applicable Utility Adjustment Agreement form (see Appendix C-7b of Exhibit C). Developer shall submit to the TTA a copy of each invoice delivered to a Utility Owner pursuant to this Section 14.12.2.2, concurrently with its delivery to the Utility Owner.

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

14.12.2.4 Developer is fully responsible for coordinating its efforts with Utility Owners and for addressing requests by Utility Owners that Developer design and/or construct Utility Enhancements. Under no circumstances shall Developer proceed with any Utility Enhancement which is incompatible with the Project or the Ultimate Design or which cannot be performed within the other constraints of applicable Law, the Governmental Approvals and the Contract Documents, including the

Completion Deadlines. Under no circumstances will Developer be entitled to any Development Price increase or time extension hereunder as the result of any Utility Enhancement, whether performed by Developer either outside of this Agreement or as part of the Development Work, or by the Utility Owner or its contractors. Developer shall promptly notify the TTA of any requests by Utility Owners which Developer considers to be Betterments, and shall keep the TTA informed as to the status of negotiations with Utility Owners concerning such requests. Developer shall provide the TTA with such information, analyses, and certificates as may be requested by the TTA in order to determine compliance with this Section 14.12.2.

14.12.3 Utility Agreements

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

14.12.3.2 Any Utility MOU's entered into by the TTA with Utility Owners are not Contract Documents, although Developer has certain obligations with respect to the Original Utility MOU's as described in Scope of Work Section 5.13. Developer shall not be entitled to any increase in the Development Price or to any time extension on account of the terms of any Original Utility MOU or of any Additional Utility MOU.

14.12.4 Early Adjustment Work

14.12.4.1 Developer shall be entitled to a time extension in the event that any Early Adjustment is not completed on or before the applicable deadline stated in Scope of Work Section 5.7.5, to the extent that such late completion delays the duration of a Critical Path thereby affecting Developer's ability to meet the applicable Completion Deadline(s). Developer's right to a time extension is subject to the limitations and restrictions set forth elsewhere in this Section 14, including the requirement to provide evidence satisfactory to the TTA that all appropriate measures were taken to mitigate the delay.

14.12.4.2 If any Early Adjustment is not completed on or before the applicable deadline stated in Scope of Work Section 5.7.5, then the TTA may, in its sole discretion, elect to add all or part of the remaining Early Adjustment Work for the subject Utility to the Development Work. Upon the TTA's issuance of a Directive Letter or Change Order providing for such addition, Developer shall have the same responsibilities with respect to such remaining Early Adjustment Work as those which are assigned to Developer for other Adjustments (including entering into a Utility Adjustment Agreement with the Utility Owner). The addition of any Early Adjustment Work to the scope of the Development Work shall be treated as a TTA-Directed Change.

14.12.5 Delays by Utility Owners

14.12.5.1 Developer shall use best efforts to obtain the cooperation of each Utility Owner as necessary for the Project. Developer shall notify the TTA immediately if (a) Developer reasonably believes that any Utility Owner would not undertake or permit a Utility Adjustment in a manner consistent with the timely completion of the Project, (b) Developer becomes aware that a Utility Owner is not cooperating in a timely manner to provide the needed work or approvals, or (c) any other dispute arises between Developer and any Utility Owner with respect to the Project, despite Developer's diligent efforts to obtain such Utility Owner's cooperation or otherwise resolve such dispute. Such notice may include a request that the TTA assist in resolving the dispute or in otherwise obtaining the Utility Owner's timely cooperation. Developer shall provide the TTA with such information regarding the Utility Owner's failure to cooperate and the effect of any resulting delay on the Project Schedule as is requested by the TTA. The TTA's obligation to assist hereunder is subject to Developer's provision of evidence reasonably satisfactory to the TTA that the Adjustment is necessary, the time for completion of the Adjustment in the Project Schedule was, in its inception, a reasonable amount of time for completion of such Development Work, and that Developer has made best efforts to obtain the Utility Owner's cooperation but has not been able to obtain such cooperation. Following the receipt of such evidence by the TTA, the TTA shall take reasonable steps to obtain the cooperation of the Utility Owner or resolve the dispute; however, the TTA shall have no obligation to exercise any of its rights or remedies under Texas Transportation Code Section 361.234 or to prosecute eminent domain or other legal proceedings, unless the TTA elects to do so in its sole discretion. After delivery of any notice or request for assistance pursuant to this Section 14.12.5.1, Developer shall continue to use best efforts to pursue the Utility Owner's cooperation. Any assistance provided by the TTA shall not relieve Developer of its sole and primary responsibility for the satisfactory compliance with its obligations and timely completion of all Utility Adjustment Work, except as otherwise expressly set forth in this Section 14.12.5.

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

14.12.5.3 Developer shall bear 100% of the risk of Critical Path delays caused by a Utility Owner's failure to timely comply with the requirements of a Utility Adjustment Agreement which has been executed by Developer and such Utility Owner. The term "**Utility Owner Delay**" shall mean a delay to the Critical Path which is directly attributable to a Utility Owner's failure to cooperate with Developer with respect to the Adjustment of its Utility, within the time period reasonably scheduled for performance of such work by Developer, where Developer and such Utility Owner have not yet executed a Utility Agreement addressing such Adjustment. Developer shall bear 100% of the risk of each Utility Owner Delay during the 120-day period following the TTA's receipt of evidence required by Section 14.12.5.1 that is reasonably satisfactory to the TTA. The risk of any Utility Owner Delay after such 120-day period shall be borne equally by each party, i.e. any affected Completion Deadline shall be extended by one day for every two full days of delay to the Critical Path (attributable to delays occurring after expiration of the 120-day period) that is directly attributable to the Utility Owner Delay. If a Utility Owner Delay is concurrent with another delay which is Developer's responsibility hereunder, then such Utility Owner Delay shall be borne 100% by Developer, except as follows: If a Utility Owner Delay is concurrent with another Utility Owner Delay by the same Utility Owner or by another Utility Owner, only one of the delays shall be counted. If a Utility Owner Delay is concurrent with a Hazardous Materials Delay, only the Utility Owner Delay shall be counted.

14.12.5.4 No Change Order for delay to the Critical Path shall be allowable for purposes of this Section 14.12.5 unless all of the following criteria are met:

(a) the general requirements and conditions for Change Orders set forth in this Section 14 have been met,

(b) Developer has provided the evidence required by Section 14.12.5.1 and such evidence is reasonably satisfactory to the TTA that Developer has made best efforts to obtain the Utility Owner's cooperation but has been unable to obtain such cooperation,

(c) if applicable, Developer has provided a reasonable Adjustment plan to the Utility Owner,

(d) Developer or the Utility Owner has obtained, or is in a position to timely obtain, all applicable approvals, authorizations, certifications, consents, exemptions, filings, leases, licenses, permits, registrations, opinions and/or rulings required by or with any Person in order to design and construct such Adjustment, and

(e) there exists no other circumstance which would delay the affected Adjustment even if the Utility Owner were cooperative.

14.12.5.5 Except as set forth in Section 14.12.5.3 with respect to certain Utility Owner Delays, Developer shall not be entitled to extension of any Completion Deadline on account of any delays caused by a Utility Owner. Developer shall not be entitled to any increase of the Development Price or reimbursement of any

additional costs which it may incur as a result of any delays caused by a Utility Owner, regardless of whether Developer is entitled to an extension of any Completion Deadlines on account of such delays pursuant to Section 14.12.5.3.

14.12.6 Amounts Owed by Utility Owners to Developer

If for any reason Developer is unable to collect any amounts owed to Developer by a Utility Owner (whether for a Utility Enhancement or otherwise): (a) the TTA shall have no liability for such amounts; (b) Developer shall have no right to collect such amounts from the TTA or to offset such amounts against amounts otherwise owing from Developer to the TTA; and (c) Developer shall have no right to stop work or to exercise any other remedies against the TTA on account of such Utility Owner's failure to pay Developer.

14.12.7 Additional Restrictions on Change Orders

In addition to all of the other requirements and limitations contained in this Section 14.12 and in the other provisions of this Section 14, the entitlement of Developer to any Change Order under this Section 14.12 shall be subject to the restrictions and limitations set forth in this Section 14.12.7.

14.12.7.1 As part of the Development Work, Developer is responsible for causing all Utility Adjustment Work to occur, for reimbursing the Utility Owners for their costs of performing or furnishing Utility Adjustment Work, and for scheduling all Utility Adjustment Work (whether performed by Developer or the affected Utility Owner) so as to meet the Completion Deadlines and the Acceptance Deadlines herein. Accordingly, if a Utility Owner performs or furnishes Utility Adjustment Work that was initially anticipated to be performed or furnished by Developer, or if Developer performs or furnishes Utility Adjustment Work that was initially anticipated to be performed or furnished by the Utility Owner (including the circumstances described in Scope of Work Section 5.7.2.4), there shall be no resulting time extension and no resulting change in the Development Price (either up or down). The foregoing shall not affect the TTA's right to any credit that may be owing under Section 14.6.

14.12.7.2 Except as otherwise set forth in Section 14.12.4 with respect to any Early Adjustments and Section 14.12.5 with respect to Utility Owner Delays, Developer assumes all risk of, and shall not be entitled to receive any time extension or increase in the Development Price on account of, any delays caused by any Utility Owner. Developer shall not be entitled to receive any time extension or increase in the Development Price on account of any failure by a Utility Owner to comply with the terms and conditions of any Utility MOU, except to the extent such failure to comply also constitutes a Utility Owner Delay. Any action or inaction by the TTA as described in Section 14.12.5.1 shall have no bearing on the restriction set forth in this Section 14.12.7.2.

14.12.7.3 Developer shall not be entitled to a Change Order for any costs or delays which it may incur that are attributable to (a) any errors, omissions, inaccuracies, inconsistencies or other defects in designs furnished by any Utility Owner,

including any failure of such designs to comply with the requirements of Scope of Work Section 5.17.1.1, and/or (b) any defect in construction performed by any Utility Owner or other failure of such construction to comply with the requirements of Scope of Work Section 5.17.2.1.

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

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

14.12.7.6 Developer shall not be entitled to any increase in the Development Price for any costs of coordinating with Utility Owners (including with respect to Unidentified Utilities).

14.12.7.7 Any information with respect to Utilities provided in the Existing Utility Information or in any other materials included in the Reference Documents is for Developer's reference only, has not been verified, and shall not be relied upon by Developer, except as expressly set forth in Section 14.12.1 and except as otherwise provided in Section 14.10 with respect to New Utilities. Accordingly, Developer shall not be entitled to any increase in the Development Price or to any time extension on account of any inaccuracies in the Reference Documents with respect to any Identified Utilities. Further, Developer shall not be entitled to any time extension on account of inaccuracies in the Reference Documents with respect to any Unidentified Utilities, and shall not be entitled to any increase in the Development Price on account of such inaccuracies except to the extent that they are reflected in the calculation of the Cost Differential for Unidentified Utilities as described in Exhibit A to this Agreement (and subject to the thresholds and any other limitations set forth in Section 14.12.1). Without limiting the generality of the foregoing, except as set forth in the preceding sentence, Developer shall not be entitled to any increase in the Development Price and/or time extension as a result of any of the following:

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

(b) any difference in the cost to Adjust a Utility from that anticipated by Developer;

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

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

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

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

14.13 Restrictions and Limitations on Change Orders

Developer acknowledges and agrees that the TTA shall bear responsibility only for limited matters involving delays and costs and the consequences resulting therefrom as set forth in this Section 14. Developer shall bear responsibility for all other matters, including the following:

(a) errors, omissions, inaccuracies, inconsistencies or other defects in the RFP Documents and any requests for Change Orders;

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

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

(d) action or inaction of other contractors (except as specified in Section 27.4), Subcontractors or sub-subcontractors (including failure to organize and integrate their work with the Development Work);

(e) subsurface moisture content and Site conditions (including geological, soil conditions, ground elevations and/or topography differing from those indicated in the RFP Documents), except to the extent that the TTA has agreed in this Section 14 to be responsible for any such conditions which constitute Differing Site Conditions;

(f) untimely delivery of equipment or material, or unavailability or defectiveness or increases in costs of material, equipment or products specified by the Contract Documents, except to the extent resulting from a Force Majeure Event;

(g) all costs covered by insurance proceeds received by or on behalf of Developer;

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

(i) failure by any member of the Developer Group to comply with the requirements of the Contract Documents, the Governmental Approvals and/or applicable Law;

(j) any delay not on a Critical Path;

- (k) delays or costs arising out of, related to or caused by Adjacent Work;
- (l) delays in issuance of any Governmental Approval by any entity with jurisdiction over the subject matter of such Governmental Approval that is required to be obtained by Developer, except to the extent resulting from a Force Majeure Event;
- (m) delays caused by untimely provision of access to Final ROW, except to the extent the TTA has agreed in this Section 14 to be responsible for any such delays which constitute TTA-Caused Delays;
- (n) delays from any other situations (other than Force Majeure Events) which, while not within one of the categories delineated above, were or should have been anticipated by Developer because such situations are referred to elsewhere in this Agreement or arise out of the nature of the Development Work; and
- (o) all events beyond the control of the TTA for which the TTA has not expressly agreed to assume liability hereunder.

