EXHIBIT 1

ABBREVIATIONS AND DEFINITIONS

[provided separately]

EXHIBIT 2

DEVELOPER'S SCHEMATIC PLAN OF FACILITY AND PROPOSAL COMMITMENTS

Schematic Plan of Facility

[TO BE PROVIDED]

Proposal Commitments

[Insert approved alternative technical concepts and other Proposal commitments, if any]

Identified Key Personnel

Developer commits to provide, and TxDOT hereby approves, the following individuals to initially serve as the following Key Personnel:

Names of Key Personnel	Titles	Facility Key Personnel Positions
		Person responsible for overall management of the Facility
		Person responsible for overall management and/or control of the Facility's finances
		Person responsible for public relations and community outreach
		Person responsible for design of the Facility
		Person responsible for construction, coordination of subcontractors, and scheduling
		Person responsible for right of way
		Person responsible for utility adjustment
		Person responsible for the control of quality, and the implementation and operation

Names of Key Personnel	Titles	Facility Key Personnel Positions
		of the Facility's quality systems
		Person responsible for independent quality acceptance
		Person responsible for environmental compliance
		Person responsible for Facility operations (such as traffic control and toll collection)
		Person responsible for Facility maintenance

EXHIBIT 3

FORM OF LEASE
AND AMENDMENT TO LEASE

FACILITY LEASE

NORTH TARRANT EXPRESS - FACILITY

by and between

TEXAS DEPARTMENT OF TRANSPORTATION

("TxDOT")

and

_____

a Texas _____ ("Developer")

Dated _____, 20__

FACILITY LEASE

NORTH TARRANT EXPRESS - FACILITY

This lease (the "Lease") is made and entered into as of _____, 20__, by and between the **TEXAS DEPARTMENT OF TRANSPORTATION**, a public agency of the State of Texas ("TxDOT"), and _____, a _____ ("Developer").

RECITALS

A. TxDOT and Developer have entered into that Comprehensive Development Agreement (North Tarrant Express –Facility) dated as of _____, 2008 (the "Agreement"). In the Agreement, to which a form of this lease constitutes Exhibit 3, TxDOT confers upon Developer certain rights to finance, develop, design, acquire, construct, use, toll, operate and maintain the Facility described therein.

B. Pursuant to the Agreement, Developer has constructed the Facility on the Facility Right of Way described below, to which entry and/or other rights necessary for construction of the Facility were granted by TxDOT to Developer pursuant to the Agreement.

C. TxDOT intends to lease the Facility and the Facility Right of Way, subject to restrictions in Section 1.2, to Developer, and Developer desires to lease the Facility and the Facility Right of Way from TxDOT, on the terms and conditions provided herein.

D. This Lease, together with all exhibits hereto, as originally executed or as it may from time to time be supplemented, modified or amended, is hereinafter referred to as the "Lease".

ARTICLE I

LEASE, PREMISES, TITLE AND TERM

Section 1.1 Lease of Premises. TxDOT hereby leases, lets, demises and rents to Developer, and Developer hereby leases and rents from TxDOT, all the real property described in Exhibit A attached hereto, together with all the improvements now or hereafter located thereon owned by TxDOT, including the portion of the Facility thereon, subject to the exclusions and reservations set forth in Section 1.2 (the “Premises”), in accordance with the terms described herein.

Section 1.2 Exclusions and Reservations.

(a) The Premises, and Developer's leasehold estate hereunder, specifically exclude any and all Airspace. There are hereby reserved to TxDOT all rights to own, lease, sell, assign, transfer, utilize, develop or exploit the Airspace for purposes of pursuing Business Opportunities to the extent permitted under, and subject to the terms of, Section 11.2 of the Agreement; and Developer shall not engage in any activity respecting or infringing upon the Airspace. TxDOT hereby reserves a non-exclusive easement over the Premises for access to and from the Airspace for development, maintenance, repair, replacement, operation, use and

enjoyment of the Airspace for such purpose. ("Airspace" shall have the meaning provided in the Agreement.)

(b) TxDOT reserves the right to enter upon, possess, control and utilize the Premises with or without payment of compensation to Developer to the extent and only to the extent specifically permitted in the CDA Documents.

(c) TxDOT reserves the right to grant to other parties utility and other permits and easements and modifications thereto and rights of use to the extent and only to the extent provided in Sections 7.5.8, 8.1.5 and 8.1.6 of the Agreement.

Section 1.3. Title. Fee title to the Premises is and at all times shall remain vested in TxDOT, subject to Developer's leasehold estate under this Lease.

Section 1.4. Term.

(a) The term of this Lease shall commence upon the Operating Commencement Date and shall continue until the date that is 52 years after the Effective Date.

(b) The term of this Lease is subject to earlier termination in accordance with the Agreement. Termination of the Agreement in accordance with its terms shall automatically result in termination of this Lease, as provided in Section 19.6 of the Agreement.

(c) The term of this Lease may be extended only as provided in the Agreement.

(d) Developer agrees and acknowledges that neither the signing of this Lease nor its expiration or earlier termination for any reason shall entitle Developer to assistance under Texas Property Code Section 21.046, Texas Administrative Code Section 43, Chapter 21, subchapter G, Texas Transportation Commission Minute Orders 65168 and 78183, and any amendments thereto, or under the Uniform Relocation and Assistance and Real Property Acquisition Policies Act, as amended, 42 U.S.C. Sections 4651 et seq. and any amendments thereto.

ARTICLE II

RENT, TAXES, OTHER CHARGES

Section 2.1. Rent. As rent for the Premises, Developer shall pay to TxDOT the Revenue Payment Amount, as set forth in Section 5.1 of the Agreement and Part A of Exhibit 7 to the Agreement. Developer's payment obligations are subject to the terms of the Agreement.

Section 2.2. Taxes. TxDOT shall have no liability with respect to any real property or possessory interest tax imposed on Developer's interest in the Premises or any part thereof by any Governmental Entity, except to the extent specifically provided otherwise in the Agreement or resulting from TxDOT's exercise of its rights with respect to Business Opportunities.

Section 2.3. Other Charges. TxDOT shall have no liability with respect to any water, electric, gas, and other lighting, heating, power and utility charges accruing or payable in connection with Developer's use of the Premises during the term of this Lease, other than as paid in connection with a Compensation Event under the Agreement.

ARTICLE III

USE

Section 3.1. Use. During the term of this Lease, Developer shall use the Premises only for the purposes of performing the Work, holding the Facility open for public use as a highway project, and tolling the Facility in accordance with the Agreement. Developer's right to perform the Work, hold the Facility open for public use and toll the Facility during the term of this Lease is hereby specifically permitted, authorized and granted by TxDOT. Such use shall be in