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

14.14 Disputes

The failure of the TTA and Developer to agree to any Change Order under this Section 14 shall be a dispute to be resolved pursuant to Section 25 of this Agreement. Except as otherwise specified in the Change Order, execution of a Change Order by the Parties shall be deemed accord and satisfaction of all claims by Developer of any nature arising from or relating to the Development Work covered by the Change Order.

14.15 No-Cost Changes

Changes in the Development Work which have no net cost effect on the Development Price may be approved in writing by the TTA as a Deviation, and in such event shall not require a Change Order.

14.16 No Release or Waiver

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

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

15. SUSPENSION OF ALL OR PART OF THE WORK

15.1 Suspension for Convenience

The TTA may order Developer in writing to suspend, delay, or interrupt all or any part of the Development Work for a period of time not to exceed 24 hours, as the TTA may determine to be appropriate for the convenience of the TTA. Any suspension for convenience in excess of 24 hours which results in a delay to the Critical Path will be considered a TTA-Directed Change.

15.2 Suspension for Other Reasons, Including Compliance with Environmental Approvals

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

15.3 Compensation and Time Extensions for Suspensions

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

16. TERMINATION FOR CONVENIENCE

16.1 Developer's Right to Terminate for Delay in Project Financing

16.1.1 Subject to Section 13.2, Developer shall have the right to unilaterally terminate its obligations under this Agreement if NTP2 has not been issued by the TTA on or before 635 Days after the Proposal Date, due to no fault of any member of the Developer Group.

16.1.2 Developer shall have no right to unilaterally terminate any Contract Documents after the issuance of NTP2, including in the case of material default by the TTA or delay in satisfaction of conditions precedent to commencing construction, except as set forth in Section 17.4.

16.2 TTA's Right to Terminate for Convenience

In addition to the TTA's rights under Section 16.1, the TTA may, in its sole discretion, terminate Developer's rights and obligations under the Contract Documents at any time subject to the provisions of this Section 16.

Developer acknowledges and agrees that the TTA has no obligation to issue an NTP hereunder, and further agrees that unless and until NTP1 is issued, the TTA shall have no liability to Developer hereunder, and unless and until the NTP for a particular Segment is issued, the TTA's liability hereunder shall be limited to payment owing hereunder for Development Work under NTPs actually issued.

16.3 Notice of Termination

The TTA shall notify Developer of its decision to terminate for convenience by delivering to Developer a written notice of termination ("**Notice of Termination**") specifying the extent of termination and its effective date. Termination (or partial termination) of this Agreement shall not relieve or release any Surety or Guarantor of its obligation for any claims arising out of the Development Work performed as of the effective date of the termination (or thereafter in the case of a partial termination).

16.4 Developer's Responsibilities After Receipt of Notice of Termination

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

16.4.1 Stop Development Work as specified in the notice;

16.4.2 Place no further Subcontracts or Utility Adjustment Agreements without the consent of the TTA;

16.4.3 Terminate all Subcontracts and Utility Adjustment Agreements to the extent they relate to the Development Work terminated except to the extent that

continuation of the Subcontract or Utility Adjustment Agreement is necessary in order to mitigate damages;

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

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

16.4.6 Assign to the TTA or its designee, in the manner, at the times, and to the extent directed by the TTA, all of Developer's right, title, and interest in any Utility Adjustment Agreements which relate to the terminated Development Work but which the TTA has directed Developer not to terminate;

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

16.4.8 Complete performance in accordance with the Contract Documents of all Development Work not terminated;

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

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

16.5 Inventory

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

16.6 Settlement Proposal

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

16.7 Amount of Termination Settlement

Subject to the provisions of Section 16.6, Developer and the TTA may agree upon the amount to be paid to Developer by reason of the total or partial termination of Development Work pursuant to this Section 16. Such negotiated settlement may include a reasonable allowance for profit solely on Development Work which has been completed and accepted by the TTA as of the termination date. Such agreed amount, exclusive of settlement costs, shall not exceed the Development Price less the amount of payments previously made to Developer and less the portions of the Development Price related to Development Work not terminated; provided, however, that if a termination occurs prior to issuance by the TTA of NTP2, the amount payable to Developer shall not exceed the amount specified in Section 13.2.1. Upon determination of the settlement amount, Developer will be paid the agreed amount and this Agreement will be amended accordingly to implement the partial or total termination. The TTA's execution and delivery of any settlement agreement shall not affect any of its rights under the Contract Documents with respect to completed Development Work, relieve Developer from its obligations with respect thereto, including Warranties, or affect the TTA's rights under the Performance Bonds and/or the Payment Bonds.

16.8 No Agreement as to Amount of Claim

If Developer and the TTA fail to agree, as provided in Section 16.7, upon the amount to be paid to Developer by reason of the termination of Development Work pursuant to this Section 16, the amount payable shall be determined pursuant to the procedures set forth in Section 25.

16.9 Reduction in Amount of Claim

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

16.10 Preservation of Records

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

16.11 TTA's Unilateral Right to Issue NTPs

16.11.1 Notwithstanding the foregoing, Developer acknowledges and agrees that the TTA has no obligation to issue an NTP hereunder, and further agrees that unless and until NTP1 is issued, the TTA shall have no liability to Developer hereunder, and unless and until the NTP for a portion of the Development Work is issued, the TTA's liability hereunder shall be limited to payment owing hereunder for Development Work under NTPs actually issued.

16.11.2 The TTA shall have sole discretion to decide whether to issue (or not issue) any NTP hereunder. Notwithstanding the foregoing, the following deadlines shall apply:

(a) if the TTA fails to issue NTP3 by 730 Days after issuance of NTP2, the TTA shall no longer have the right to issue any further notices to proceed unilaterally.

(b) if the TTA fails to issue NTP4 by 1095 Days after issuance of NTP2, the TTA shall no longer have the right to issue NTP4 unilaterally.

(c) if the TTA fails to issue NTP5 by 180 Days after issuance of NTP2, the TTA shall no longer have the right to issue NTP5 unilaterally.

The foregoing shall not preclude the Parties from mutually agreeing to extend the time for issuance of any notices to proceed hereunder.

17. DEFAULT

17.1 Default of Developer

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

(a) Developer fails either (i) to immediately begin any portion of the Development Work under the Contract Documents following issuance of an NTP therefor, or (ii) to prosecute the Development Work in accordance with the Project Schedule; or

(b) Developer fails to perform the Development Work with sufficient resources to assure Substantial Completion of any Segment by the Completion Deadline for such Segment and Final Acceptance of any Segment by the Acceptance Deadline for such Segment (i.e. Developer fails to provide and thereafter meet a Recovery Schedule pursuant to Section 5.5); or

(c) Developer fails to perform and complete the Development Work in accordance with the Contract Documents, the Governmental Approvals and applicable Law, or refuses to repair, remove and replace defective or rejected materials, Nonconforming Work or Development Work deemed unacceptable by the TTA; or

(d) Developer suspends, ceases, stops or abandons the Development Work or fails to continuously and diligently prosecute the Development Work, excluding any work stoppage (i) due to termination by the TTA, (ii) due to and during the continuance of a Force Majeure Event or suspension by the TTA pursuant to Section 15.1; or (iii) due to and during the continuance of any suspension of work under Section 17.4.

(e) Developer fails to resume performance of Development Work which has been suspended or stopped, within a reasonable time after receipt of notice from the TTA to do so or after cessation of the event preventing performance; or

(f) Developer fails to maintain the insurance required under Section 10 or fails to provide the NTP1 or NTP2 Performance Bond, or the NTP1 or NTP2 Payment Bond; or

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

(h) Developer assigns or transfers the Agreement or any right or interest herein, except as expressly permitted hereunder; or

(i) Developer fails to discharge or obtain a stay within 10 days of any final judgment(s) or order for the payment of money against it in excess of \$100,000

in the aggregate arising out of the prosecution of the Development Work; provided, however, that the posting of a bond in the amount of 125% of such judgment or order shall be deemed an effective stay; or

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

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

(l) Developer or any Guarantor is a party to fraud; or

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

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

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

(p) Developer fails to submit to the TTA a TTA-approved Project Schedule as required under the Contract Documents.

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

17.2 Remedies

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

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

(b) If requested by the TTA, Developer shall withdraw from the Final ROW and shall remove such materials, equipment, tools and instruments used by, and any debris or waste materials generated by, any member of the Developer Group in the performance of the Development Work as the TTA may direct; and/or

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

(d) Developer shall assign to the TTA the Subcontracts requested by the TTA and Developer shall terminate, at its sole cost, those Subcontracts not assigned to the TTA; and/or

(e) The TTA may deduct from any amounts payable by the TTA to Developer such amounts payable by Developer to the TTA, including Liquidated Damages or other damages payable to the TTA under the Contract Documents.

17.2.2 If an Event of Default shall occur, then the TTA shall have the following rights without further notice and without waiving or releasing Developer from any obligations:

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

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

(c) If the TTA exercises any right to perform any obligations of Developer, in the exercise of such right it may, but is not obligated to, among other things: (i) perform or attempt to perform, or caused to be performed, such work; (ii) spend such sums as the TTA deems necessary and reasonable to employ and pay such architects, engineers, consultants and contractors and obtain materials and equipment as may be required for the purpose of completing such work; (iii) execute all applications, certificates and other documents as may be required for completing the work; (iv) modify or terminate any contractual arrangements; (v) take any and all other actions which it may in its sole and absolute discretion consider necessary to complete the work; and (vi) prosecute and defend any action or proceeding incident to the Development Work.

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

17.2.3 The rights and remedies of the TTA hereunder are in addition to any other rights and remedies provided by law or equity or provided under this Agreement or the NTP1 or NTP2 Performance Bonds, or NTP1 or NTP2 Payment Bonds, or any guarantees hereunder, and the exercise or beginning of the exercise by the TTA of any

one or more of any of such rights or remedies shall not preclude the simultaneous or later exercise by the TTA of any or all other such rights or remedies.

17.2.4 Developer and Surety shall not be relieved of liability for continuing Liquidated Damages on account of a breach or default by Developer hereunder or by the TTA's declaration of an Event of Default, or by actions taken by the TTA under this Section 17.2

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

17.3 Failure to Comply Caused by Delay Event

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

17.4 Right to Stop Work for Failure by the TTA to Make Undisputed Payment

In the event that Developer fails to receive a payment in the amount approved under Section 13.3.7 on the date specified for payment in Section 13.3.7, Developer shall promptly notify the TTA in writing. Developer shall have the right to suspend the Development Work if payment is not made within five Business Days after delivery of the notice of nonpayment, without limitation to any other recourse of the Developer.

Any such suspension by Developer based on a failure of the TTA to make payment shall be considered a TTA-Caused Delay entitling Developer to a Change Order hereunder. Developer shall not have the right to terminate the Agreement for default in the event of the TTA's failure to make payments owing hereunder, but Developer shall have the right to declare a termination for convenience under Section 16 if such suspension for nonpayment continues for more than 365 days.

18. DAMAGES

Developer understands and agrees that if Developer fails to complete the Development Work in accordance with the Contract Documents, the TTA will suffer substantial Losses. Developer agrees that it shall be liable for all such Losses. Developer and the TTA have agreed to require payment of Liquidated Damages with respect to certain types of Losses. Developer acknowledges and agrees that the Liquidated Damages are intended to compensate the TTA solely for Developer's failure to meet the deadlines set forth in Section 5.2 and shall not excuse Developer from liability from any other breach of requirements of the Contract Documents, including any failure of the Development Work to conform to applicable requirements. Developer shall not be liable for actual damages in addition to the Liquidated Damages for Developer's failure to meet the deadlines set forth in Section 5.2.

18.1 Liquidated Damages

Developer acknowledges and agrees that because of the unique nature of the Project, the fact that it is an essential part of the Central Texas highway system, and the fact that inconvenience to the traveling public will be one of the significant impacts of any failure by Developer to achieve, for each Segment, Substantial Completion by the Completion Deadline and Final Acceptance by the Acceptance Deadline, it is impracticable and extremely difficult to ascertain and determine the actual Losses which would accrue to the TTA and the public if Developer fails to achieve Substantial Completion by the Completion Deadline and Final Acceptance by the Acceptance Deadline for each Segment. Therefore, Developer shall pay the TTA a liquidated amount (the "**Liquidated Damages**") as deemed compensation to the TTA for such Losses, in the following amounts:

- (a) \$50,000 for each Day after the Segment 1 Completion Deadline and through the date of Substantial Completion for Segment 1, but not to exceed 365 Days;
- (b) \$35,000 for each Day after the Segment 2 Completion Deadline and through the date of Substantial Completion for Segment 2, but not to exceed 365 Days;
- (c) \$35,000 for each Day after the Segment 3 Completion Deadline and through the date of Substantial Completion for Segment 3, but not to exceed 365 Days;
- (d) \$35,000 for each Day after the Segment 4 Completion Deadline and through the date of Substantial Completion for Segment 4, but not to exceed 365 Days;
- (e) \$25,000 for each Day after the Segment 6 Completion Deadline and through the date of Substantial Completion for Segment 6, but not to exceed 365 Days; and
- (f) \$8,000 per Day for each Day after the Acceptance Deadline and through the date of Final Acceptance for each Segment.

Developer understands and agrees that any Liquidated Damages payable in accordance with this Section 18.1 are in the nature of liquidated damages and not a penalty and that such sums are reasonable under the circumstances existing as of the Effective Date. Developer further acknowledges and agrees that Liquidated Damages may be owing as the result of a Delay Event, even though no Event of Default has occurred or been declared.

18.2 Payment Terms/Offset; Reduction; Waiver

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

18.2.2 Permitting or requiring Developer to continue and finish the Development Work or any part thereof after the Completion Deadline or Acceptance Deadline for any Segment shall not act as a waiver of the TTA's right to receive Liquidated Damages hereunder or any rights or remedies otherwise available to the TTA.

18.3 Limitation of Developer's Liability

18.3.1 Developer's liability to the TTA for damages and Losses resulting from breach of this Agreement, whether in contract, negligence or other tort, or any other theory of law, but excluding gross negligence or willful misconduct on the part of the Developer, shall be limited to the sum of (a) all those costs reasonably incurred by the TTA or any party acting on the TTA's behalf in completing or correcting the Development Work or having the Development Work completed or corrected by another Person, plus (b) the amount of \$100,000,000 (which sum shall specifically include any Liquidated Damages paid pursuant to this Section 18 and Section 19.1, as well as any payments made to or for the benefit of the Indemnified Parties pursuant to Section 23).

18.3.2 A separate cap in the amount of \$1,000,000 shall apply for each Segment with respect to Developer's liability to the TTA for consequential damages (defined as remote, speculative, or incidental damages which flow naturally and inevitably from a breach, such as toll revenue losses, loss of use, cost of capital, debt service, loss of profit on related contracts, claims of taxpayers or other indirect damage within the contemplation of the parties) arising prior to Final Acceptance of the Segment due to breach of the Agreement by Developer (whether such claim arises in contract, negligence or other tort, or any other theory of law), provided that said cap shall not limit liability for (a) damages to the extent covered by insurance, (b) increased costs of financing under Section 17.2.2, or (c) Liquidated Damages owing hereunder. Furthermore, with respect to any Segment, under no circumstances will either party be entitled to consequential damages arising out of breach of the Agreement by the other party after Final Acceptance of such Segment (whether such claim arises in contract,

negligence or other tort, or any other theory of law), except to the extent covered by insurance; provided that this limitation shall not affect the rights and remedies of the parties expressly set forth in the Contract Documents, such as the right to collect Liquidated Damages and the right to indemnity.

18.4 Failure to Complete NTP3 Work Timely

Developer acknowledges and agrees that no Liquidated Damages will be assessed for failure to complete and obtain the TTA's acceptance of the NTP3 Work by the Completion Deadline set forth in Section 5.2.1.5. Damages payable by Developer to the TTA for any failure to complete the NTP3 Work on time will be determined in accordance with applicable Law.

19. LABOR AND EMPLOYMENT REQUIREMENTS

19.1 Key Personnel; Qualifications of Employees

19.1.1 The Contract Documents identify certain job categories of Key Personnel for the Project. Developer shall not change, or permit any change in, any Key Personnel without the prior written consent of the TTA in accordance with Section 2.1.2.2 of the Scope of Work.

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

19.1.3 Developer shall designate in writing who shall have onsite field and office authority to represent and act for Developer. Said authorized representative shall be present at the jobsite at all times while Development Work is actually in progress. While any night work or shift work is to be performed by Developer, a superintendent shall be at the jobsite at all times. Developer shall provide phone and pager numbers for all Key Personnel. The TTA requires the ability to contact these key individuals 24 hours per Day, seven Days per week.

19.1.4 Developer acknowledges and agrees that the award of this Agreement by the TTA to Developer was based, in large part, on the qualifications and experience of the personnel listed in the Proposal and Developer's commitment that such individuals would be available to undertake and perform the Development Work. Developer represents, warrants and covenants that such individuals are available for and will fulfill the roles identified for them in the Proposal in connection with the Development Work. Unless otherwise agreed to by the TTA in writing, individuals filling Key Personnel roles shall devote 100% of their time to the prosecution and performance of the Development Work. If the individuals filling the Category A Key Personnel roles are not available for the Development Work and do not dedicate 100% of their time to the prosecution and performance of the Development Work, Developer acknowledges that the TTA, the Development Work and the Project will suffer significant and

substantial Losses and that it is impracticable and extremely difficult to ascertain and determine the actual Losses which would accrue to the TTA in such event. Therefore, if such Category A Key Personnel are not available or do not dedicate 100% of their time to the prosecution and performance of the Development Work, Developer agrees to pay the TTA a liquidated amount as follows as deemed compensation to the TTA for such Losses:

POSITION	LIQUIDATED DAMAGES AMOUNT
Project manager	\$500,000
Deputy project managers	\$100,000
All other Category A positions	\$50,000

Developer understands and agrees that any damages payable in accordance with this Section 19.1 are in the nature of liquidated damages and not a penalty and that such sums are reasonable under the circumstances existing as of the Effective Date. The TTA shall have the right to deduct any amount owed by Developer to the TTA hereunder from any amounts owed by the TTA to Developer, including any Retainage which may be payable by the TTA to Developer. Notwithstanding the foregoing, Developer shall not be liable for liquidated damages under this Section 19.1 if (i) Developer removes or replaces such personnel at the direction of the TTA; (ii) such individual is unavailable due to death, retirement, injury or no longer being employed by the applicable member of the Development Group (provided that moving to an affiliated company shall not be considered grounds for avoiding liquidated damages), or (iii) such individual is unavailable due to the TTA's failure to issue NTP2 within 270 days of the Proposal Date; provided, however, in each such case, Developer shall promptly propose to the TTA a replacement for such personnel, which individual shall be subject to the TTA's review and written consent. In the event NTP2 has not been issued within 270 days after the Proposal Date, Developer shall have 30 days after issuance of NTP2 to identify any change in Category A Key Personnel without incurring any liquidated damages.

19.1.5 Developer acknowledges and agrees that the Category A Key Personnel positions are of critical importance to the TTA and the Project. In addition to the approval rights of the TTA set forth in Section 19.1.1 and the liquidated damages set forth in Section 19.1.4, if an individual in a Category A Key Personnel position leaves that position for a reason other than as set forth in clauses (i)-(iii) of Section 19.1.4, the TTA shall have the unilateral right to terminate this Agreement without further liability to Developer, except for payment for such Development Work that has been completed and accepted as of the date of termination, unless Developer provides the TTA a replacement acceptable to the TTA within 30 Days after the earlier of (i) the date on which such individual has left his/her position; or (ii) Developer or the TTA becomes aware that such individual intends to leave his/her position. In connection with a termination under this Section 19.1.5, Developer shall not be entitled to any payment of profit, overhead or any settlement costs under Section 16, but shall only be entitled to the payment of Developer's actual costs incurred and not previously paid for by the TTA

in connection with Development Work which has been completed and accepted as of the termination date.

19.2 Responsibility for Employees and Subcontractors

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

19.3 Subcontracts

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

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

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

19.3.4 The following requirements shall apply to Subcontracts:

(a) Developer shall, prior to soliciting any bids for performance of work or labor or rendering of services in or about the design or construction of the Project or for special fabrication and installation of a portion of the work for the Project, submit to the TTA for its review and approval a procedure for the conduct of the bidding and approval process applicable to Major Subcontracts. Such procedure shall include times for each step of the process and shall provide that award of any Major Subcontract will go to the lowest responsive bid by a responsible bidder. Developer may use procedures set forth in the TxDOT Standards or may submit alternative competitive bid procedures to the TTA for approval. Developer shall not enter into any Major Subcontracts except in accordance with the foregoing procedure. Once Developer has entered into any Major Subcontract, Developer shall not have the right to

make any substitution of such Subcontractor except with the TTA's prior written approval.

(b) As soon as a potential Subcontractor has been identified by Developer, but in no event less than 30 Days prior to the scheduled initiation of Development Work by such proposed Subcontractor, Developer shall notify the TTA in writing of the name, address, phone number and contact name of such Subcontractor.

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

19.3.5 Each Subcontract shall:

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

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

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

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

(e) Not be assignable by the Subcontractor without Developer's prior written consent.

(f) With respect to any Subcontract which, when aggregated with all Subcontracts between Developer and such Subcontractor for the same Fiscal Year, is in excess of \$250,000: (i) be terminable by the Subcontractor only for cause; and

(ii) include an indemnity from the Subcontractor in favor of Developer and the Indemnified Parties against any and all Losses arising out of, related to or associated with, the actions, omissions, negligence, willful misconduct, or breach of applicable Law or contract by the Subcontractor or any of its officers, employees, agents or representatives.

(g) Expressly require the Subcontractor to participate in meetings between Developer and the TTA, upon the TTA's request, concerning matters pertaining to such Subcontract or its work, provided that all direction to such Subcontractor shall be provided by Developer, and provided further that nothing in this clause (g) shall limit the authority of the TTA to give such direction or take such action which, in its opinion, is necessary to remove an immediate and present threat to the safety of life or property.

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

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

19.3.6 Developer shall not amend any Subcontract with respect to any of the foregoing matters without the prior written consent of the TTA.

19.3.7 Developer shall not enter into any Subcontracts with any Person then debarred or suspended from submitting bids by any agency of the State.

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

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

19.3.10 In no event shall Developer enter into Subcontracts for more than 70% of the Development Work, either in terms of the Development Price or actual Development Work.

20. COMPLETION AND ACCEPTANCE

20.1 Substantial Completion

20.1.1 For each Segment, Developer shall provide written notice to the TTA no later than 425 Days prior to the date when all of the following will occur:

(a) Developer has completed the Development Work, except for Punch List items, final cleanup and other items included in the requirements for Final Acceptance of the applicable Segment;

(b) Developer has ensured that all Development Work relating to the Segment has been performed in accordance with the requirements of the Contract Documents, the Governmental Approvals and applicable Law;

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

(d) The applicable Segment of the Turnpike, excluding the elements of the Turnpike that are to be installed by the Systems Integrator, (i) can be safely opened to public use , (ii) is fully signed and striped, and (iii) has all safety appurtenances installed; and

(e) All remaining Punch List work for the Segment can be completed with no impact to traffic. If any lane closures are required to complete the Punch List items, Developer shall be only entitled to close lanes between 8:00 p.m. and 6:00 a.m. and through traffic will be maintained at all times.

20.1.2 Substantial Completion of a Segment shall be deemed to have occurred when:

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

(b) Developer has corrected any defects and deficiencies in the Development Work relating to such Segment to the satisfaction of the TTA, and the TTA has notified Developer in writing of its acceptance, or waiver pending Final Acceptance, of such corrections and the concurrence that Substantial Completion of the Segment has occurred;

(c) Developer has received all applicable Governmental Approvals required for such Segment and to be obtained by Developer pursuant to this Agreement;

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

(e) A Punch List to be performed prior to Final Acceptance of the Segment has been mutually agreed to by the TTA and Developer.

Developer acknowledges and agrees that it is responsible for coordinating the performance of the Development Work with the work to be performed by the Systems Integrator and allowing such contractor(s) sufficient time in advance of the date projected for Substantial Completion to install such facilities so as to be able to open each Segment and the Project for revenue operations by such date.

20.2 Final Acceptance

20.2.1 Promptly after Substantial Completion of a Segment, Developer shall perform all Development Work, if any, which was deferred in connection with the Substantial Completion, and shall satisfy all of its other obligations under the Contract Documents, the Governmental Approvals and applicable Law, including ensuring that all equipment, materials, facilities, improvements, structures and components have been properly adjusted and tested. Final Acceptance of a Segment shall be deemed to have occurred when all of the following have occurred:

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

(b) The TTA shall have received all Design Documents, As-Built Documents, Final ROW record maps, surveys, maintenance manuals, electronic files, test data and other deliverables relating to such Segment required under the Contract Documents;

(c) All special tools, equipment, furnishings and supplies purchased and/or used by Developer solely for such Segment as provided in the Contract Documents shall have been delivered to the TTA and all replacement spare parts shall have been purchased and delivered to the TTA, free and clear of Liens;

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

(e) Developer shall have delivered to the TTA a certification representing that there are no outstanding claims of Developer or claims, Liens or stop notices of any Subcontractor, laborer, Utility Owner or railroads with respect to the Development Work for such Segment, other than any previously submitted unresolved claims of Developer and any claims, Liens or stop notices of a Subcontractor, laborer, Utility Owner or railroad being contested by Developer (in which event the certification shall include a list of all such matters with such detail as is requested by the TTA and, with respect to all Subcontractor, laborer, Utility Owner and railroad claims, Liens and stop notices, shall include a representation by Developer that it is diligently and in good faith contesting such matters by appropriate legal proceedings which shall operate to

prevent the enforcement or collection of the same). For purposes of such certificate, the term "claim" shall include all matters or facts which may give rise to a claim;

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

(g) If the TTA has issued Maintenance NTP1 (as defined in the Maintenance Agreement) to the Maintenance Contractor, Maintenance Contractor has obtained and delivered the bonds and insurance required under Section 7 of the Maintenance Agreement;

(h) Developer shall have completed the items set forth in Section 9.2 of the Scope of Work;

(i) Developer shall have finalized and closed out all Governmental Approvals; and

(j) The TTA has issued a certificate of Final Acceptance to Developer acknowledging the satisfaction of the conditions set forth in clauses (a)-(i) above.

20.2.2 The occurrence of Final Acceptance of any Segment shall not relieve Developer of any of its continuing obligations under the Contract Documents, including Warranty obligations, or constitute any assumption of liability by the TTA.

20.3 Assignment of Causes of Action

Developer shall assign to the TTA all right, title and interest in and to all claims and causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15), arising from purchases of goods, services or materials pursuant to the Contract Documents or any Subcontract. This assignment shall be made and become effective at the time the TTA tenders Final Payment to Developer, without further acknowledgment by the Parties.

21. VALUE ENGINEERING

21.1 General

This Section 21 sets forth the requirements applicable to preparation, review and approval of Value Engineering recommendations (“**VEs**”) for the purpose of enabling Developer and the TTA to take advantage of potential cost savings or provide potential improvements to the Development Work through changes in the requirements relating to the Development Work. Developer is encouraged to submit VEs whenever it identifies potential savings or improvement (“**Developer Initiated VE**”) for the Project. The TTA may also request Developer to develop and submit a specific VE (“**TTA Initiated VE**”). Developer shall have the right to refuse to consider such TTA Initiated VE, provided that nothing herein is intended to alter the TTA’s right to issue TTA-Directed Changes in accordance with Section 14.

21.2 Value Engineering Recommendation

A VE is a proposal developed and documented by Developer which: (a) would modify or require a change in any of the requirements of or constraints set forth in the Contract Documents in order to be implemented; and (b) changes the Development Price without impairing essential functions or characteristics of the Project, including service life, economy of operation, ease of maintenance, desirability and safety, as determined by the TTA in its sole discretion, and provided that it is not based solely upon a change in quantities.

21.3 Required Information

At a minimum, the following information shall be submitted by Developer with each VE:

- (a) A statement that the submission is a VE, and a narrative description of the proposed change;
- (b) Description of the existing requirements in the Contract Documents which are involved in the proposed change;
- (c) Description of the proposed change;
- (d) Discussion of differences between existing requirements and the proposed change, together with advantages and disadvantages of each changed item;
- (e) Itemization of the requirements of the Contract Documents which must be changed if the VE is approved (e.g., drawing numbers and specifications);
- (f) A complete cost analysis including (i) Developer’s cost estimate for performing the subject Development Work in accordance with the Contract Documents compared to Developer’s cost estimate for performing the subject Development Work in accordance with the proposed changes, (ii) an estimate of additional costs that will be

incurred by the TTA, and (iii) costs of development and implementation of the VE by Developer. The cost of any additional Governmental Approvals, rights-of-way or easements and other costs or impacts to the Project, shall be included in the cost analysis;

(g) Justification for changes in function or characteristics of each item, and effect of the change on the performance of the end item, as well as on the meeting of requirements contained in the Contract Documents, including environmental compliance requirements;

(h) If available, a description of any previous use or tests of the VE and the conditions and results. If the VE was previously submitted on another TTA or TxDOT project, indicate the date, contract number and the action taken by the TTA or TxDOT; and

(i) Date or time by which a Change Order adopting the VE must be issued in order to obtain the maximum cost reduction, noting any effect on the current Project Schedule and most recent approved Draw Request.

Any additional information requested by the TTA shall be provided in a timely manner. Additional information could include results of field investigations and surveys, design computations and field change sheets.

21.4 TTA Review and Approval

21.4.1 The TTA will determine whether a VE qualifies for consideration and evaluation. VEs that require excessive time or costs for review, evaluation or investigations, or that are not consistent with the TTA's design policies and basic design criteria may be rejected without evaluation. Developer shall have no claim for any additional costs or delays resulting from the rejection of a Developer-Initiated VE, including VE development costs, loss of anticipated profits or increased material or labor costs. The TTA will consider only proven features that have been employed under similar conditions or projects acceptable to the TTA. Within five Business Days after receipt of the VEs, the TTA and Developer will meet and confer to determine whether to proceed with further evaluation. If requested by the TTA, Developer shall conduct an analysis of each such concept and shall provide data to the TTA within 15 Business Days after receipt of such request so as to enable the TTA to determine whether to accept the VE.

21.4.2 Upon receipt of a VE, the TTA will process it expeditiously, but shall not be liable for any delay in acting upon any VE submitted pursuant to this Section 21. Developer or the TTA may withdraw all or part of any VE at any time prior to approval. In the event Developer withdraws a Developer Initiated VE, Developer shall be liable for costs incurred by the TTA in reviewing the withdrawn VE. In the event the TTA withdraws a TTA Initiated VE, the TTA shall be liable for costs incurred by Developer in studying and preparing the withdrawn VE. Each Party shall bear its own costs in connection with preparation and review of rejected VEs.

21.4.3 The TTA may approve, in its sole discretion, in whole or in part, by Change Order, any VE submitted. Designs for approved VEs shall be prepared by Developer for incorporation into the Design Documents. Until a Change Order is issued on a VE, Developer shall remain obligated to perform in accordance with the Contract Documents. The decision of the TTA as to rejection or approval of any VE shall be at the sole discretion of the TTA and shall be final and not subject to partnering, dispute resolution or appeal.

21.5 Development Price Adjustment

If the TTA accepts a VE, the Development Price shall be adjusted in accordance with the following:

21.5.1 For Developer-Initiated VEs which reduce the Developer's costs, the Development Price shall be reduced by an amount equal to the sum of (a) 100% of any additional costs incurred by the TTA resulting from the VE plus (b) 50% of estimated net savings. For TTA Initiated VEs which reduce the Developer's costs, the Development Price shall be reduced by an amount equal to the sum of (a) 100% of any additional costs incurred by the TTA resulting from the VE plus (b) 75% of estimated net savings. For VEs that result in a reduction of the Developer's costs, the term "estimated net savings" shall mean (x) the difference between the cost of performing the Development Work according to the Contract Documents and the actual cost to perform the Development Work, as modified by the VE, less (y) the actual costs of studying and preparing the VE as substantiated by Developer and approved by the TTA in writing in accordance with the Change Order procedures set forth herein, less (z) any additional costs incurred by the TTA resulting from the VE (including the costs incurred in reviewing the VE). Developer's profit shall not be considered part of the cost. For Developer-initiated VEs that result in an increase in the Developer's costs, the Development Price shall be increased by an amount equal to the sum of (a) 100% of any additional costs incurred by Developer resulting from the VE plus (b) 50% of estimated net savings. For VEs that result in an increase of the Developer's costs, the term "estimated net savings" shall mean (x) the amount of any savings in the TTA's costs resulting from the VE (taking into consideration the costs incurred in reviewing the VE), less (y) the actual costs of studying and preparing the VE as substantiated by Developer and approved by the TTA in writing in accordance with the Change Order procedures set forth herein, less (z) the difference between the actual cost to perform the Development Work, as modified by the VE, and the cost of performing the Development Work according to the Contract Documents. Developer's profit shall not be considered part of the cost.

21.5.2 Developer is not entitled to share in either collateral or future contract savings. The term "collateral savings" means those measurable net reductions in the TTA's costs of operation resulting from the VE, including costs of maintenance by the TTA or any third party, logistics, TTA-furnished property and future costs associated with the Project. The term "future contract savings" shall mean reductions in the cost of performance of future construction contracts for essentially the same item resulting from a VE submitted by Developer.

21.5.3 In a case where a VE involves acquisition of Additional Property and/or reduces the TTA's cost of property acquisition, the analysis of the VE shall consider the additional costs or savings associated with the adjustment in the real property requirements for the Project, including Developer's costs for property acquisition support services, the costs involved in adjusting the Governmental Approvals, the TTA's additional costs, including costs of personnel, Developer's out-of-pocket costs such as the price of the Additional Property, and the incremental reduction in the TTA's costs (if any) for property acquisition. The estimated net savings shall be shared between the TTA and Developer as described above.

21.5.4 In the event that Developer proceeds with a Developer-requested change that the TTA believes should be characterized as a VE, and it is later determined through the dispute resolution process that the change meets the technical qualifications for a VE, the Development Price shall be reduced by an amount equal to the sum of (a) 100% of any additional costs incurred by the TTA resulting from the VE plus (b) 75% of estimated net savings.

21.6 Implementation of VEs

21.6.1 Designs for approved VEs shall be prepared by Developer for incorporation into the Design Documents and shall be subject to the same design procedures as other aspects of the Project's design.

21.6.2 Developer's share of any VE cost savings shall be payable at such time as payments would have been made for the Development Work which is the subject of the VE had the VE not been implemented. If a VE results in a Development Price increase, payment for the additional construction work will be made in the ordinary course of progress of the Project.

21.7 Use of VEs By the TTA

All approved or disapproved VEs will become the property of the TTA, and shall contain no restrictions imposed by Developer on their use or disclosure. The TTA retains the right to use, duplicate and disclose in whole or in part any data necessary for the utilization of the VE on any other or subsequent projects without any obligation to Developer.

22. REPRESENTATIONS AND WARRANTIES

22.1 TTA Representations and Warranties.

The TTA represents and warrants to Developer as follows:

(a) The TTA is a division of TXDOT, existing under Chapters 361 and 362 of the Act, and has full power, right and authority to execute, deliver and perform its obligations under, in accordance with and subject to the terms and conditions of this Agreement and other Contract Documents to which it is a Party.

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

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

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

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

22.2 Developer Representations, Warranties and Covenants

Developer represents, warrants and covenants to the TTA as follows:

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

(b) The design for the Project can and shall be based on the Schematic Design, and the Project can and shall be built in conformity with the Contract Documents, all applicable Laws and Governmental Approvals.

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

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

(e) Developer acknowledges and agrees that it has familiarized itself with the requirements of any and all applicable Laws and the conditions and schedules contained in all Governmental Approvals prior to entering into this Agreement. Developer shall comply with the foregoing at its sole cost and expense and without any increase in the Development Price or extension of any Completion Deadline or any Acceptance Deadline on account of such compliance, regardless of whether such compliance would require additional time for performance or additional labor, equipment and/or materials not expressly provided for in the Contract Documents. Developer has no reason to believe that any Governmental Approval required to be obtained by

Developer will not be granted in due course and, thereafter, remain in effect in order to enable the Development Work to proceed in accordance with the Contract Documents. If any Governmental Approval required to be obtained by Developer must formally be issued in the name of the TTA, Developer shall undertake all efforts to obtain such approvals, subject to the TTA's reasonable cooperation and assistance with Developer, including preparation and delivery of appropriate applications and other documentation in a form approved by the TTA.

(f) Developer shall comply with all requirements of the approved Design QC/QAP and the Construction QC/QAP.

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

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

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

(j) Developer is a joint venture, duly formed, validly existing and in good standing under the Laws of the State of Texas. Developer is composed of Fluor Daniel, a Division of Fluor Enterprises, Inc., Balfour Beatty Construction, Inc. and T. J. Lambrecht Construction, Inc. Each member of Developer is duly qualified to do business and is in good standing under the Laws of the State and will remain in good standing throughout the term of this Agreement and for as long thereafter as any obligations remain outstanding under the Contract Documents.

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

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

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

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

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

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

(q) Developer is in compliance with all Laws applicable to Developer or its activities in connection with this Agreement and the other Contract Documents.

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

(s) Developer has delivered to the TTA true and complete copies of the financial information required under Section 26.3 ("**Audited Financial Statements**"). The Audited Financial Statements have been prepared in conformity with generally accepted accounting principles, consistently applied, and present fairly the financial position and results of the operations and cash flows of the applicable entity(ies) at the dates and for the periods stated.

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

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

23. INDEMNIFICATION; RELEASES

23.1 Indemnification By Developer

23.1.1 DEVELOPER SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD EACH OF THE INDEMNIFIED PARTIES HARMLESS FROM AND AGAINST ANY AND ALL LOSSES ARISING OUT OF, RELATING TO OR RESULTING FROM:

(a) THE BREACH OR ALLEGED BREACH OF THIS AGREEMENT OR ANY OTHER CONTRACT DOCUMENTS BY DEVELOPER.

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

(c) ANY ALLEGED PATENT OR COPYRIGHT INFRINGEMENT OR OTHER ALLEGEDLY IMPROPER APPROPRIATION OR USE OF TRADE SECRETS, PATENTS, PROPRIETARY INFORMATION, KNOW-HOW, COPYRIGHT RIGHTS OR INVENTIONS IN PERFORMANCE OF THE DEVELOPMENT WORK, OR ARISING OUT OF ANY USE IN CONNECTION WITH THE PROJECT OF METHODS, PROCESSES, DESIGNS, INFORMATION, OR OTHER ITEMS FURNISHED OR COMMUNICATED TO THE TTA OR ANOTHER INDEMNIFIED PARTY PURSUANT TO THE CONTRACT DOCUMENTS; PROVIDED THAT THIS INDEMNITY SHALL NOT APPLY TO ANY INFRINGEMENT RESULTING FROM THE TTA'S FAILURE TO COMPLY WITH SPECIFIC WRITTEN INSTRUCTIONS REGARDING USE PROVIDED TO THE TTA BY DEVELOPER.

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

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

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

(g) ANY (I) RELEASE(S) OF HAZARDOUS MATERIALS ATTRIBUTABLE TO THE ACTS, OMISSIONS, NEGLIGENCE, WILLFUL MISCONDUCT, RECKLESSNESS OR BREACH OF CONTRACT OR LAW BY ANY MEMBER OF THE DEVELOPER GROUP; OR (II) THE RELEASE OF ANY HAZARDOUS MATERIALS

CAUSED TO BE PRESENT ON THE FINAL ROW OR ELSEWHERE BY ANY MEMBER OF THE DEVELOPER GROUP REGARDLESS OF WHETHER THOSE ARE THE PERSONS WHO ACTUALLY CAUSED THE RELEASE AND REGARDLESS OF THE CAUSE FOR THE RELEASE.

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

(i) ANY CLAIM, DEMAND, SUIT, PROCEEDING, INVESTIGATION OR CAUSE OF ACTION BROUGHT AGAINST THE TTA IN CONNECTION WITH THE DESIGN AND CONSTRUCTION OF THE PROJECT OR OTHER DEVELOPMENT WORK, INCLUDING WITH RESPECT TO CONSTRUCTION ACCIDENTS.

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

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

23.2 Restrictions

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

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

(b) any material defect inherent in prescriptive design or prescriptive construction specifications included in the Contract Documents, provided Developer

complied with such specifications and did not actually know, or would not reasonably have known, while exercising reasonable diligence, that it was deficient or, if Developer actually knew of the deficiency, unsuccessfully sought the TTA's waiver of or approval of a Deviation from such standard; or

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

23.2.2 Such indemnities shall not be construed to effect any extension of statutes of limitations otherwise applicable to causes of action for breach of contract held by the TTA against Developer.

23.3 Employee Claims

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

23.4 No Relief from Responsibility

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

(a) relieve Developer of its responsibility for the selection and the competent performance of all members of the Developer Group;

(b) relieve Developer of any of its obligations or liabilities under the Contract Documents;

(c) be deemed or construed to waive any of the TTA's rights and remedies under the Contract Documents, applicable Law or in equity; or

(d) be deemed or construed as any kind of representation or warranty, express or implied, by the TTA.

23.5 Right to Rely

Notwithstanding the provisions of Section 23.4 and Section 23.5, (a) Developer shall be entitled to rely on specific written Deviations the TTA gives under this Agreement, (b) the TTA is not relieved from any liability arising out of a material misrepresentation under any written statement the TTA knowingly and intentionally delivers, and (c) the TTA is not relieved from its obligations under the Contract Documents.

23.6 Survival

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

23.7 Intent of Indemnity for Breach of Contract

The requirement to provide an indemnity for breach of contract set forth in Section 23.1.1(a) is intended to provide protection to the TTA with respect to third party claims associated with such breach. It is not intended to provide the TTA with an alternative cause of action for damages incurred directly by the TTA with respect to a breach by Developer, nor is this paragraph intended to limit the TTA's remedies other than as specifically stated herein.

24. TORT LIABILITY

24.1 Notice of Claims

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

24.2 Limitation on State's Liability

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

25. DISPUTE RESOLUTION

25.1 General Dispute Resolution Provisions

25.1.1 Nature of Process

Partnering, as described in Section 2.3, will be encouraged in preference to the more formal dispute resolution mechanisms provided in this Agreement. Partnering in this context is intended to be a voluntary, non-binding procedure available for use by the Parties to this Agreement to resolve any issues that may arise during performance of the Development Work.

In the event partnering fails to resolve an issue and Developer elects to pursue a formal Dispute with the TTA, the Dispute shall be resolved as provided by this Section 25.

25.1.2 Demands and Disputes; Disputes Governed by this Section; Priorities

25.1.2.1 A “**Demand**” is any written request for relief in any form arising out of or relating to the Contract Documents, the Development Work or the Project, including all contract claims, statutory claims, equitable claims, claims for additional compensation, and claims for extension of time; provided, however, that Section 25 shall not apply to (i) claims that are not actionable against the TTA by Developer on its own behalf or on behalf of any of its Subcontractors in accordance with Section 25.3, (ii) claims arising solely in tort; (iii) claims for indemnity under Section 23; (iv) claims for injunctive relief; (v) claims against insurance companies; or (vi) claims arising out of or relating to any Utility Adjustment where the Utility Owner is a necessary party (unless, and only to the extent that, the applicable Utility Adjustment Agreement provides for resolution of claims as set forth in this Section 25 or the TTA approves resolution of such claims under this Section 25.)

25.1.2.2 A Demand becomes a “**Dispute**” if Developer disagrees with a Final Determination issued by the TTA pursuant to Section 25.2.4 and proceeds in accordance with Section 25.2.5.

25.1.2.3 All references to Demands or Disputes brought by a Developer refer also to Demands or Disputes brought by Developer on behalf of any of its Subcontractors, provided that in such event the additional requirements of Section 25.3 shall also apply.

25.1.3 Overview of Process

The dispute resolution process shall involve the following steps, each of which must be taken before the next is available, provided, however, that the TTA may initiate a proceeding in a court of competent jurisdiction at any time and the Parties

may, by mutual agreement, submit their dispute to mediation or other alternative dispute resolution process, at any time in accordance with Section 25.4.

(a) Informal efforts will be made to resolve issues presented by a Demand through negotiations between the Parties.

(b) If the Demand is not resolved by negotiation, the TTA will issue a written determination on the issues presented.

(c) If Developer is not satisfied with the determination, it may seek a reconsideration and the TTA will issue a Final Determination.

(d) If Developer is not satisfied with the Final Determination, further proceedings will be required under applicable law, including Chapter 2260 of the Texas Gov't Code, if applicable, as well as the rules adopted by TxDOT or the TTA for the processing of disputed claims.

25.1.4 Continuation of Development Work

At all times during this dispute resolution process or any subsequent administrative, arbitration or court proceeding, Developer and all Subcontractors shall proceed with the Project diligently, without delay, in accordance with this Agreement, and as directed by the TTA. Developer acknowledges that it shall be solely responsible for any Project delay that results from its actions or inactions during the dispute resolution process, even if Developer's position in connection with the Dispute ultimately prevails. In addition, all Parties shall continue to comply with all provisions of the Contract Documents, the Governmental Approvals and applicable Law.

25.1.5 Records Related to Dispute

Throughout the course of any Development Work that is the subject of any Demand or Dispute, Developer shall keep separate and complete records as required by Section 14.3.4. These records shall be retained for a period of not less than five years from the date of resolution of the Dispute.

25.2 Dispute Resolution Process

25.2.1 Notice of Demand

If Developer disagrees with anything required in any written communication from the TTA, including any direction, instruction, interpretation, determination by the TTA, or denial of a request for Change Order as described in Section 14.14, Developer shall deliver to the TTA, within 30 Days following receipt of said communication, either:

(a) A signed Demand; or

(b) An oral notification of a potential Demand, which is confirmed by a signed Demand within seven Days thereafter.

In order to be valid, the Demand must include sufficient detail to identify the general nature and scope of the matter being protested. Failure to provide notice in accordance with this Section 25.2.1 shall constitute a waiver of all claims in any way related to the item with respect to which Developer disagrees. To the extent a claim is required to be presented to the TTA under the provisions of Chapter 2260 of the Texas Government Code, said claim shall be submitted within the time required for a signed Demand under this Section 25.2.1.

25.2.2 Negotiation; Response to Claim

Upon receipt of a Demand, the Parties shall first attempt to resolve the dispute through negotiations between the Parties' authorized representatives. The negotiations described in this Section 25.2.2 shall constitute the "Negotiation" described in Section 2260.052 of the Texas Government Code, to the extent such "Negotiation" is required. The two Parties shall meet in good faith within five Business Days of the time that a Demand under Section 25.1.2 is received by the TTA. There shall be at least one meeting to attempt a resolution through negotiation, which shall be continued upon agreement of all Parties. The negotiations shall conclude no later than 60 days following receipt of the Demand, unless the Parties agree otherwise. Within 15 Business Days following the conclusion of these negotiations, the TTA shall issue a determination of the matters under dispute. If the TTA determines that the Demand is valid, the TTA shall take steps to address the issues presented by the Demand, as appropriate. The determination must be in writing, or, if oral, confirmed in writing within seven Days of the oral decision.

25.2.3 Request for Reconsideration

If Developer is not satisfied with the determination, Developer may deliver to the TTA, within 14 Days after transmittal by the TTA of the written determination, a written request for the TTA's reconsideration of its determination ("**Request for Reconsideration**"). At a minimum, the Request for Reconsideration must include the following information:

- (a) The date of the initial Demand;
- (b) The nature and circumstances of the Demand;
- (c) The Contract Document provisions relevant to the Demand;
- (d) The estimated dollar cost, if any, of the Development Work in dispute;
- (e) An analysis of the impact, if any, that an outcome favoring Developer would have on the Project Schedule and the ability of Developer to achieve Substantial Completion of each Segment by the applicable Completion Deadline and Final Acceptance of each Segment by the applicable Acceptance Deadline;
- (f) The date and number of the PCO Notice, if any.

Developer shall also provide any additional information, at the TTA's request, that the TTA determines is necessary for its evaluation of the Request for Reconsideration.

25.2.4 Final Determination

Within 15 Business Days after receipt of a Request for Reconsideration conforming to the requirements of Section 25.2.3, the TTA shall issue its written decision on reconsideration, including a brief description of supporting reasons and instructions for implementation of the decision (if necessary). The TTA's decision on reconsideration of its initial determination will be considered the "**Final Determination**". The Final Determination shall be conclusive on the issues raised, subject only to Developer's right to seek further remedies under Chapter 2260 of the Texas Government Code and either party's right to initiate a proceeding in a court of competent jurisdiction, as provided in this Section 25.

25.2.5 Developer Claim Under Texas Government Code Chapter 2260

Within 30 Days (or such other time as is mutually agreed among the Parties, but not to exceed 45 Days) after receipt of the Final Determination, Developer may file a request for hearing under the provisions of Texas Government Code Chapter 2260, Subchapter C.

25.2.6 TTA Disputes

The TTA shall have the right to initiate a proceeding in a court of competent jurisdiction at any time, without the necessity of making a Demand or a Final Determination.

25.3 Dispute Resolution: Additional Requirements for Subcontractor Demands

25.3.1 For purposes of this Section 25, a "**Subcontractor Demand**" shall include any claim by a Subcontractor, including also any pass-through claims by a lower tier Subcontractor, against Developer that is actionable by Developer against the TTA and arises from Development Work, materials or other services provided or to be provided under the Contract Documents. If Developer determines to pursue a Demand against the TTA that includes a Subcontractor Demand, the following additional conditions shall apply:

(a) Developer shall identify clearly in all submissions pursuant to this Section 25, that portion of the Demand that involves a Subcontractor Demand.

(b) Failure of Developer to assert a Subcontractor Demand on behalf of any Subcontractor at the time of submission of a related Demand by Developer, as provided hereunder, shall constitute a release and discharge of the TTA by Developer on account of, and with respect to, such Subcontractor Demand.

(c) Developer shall require in all Subcontracts that all Subcontractors of any tier (a) agree to submit Subcontractor Demands to Developer in a proper form and in sufficient time to allow processing by Developer in accordance with this Section 25; (b) agree to be bound by the terms of this Section 25 to the extent applicable to Subcontractor Demands; (c) agree that, to the extent a Subcontractor Demand is involved, completion of all steps required under this Section 25 shall be a condition precedent to pursuit by the Subcontractor of any other remedies permitted by Law, including institution of a lawsuit against Developer; (d) agree that any Subcontractor Demand brought against a bonding company, that also is actionable against the TTA through Developer, shall be stayed until completion of all steps required under this subsection; and (e) agree that the existence of a dispute resolution process for Disputes involving Subcontractor Demands shall not be deemed to create any claim, right or cause of action by any Subcontractor against the TTA. The Subcontractors shall, at all times, have rights and remedies only against Developer.

25.3.2 Notwithstanding the foregoing, this Section 25 shall not apply to (a) any Subcontractor Demand between the Subcontractor(s) and Developer that is not actionable by Developer against the TTA, (b) any Subcontractor Demand based on remedies expressly created by statute, (c) any Subcontractor Demand that is covered by insurance, or (d) any Subcontractor Demand that is actionable only against a bonding company.

25.4 Mediation or Other Alternative Dispute Resolution

Developer and the TTA, by mutual agreement, may at any time refer the Dispute to mediation or any other form of alternative dispute resolution that is acceptable to all parties to the Dispute. At the request of the TTA, Developer shall also participate in any and all mediation or other alternative dispute resolution proceedings between the TTA and any Utility Owner relating to any Utility Adjustment (to the extent not resolved under the dispute resolution process set forth in this Section 25). Developer and the TTA shall share equally the expenses of the mediator or other alternative dispute resolution process.

25.5 Subsequent Proceedings

25.5.1 Resolution of Claims Against the State

Claims asserted against the TTA shall be subject to the process and procedures set forth in Chapter 2260 of the Texas Government Code, the rules, if any, adopted by the TTA pursuant thereto, and the provisions of this Section 25.

25.5.2 Exclusive Jurisdiction and Venue

Developer agrees that the exclusive jurisdiction and venue for any legal action or proceeding, at law or in equity, arising out of or relating to the Contract Documents or the Project, shall be the Travis County District Court. Developer waives all objections it might have to the jurisdiction or venue of such court and hereby

consents to such court's jurisdiction, regardless of Developer's residence or domicile, for any such action or proceeding.

25.5.3 Admissibility of Disputes Resolution Proceedings

The admissibility, in any administrative or judicial proceeding subsequent to this dispute resolution process, of the Parties' submittals and the Final Determination shall be in the discretion of the appropriate administrative officer or the court in accordance with applicable rules of Law.

26. DOCUMENTS AND RECORDS

26.1 Escrowed Proposal Documents

Prior to execution of this Agreement, Developer delivered into escrow one copy of all documentary information used in preparation of the Development Price (the “EPDs”). Upon execution of this Agreement, the EPDs shall be transferred from escrow and held in locked fire-proof cabinet(s) supplied by Developer and located in the TTA’s offices in Pflugerville, with the key held only by Developer. Concurrently with approval of each Change Order or amendment to any Contract Document, one copy of all documentary information used in preparation of the Change Order or amendment shall be added to the cabinet to be held with the other EPDs. The EPDs will be held in such cabinet or otherwise maintained until all of the following have occurred: (a) 180 Days have elapsed from the later of Project Final Acceptance or termination of this Agreement, as applicable; (b) all disputes regarding the Development Work have been settled; and (c) Final Payment has been made and accepted.

26.1.1 Availability for Review

The EPDs shall be available during business hours for joint review by Developer, the TTA and any dispute resolver in accordance with Section 25, in connection with approval of the Project Schedule, negotiation of Change Orders and resolution of Disputes under the Contract Documents, and also as described in Section 26.1.6. The TTA shall be entitled to review all or any part of the EPDs in order to satisfy itself regarding the applicability of the individual documents to the matter at issue.

26.1.2 Proprietary Information

Although the EPDs will reside in the TTA’s office, the EPDs are, and shall always remain, the property of Developer and shall be considered to be in Developer’s possession, subject to the TTA’s right to review the EPDs as provided in this Section 26. Developer will have and control the keys to the filing cabinet containing the EPDs. The TTA acknowledges that Developer may consider that the EPDs constitute trade secrets or proprietary information.

26.1.3 Representation

Developer represents and warrants that the EPDs constitute all documentary information used in the preparation of its Development Price. Developer agrees that no other price proposal preparation information will be considered in resolving Disputes or Claims. Developer further agrees that the EPDs are not part of the Contract Documents and that nothing in the EPDs shall change or modify any Contract Document.

26.1.4 Contents of EPDs

The EPDs shall, inter alia, clearly detail how each price included in the Proposal has been determined and shall show prices and price elements in sufficient detail as is adequate to enable the TTA to understand how Developer calculated the Development Price. The EPDs provided in connection with quotations and Change Orders shall, inter alia, clearly detail how the total price and individual components of that price were determined. The EPDs shall itemize the estimated costs of performing the required work separated into usual and customary items and cost categories and sub-items and cost categories to present a detailed estimate of costs, such as direct labor, repair labor, equipment ownership and operation, expendable materials, permanent materials, Subcontract costs, plant and equipment, indirect costs, contingencies, mark-up, overhead and profit. The EPDs shall itemize the estimated annual costs of insurance premiums for each coverage required to be provided by Developer under Section 10. The EPDs shall include all assumptions, detailed quantity price reductions, rates of production and progress calculations, and quotes from Subcontractors used by Developer to arrive at the Development Price, amendment price or Change Order price.

26.1.5 Form of EPDs

Except as otherwise provided in the RFP, Developer shall submit the EPDs in such format as is used by Developer in connection with its Proposal. Developer represents and warrants that the EPDs provided with the Proposal were personally examined by an authorized officer of Developer prior to delivery, and that the EPDs meet the requirements of Section 26.1.4. Developer further represents and warrants that the EPDs provided in connection with quotations and Change Orders will be personally examined prior to delivery by an authorized officer of Developer, and that they shall meet the requirements of Section 26.1.4.

26.1.6 Review by TTA

The TTA may at any time conduct a review of the EPDs to determine whether they are complete. If the TTA determines that any data is missing from an EPD, Developer shall provide such data within three Business Days after delivery of the TTA's request for such data. At that time of its submission to the TTA, such data will be date stamped, labeled to identify it as supplementary EPD information and added to the EPD. Developer shall have no right to add documents to the EPDs except upon the TTA's request. The EPDs associated with any Change Order or amendment to this Agreement shall be reviewed, organized and indexed in the same manner described in Section 3 of the Instructions to Proposers.

26.2 Subcontract Pricing Documents

Immediately prior to executing the Subcontract or Change Orders or amendments thereto, Developer shall require each Subcontractor whose Subcontract price equals or exceeds \$5,000,000 to submit to Developer a copy of all documentary information used in determining its Subcontract price. This information is to be held in

the same manner as the EPDs, and shall be accessible by Developer, the TTA and their respective successors and assigns and dispute resolvers, on terms substantially similar to those contained herein. Each such Subcontract shall include a representation and warranty from the Subcontractor stating that its EPDs constitute all the documentary information used in establishing its Subcontract price. Each Subcontract with a Subcontractor whose Subcontract price is less than \$5,000,000 shall require the Subcontractor to preserve all documentary information used in establishing its Subcontract price and to provide such documentation to Developer and/or the TTA in connection with any claim exceeding \$250,000 made by such Subcontractor.

26.3 Reporting Requirements

26.3.1 Developer shall deliver to the TTA financial and narrative reports, statements, certifications, budgets and information as and when required under this Agreement.

26.3.2 Developer shall furnish, or cause to be furnished, to the TTA such information and statements as the TTA may reasonably request from time to time for any purpose related to the Project, this Agreement or the other Contract Documents. In addition, Developer shall deliver to the TTA the following financial statements for each Guarantor, at the times specified below:

26.3.2.1 Within 60 Days after the end of each fiscal quarter, duplicate copies of the balance sheet and a consolidated statement of earnings of the Guarantor and its consolidated subsidiaries for such quarter and for the period from the beginning of the then current fiscal year to the end of such quarter, setting forth in comparative form the figures for the corresponding periods during the previous fiscal year, all in reasonable detail and certified as complete and correct, subject to changes resulting from year-end adjustments, by the chief financial officer of the Guarantor;

26.3.2.2 Within 120 Days after the end of each fiscal year, duplicate copies of the balance sheet and a consolidated statement of financial condition of the Guarantor and its consolidated subsidiaries at the end of such year, and statements of earnings, changes in financial position of the Guarantor and its consolidated subsidiaries for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and accompanied by an opinion thereon of an independent public accountant of recognized national standing selected by the Guarantor, which opinion shall state that such financial statements have been prepared in accordance with generally accepted accounting principles consistently applied (except for changes in application in which such accountants concur), and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards, and accordingly, included such tests of the accounting records and such other auditing procedures as were considered necessary in the circumstances; and

26.3.2.3 Upon request of the TTA for particular fiscal quarters, copies of all other financial statements and information reported by the Guarantor to its shareholders generally and of all reports filed by the Guarantor with the Securities

Exchange Commission under Sections 13, 14 or 15(d) of the Exchange Act, to be provided to the TTA as soon as practicable after furnishing such information to the Guarantor's shareholders or filing such reports with the Securities and Exchange Commission, as the case may be.

26.3.3 Developer shall cooperate and provide, and shall cause the Subcontractors to cooperate and provide, such information as determined necessary or desirable by the TTA in connection with the Project financing, including Bond financing, the Developer Note and applications for state and federal assistance (including TIFIA credit and other federal or state financial assistance). Without limiting the generality of the foregoing, Developer shall provide such information deemed necessary or desirable by the TTA for inclusion in the TTA's securities disclosure documents and in order to comply with Securities and Exchange Commission Rule 15c2-12 regarding certain periodic information and notice of material events. Developer shall provide customary representations and warranties to the TTA and the capital markets as to the correctness, completeness and accuracy of any information furnished.

26.3.4 Developer shall cooperate and provide, and shall cause the Subcontractors to cooperate and provide, such information as is necessary or requested by the TTA to assist or facilitate the submission by the TTA of any documentation, reports or analysis required by the State, USDOT, FHWA (including reports required by the FHWA's Financial Plan Guidance requirements for "Mega Projects") and/or any other Governmental Entity with jurisdiction over the Project.

26.3.5 All reports and information delivered by Developer under Sections 26.3.3 and 26.3.4 shall also be delivered electronically, to the extent electronic files exist, and be suitable for posting on the web.

26.4 Maintenance of, Access to and Audit of Records

26.4.1 Developer shall maintain at its Project administration office a complete set of all books and records prepared or employed by Developer in its management, scheduling, cost accounting and other activities related to the Development Work and the Project. Developer shall grant to the TTA such audit rights and shall allow the TTA such access to and the right to copy such books and records as the TTA may request in connection with the issuance of Change Orders, the resolution of Disputes, and such other matters as the TTA reasonably deem necessary for purposes of verifying compliance with this Agreement and applicable Law.

26.4.2 Where the payment method for any Development Work is on a time and materials basis, such examination and audit rights shall include all books, records, documents and other evidence and accounting principles and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of such Development Work. If an audit indicates Developer has been overpaid under a previous progress report or progress payment, the excess payment will be credited against current progress reports or payments.

26.4.3 For cost and pricing data submitted in connection with pricing Change Orders, the TTA and its representatives shall have the right to examine all books, records, documents and other data of Developer related to the negotiation of or performance of Development Work under such Change Orders for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted; provided, however, that the foregoing shall not apply to pricing based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the public or prices set by Law or regulation, in each case, as determined by the TTA. Such right of examination shall extend to all documents deemed necessary by the TTA and its representative to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

26.4.4 Developer acknowledges that the TTA wishes to obtain information regarding the cost of performance of Utility Adjustment Work. Developer agrees to provide the TTA with such reports and information as the TTA may request from time to time relating to such costs. Developer shall maintain separate records regarding utility costs incurred in performance of the Development Work, and shall allow the TTA access to, and the right to copy, such separate records as may be reasonably requested by the TTA from time to time, including access to back-up data that would not normally be expected to be delivered in connection with a lump sum contract. The TTA agrees that the information described in this Section 26.4.4 shall be used solely for purposes of cost tracking and shall not be relevant for purposes of determining the amount of any payment owing to Developer, provided that the foregoing shall not affect the TTA's ability to make any cost adjustment pursuant to any other provision of the Contract Documents.

26.5 Retention of Records

Developer shall maintain all records and documents relating to the Development Work, including copies of all original documents delivered to the TTA, and the Project in Austin, Texas until five years after the date of Project Final Acceptance or the termination of this Agreement, whichever is applicable. Developer shall notify the TTA where such records and documents are kept. Notwithstanding the foregoing, all records which relate to Demands being processed or actions brought under the dispute resolution provisions hereof shall be retained and made available until such actions and Demands have been finally resolved. Records to be retained include all books, electronic information and files and other evidence bearing on Developer's costs under the Contract Documents. Developer shall make these records and documents available for audit and inspection to the TTA, at Developer's offices in Austin, Texas, at all reasonable times, without charge, and shall allow such Persons to make copies of such documents, at no expense to Developer. If approved by the TTA, photographs, microphotographs or other authentic reproductions may be maintained instead of original records and documents.

26.6 Public Records Act

26.6.1 Developer acknowledges and agrees that all records, documents, drawings, plans, specifications and other materials in the TTA's possession, including materials submitted by Developer, are subject to the provisions of the Public Information Act. Developer shall be solely responsible for all determinations made by it under such Law, and for clearly and prominently marking each and every page or sheet of materials with "Trade Secret" or "Confidential", as it determines to be appropriate. Developer is advised to contact legal counsel concerning such Law and its application to Developer.

26.6.2 If any of the materials submitted by Developer to the TTA are clearly and prominently labeled "Trade Secret" or "Confidential" by Developer, the TTA will endeavor to advise Developer of any request for the disclosure of such materials prior to making any such disclosure. Under no circumstances, however, will the TTA be responsible or liable to Developer or any other Person for the disclosure of any such labeled materials, whether the disclosure is required by Law, or court order, or occurs through inadvertence, mistake or negligence on the part of the TTA.

26.6.3 In the event of litigation concerning the disclosure of any material submitted by Developer to the TTA, the TTA's sole involvement will be as a stakeholder retaining the material until otherwise ordered by a court, and Developer shall be fully responsible for otherwise prosecuting or defending any action concerning the materials at its sole cost and risk; provided, however, that the TTA reserves the right, in its sole discretion, to intervene or participate in the litigation in such manner as it deems necessary or desirable. All costs and fees, including attorneys' fees and costs, incurred by the TTA in connection with any litigation, proceeding or request for disclosure shall be reimbursed and paid by Developer.

27. COOPERATION AND COORDINATION WITH OTHER CONTRACTORS AND GOVERNMENTAL ENTITIES

27.1 Cooperation with Other Contractors

The TTA reserves the right to contract with others for and perform other or additional work on or near the Site. Developer shall cooperate with such other contractors to the extent reasonably necessary for the performance by such other contractors of their work, and shall cause all members of the Developer Group to so cooperate. If other separate contracts are awarded by the TTA or TxDOT which affect the Development Work, including work related to abutting roadways, connectors and toll collection system design, supply, installation, operation, maintenance and repair, Developer shall conduct its Development Work without interfering with or hindering the progress or completion of the work being performed by other contractors.

27.2 Interference by Other Contractors

Except as provided in Section 27.4, if Developer asserts that any of the TTA's or TxDOT's other contractors have hindered or interfered with the progress or completion of the Development Work, then Developer's sole remedy shall be to seek recourse against such other contractors.

27.3 Coordination with Governmental Entities and Contractors

Developer shall coordinate with Governmental Entities, with owners of property adjoining the Project, the toll related work participants, including the System Integrator, and contractors involved with Adjacent Work as more particularly described in the Scope of Work.

27.4 Coordination with Toll Related Project Participants; Delays

27.4.1 Developer shall coordinate with all Persons engaged in work on the Turnpike Intelligent Management/Operation Systems or any other elements relating to tolling of the Turnpike. Developer shall also maintain on-going communication regarding requirements applicable to and progress with respect to the intelligent system infrastructure included in the Project, including coordination with the TTA, the Systems Integrator, the tollbooth fabricator and representatives of the Texas Department of Public Safety.

27.4.2 Subject to the requirements which are generally applicable to Change Orders in Section 14, Developer shall be entitled to an extension of the Completion Deadline(s) and Acceptance Deadline(s) for delays to the Critical Path resulting from Developer's inability to complete activities caused solely by the System Integrator's failure or inability to provide responses to proposed plans, Design Documents and other submittals and matters for which response is required, within the time periods (if any) indicated in Section 2.3 of the Scope of Work.

28. GOVERNING LAW; COMPLIANCE WITH LAW AND REFERENCE STANDARDS

28.1 Texas Law

This Agreement shall be governed and construed in accordance with the laws of the State without regard to conflict of law principles.

28.2 Compliance With Laws and Federal Requirements

Developer shall comply with, and ensure that all Subcontractors comply with, all requirements of all applicable Laws, including Environmental Laws, and the Federal Requirements.

28.3 Compliance With Referenced Standards

Developer shall ensure that the Project meets the TxDOT Standards, except to the extent that the Contract Documents specifically allow Deviations therefrom. Developer shall also ensure that the Project meets all other applicable referenced standards, except to the extent that the Contract Documents specifically allow Deviations therefrom. Unless specifically designated to the contrary, in cases where this Agreement refers to TXDOT Standards or any manual, policy, guidance document or other similar document, it shall mean the latest edition or revision thereof and amendments or supplements thereto in effect on the Proposal Date.

29. MISCELLANEOUS

29.1 Reserved Rights

Notwithstanding anything to the contrary contained in this Agreement or the other Contract Documents, the TTA shall retain and enjoy the Reserved Rights.

29.2 Ownership of Documents

All data, sketches, charts, calculations, plans, specifications, electronic files, correspondence and other documents created or collected under the terms of the Contract Documents are the exclusive property of the TTA and Developer shall furnish the same to the TTA upon request. All documents prepared by Developer and all documents furnished to Developer by the TTA shall be delivered to the TTA upon Substantial Completion or termination of this Agreement. Release of any and all information shall be in conformance with the Public Information Act exclusively by and through the TTA or its designee. Upon receipt of any such public record request, Developer shall immediately notify the TTA and secure prior written consent before releasing such documents.

29.3 Amendments to Contract Documents

29.3.1 The Contract Documents may be amended only by a written instrument duly executed by the Parties or their respective successors or assigns. No oral agreement or implied covenant shall be held to vary the terms hereof, any statute, Law or custom to the contrary notwithstanding.

29.3.2 If any provisions of the Contract Documents are rendered obsolete or ineffective in serving their purpose by Change in Law, passage of time, financing requirements or other future events or circumstances, the Parties agree to negotiate in good faith appropriate amendments to or replacements of such provisions in order to restore and carry out the original purposes thereof to the extent practicable; provided, however, that neither Party is obligated to agree to any amendment or replacement which would reduce its rights or enlarge its responsibilities under the Contract Documents in any material respect.

29.4 Waiver

29.4.1 No waiver by any Party of any right or remedy under the Contract Documents shall be deemed to be a waiver of any other or subsequent right or remedy under the Contract Documents. The consent by one Party to any act by the other Party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

29.4.2 No act, delay or omission done, suffered or permitted by one Party or its agents shall be deemed to waive, exhaust or impair any right, remedy or power of such Party under any Contract Document, or to relieve the other Party from the full performance of its obligations under the Contract Documents. No custom or practice between the Parties in the administration of the terms of the Contract Documents shall be construed to waive or lessen the right of a Party to insist upon performance by the other Party in strict compliance with the terms of the Contract Documents.

29.4.3 No waiver of any term, covenant or condition of the Contract Documents shall be valid unless it is in writing and signed by the Party for whom such waiver is sought.

29.4.4 Unless stated expressly to the contrary in any such provision, to the extent that waivers, releases or limitations on liability or remedies are expressed in the Agreement, then all such waivers, releases or limitations shall apply as written, notwithstanding the fault, negligence, or strict liability of the party to be released or whose liability is limited, and shall extend to the officers, employees, and related entities of such party.

29.5 Relationship of Parties

The relationship of Developer to the TTA shall be one of an independent contractor, not an agent, partner, representative, joint venturer or employee. Officials, employees, partners, Subcontractors and agents of Developer shall in no event be considered employees, contractors, agents, partners or representatives of the TTA. Notwithstanding the foregoing, Persons performing professional services under this Agreement shall owe a fiduciary duty to the TTA to comply with all applicable requirements of the Contract Documents in performance of such services.

29.6 Assignment

Subject to the limitations of this Section 29.6, the Contract Documents shall be binding upon and shall inure to the benefit of the Parties hereto and their respective legal representatives, successors and permitted assigns, and wherever a reference in any Contract Document to any of the Parties thereto, such reference also shall be deemed to include, wherever applicable, a reference to the legal representatives, successors and permitted assigns of such Party, as if in every case so expressed.

29.6.1 Developer may not, without the prior written consent of the TTA (in its sole discretion), voluntarily or involuntarily assign, convey, transfer, pledge, mortgage or otherwise encumber its rights or interests under the Contract Documents. No partner, joint venturer, member or shareholder of Developer may assign, convey, transfer, pledge, mortgage or otherwise encumber its ownership interest in Developer without the prior written consent of the TTA, in its sole discretion.

29.6.2 The TTA may transfer and assign its interests in the Project, this Agreement and any other Contract Document

(a) to any other public agency or public entity as permitted by Law, provided that the successor or assignee has assumed all of the TTA's obligations, duties and liabilities under the Contract Document then in effect, and has provided Developer with reasonable assurance of its legal and financial authority to honor and perform the same.

(b) to the Bond Trustee as security for the performance of the TTA's obligations to the Bond Trustee. In the event of such an assignment, the term "TTA" as used in this Agreement shall be deemed to mean the Bond Trustee as assignee of the TTA, and as such assignee the Bond Trustee shall have all rights accorded to the TTA. Any Bond Trustee may, in connection with any default under any financing document, assign any rights assigned to it hereunder to any Person.

(c) to any other Person with the prior written approval of Developer and the Bond Trustee.

29.7 Designation of Representatives; Cooperation with Representatives and with Financing Entities

The Parties hereto shall each designate an individual or individuals who shall be authorized to make decisions and bind the Parties on all matters relating to the Contract Documents except insofar as such authority may be limited by the particular provision or the delegation of such authority in accordance with this Section 29.7. Exhibit O hereto provides the initial designations of the authorized representatives. Such designations may be changed by a subsequent writing delivered to the other Party in accordance with Section 29.12.

29.8 No Gift or Dedication

29.8.1 Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of the Project, Final ROW or Development Work to the general public, or be deemed to create any rights to be held by the general public in the Project, Final ROW or Development Work except as expressly set forth herein.

29.8.2 Developer shall not, other than as provided by Law, directly or indirectly, give, offer or promise anything of value to any present or former state employee that might reasonably tend to influence them in the discharge of their official duties or is offered with the intent to influence official conduct, for or because of any official act performed or to be performed by such employee. The phrase "anything of value", as used herein means any item of value, including invitations or tickets to sporting events, social gatherings, outings or parties, or the provision of meals or

lodging, or the use of vehicles of any kind, and any other item or thing of monetary value.

29.9 Use of Police and Other Powers

Nothing in this Agreement limits the authority of the TTA to exercise its regulatory, statutory and police powers granted by Law, including its powers of condemnation with respect to all or any part of the Project, the Final ROW and any of Developer's rights hereunder.

29.10 Survival

All covenants, agreements, representations and warranties made in or pursuant to the Contract Documents shall be deemed continuing and made at and as of the date of each such document and at and as of all other applicable times during the course of the Project. All covenants, agreements, representations and warranties made in or pursuant to the Contract Documents shall survive the expiration or earlier termination thereof and shall not be waived by the execution and delivery of the Contract Documents, by completion of construction, by any investigation by the TTA or by any other event except a specific written waiver by the Party against whom waiver is asserted.

29.11 No Third Party Beneficiaries

Nothing contained in the Contract Documents is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the Parties toward any Person or entity not a Party hereto, except to the extent that specific provisions (such as the warranty and indemnity provisions) identify third parties and state that they are entitled to benefits hereunder.

29.12 Notices and Communications

29.12.1 Notices under the Contract Documents shall be in writing and (a) delivered personally, (b) sent by certified mail, return receipt requested, (c) sent by a recognized overnight mail or courier service, with delivery receipt requested, or (d) sent by facsimile communication followed by a hard copy and with receipt confirmed by telephone, to those individuals designated by Developer and the TTA from time to time in writing:

Lone Star Infrastructure
1515 South Capital of Texas Highway
Suite 400a
Austin, Texas 78746
Attn: Mr. Douglas A. Fuller, Project Director
Phone: (512) 314-1329

Fax: (512) 314-1333

Texas Turnpike Authority
1421 Wells Branch Parkway
Building 1, Suite 107
Pflugerville, Texas 78660
Attn: c/o Mr. Jeff Curren,
Central Texas Turnpike Team
Phone: (512) 225-1300
Fax: (512) 225-1400

In addition, copies of all notices to proceed and suspension, termination and default notices forwarded by either Party shall be delivered to the following Persons:

Texas Turnpike Authority
125 East 11th Street – 5th Floor
Austin, Texas 78701
Attn: Mr. Phillip Russell
Phone: (512) 936-0903
Fax: (512) 305-9518

and

Texas Department of Transportation
Office of General Counsel
125 East 11th Street
Austin, Texas 78701
Attn: Mr. Richard D. Monroe
Phone: (512) 463-8630
Fax: (512) 475-3070

All communications to the TTA shall be clearly marked with the contract number to identify this Agreement and the Project name and location.

29.12.2 Notices shall be deemed received when actually received in the office of the addressee, or by the addressee if personally delivered, or when delivery is refused, as shown on the receipt of the U. S. Postal Service, private carrier or other Person making the delivery. Notwithstanding the foregoing, notices sent by telefacsimile after 4:00 p.m. Central Standard or Daylight Time, as applicable, and all other notices received after 5:00 p.m. shall be deemed received on the first Business Day following delivery. As an example, in order for a fax to be deemed received on the same Day, at least the first page of the fax must have been received before 4:00 p.m.

Developer's representatives shall be available at all reasonable times for consultation with the TTA.

29.12.3 Developer shall forward a copy of all written correspondence pertaining to the Project between Developer any railroad, Utility Owner, owner of any property adjacent to the Project or which may potentially be acquired in connection with the Project and any representative of any Governmental Entity to the TTA within five 5 Days after receipt thereof.

29.13 Further Assurances

Each Party shall promptly execute and deliver to other all such instruments and other documents and assurances as are reasonably requested by the other Party to further evidence the obligations of the Parties hereunder.

29.14 Severability

If any term or provision of the Contract Documents, the deletion of which would not adversely affect the receipt of any material benefit by either Party hereunder, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Contract Documents shall not be affected thereby and each other term and provision of the Contract Documents shall be valid and enforceable to the fullest extent permitted by Law. If any clause or provision of the Contract Documents that is found to be illegal, invalid or unenforceable, the Parties agree that they shall in good faith (a) promptly meet and negotiate a substitute therefor which shall, to the greatest extent legally permissible, effect the original intent of the Parties; and (b) if necessary or desirable, apply to the court which declared such invalidity for a judicial construction of the invalidated portion to guide the negotiations.

29.15 Headings

The captions of the sections of the Contract Documents identified therein are inserted solely for convenience. Under no circumstances are they or any of them to be treated or construed as part of each such instrument, except to the extent that the provision cannot be understood without the caption.

29.16 Interpretation of Contract Documents

29.16.1 In the Contract Documents, where appropriate and unless otherwise specified: the singular includes the plural and vice versa; references to statutes or regulations include all statutory or regulatory provisions consolidating, amending or replacing the statute or regulation referred to; the words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation"; references to sections, appendices or schedules are to the document in which they are contained;

words such as “herein,” “hereof” and “hereunder” shall refer to the entire document in which they are contained and not to any particular provision or section; words not otherwise defined which have well-known technical or construction industry meanings, are used in accordance with such recognized meanings; references to Persons include their respective permitted successors and assigns and, in the case of Governmental Entities, Persons succeeding to their respective functions and capacities; and words of either gender used herein shall include each other gender where appropriate. Unless otherwise specified, lists contained in the Contract Documents defining the Project or the Development Work shall not be deemed all-inclusive. Furthermore, notwithstanding the rule of law to the effect that specific provisions contained in a contract shall govern over general provisions, the Scope of Work shall be as set forth in Section 3.1, and specific provisions in the Contract Documents which describe tasks included in the Development Work shall not constitute a limit on the Scope of Work, unless specifically so stated.

29.16.2 Developer acknowledges and agrees that it had the opportunity and obligation, prior to submission of its Proposal, and during the negotiation process prior to award of this Agreement, to review the terms and conditions of the Contract Documents and to bring to the attention of the TTA any conflicts or ambiguities contained therein. Developer further acknowledges and agrees that it has independently reviewed the Contract Documents with legal counsel, and that it and each of its members has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions of the Contract Documents. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of the Contract Documents, they shall not be interpreted or construed against the Party which prepared them, and instead other rules of interpretation and construction shall be utilized.

29.16.3 The final answers to the questions posed during the Proposal process shall in no event be deemed part of the Contract Documents and shall not be relevant in interpreting the Contract Documents except as they may clarify provisions otherwise considered ambiguous.

29.16.4 Headings set forth in the Contract Documents are set forth for convenience and shall not be used to interpret the terms thereof.

29.17 Approvals under Contract Documents

In all cases where approvals or consents are required to be provided under the Contract Documents by the TTA, Developer or other parties thereto, such approvals or consents shall not be withheld unreasonably except in cases where a different standard (such as sole discretion) is specified. In cases where sole discretion is specified, the decision shall not be subject to dispute resolution hereunder.

29.18 Counterparts

This instrument may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

29.19 Non-Business Days

If the date to perform any act or give any notice specified in the Contract Documents falls on a non-Business Day, such act or notice may be timely performed on the next succeeding Business Day. Notwithstanding the foregoing, requirements contained in the Contract Documents relating to actions to be taken in the event of an emergency, requirements contained in Section 4.3.2 of the Scope of Work, and other requirements for which it is clear that performance is intended to occur on a non-Business Day, shall be required to be performed as specified, even though the date in question may fall on a non-Business Day.

29.20 Entire Agreement

The Contract Documents and, if the maintenance option is exercised, the Maintenance Agreement constitute the entire and exclusive agreement between the Parties (including the limited liability company related to the Developer that executed the Maintenance Agreement) relating to the specific matters covered herein and therein. All prior or contemporaneous oral or written agreements, understandings, representations and/or practices relative to the foregoing are hereby superseded, revoked and rendered ineffective for any purpose.

[signatures on next page]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date and year first set forth above.

DEVELOPER: Lone Star Infrastructure
a Texas joint venture

By: Fluor Daniel, a Division of Fluor Enterprises, Inc.

By: [Signature]
Name: Har S. Sagar
Title: V.P. Transportation Ops.

By: Balfour Beatty Construction, Inc.

By: [Signature]
Name: William L. Miller
Title: SR. VICE PRES

By: T. J. Lambrecht Construction, Inc.

By: [Signature]
Name: THOMAS J Lambrecht
Title: PRESIDENT

TTA: **TEXAS TURNPIKE AUTHORITY,**
a division of the Texas Department of
Transportation

By: [Signature]
Name: Michael W. Behrens, P.E.
Title: Executive Director, TxDOT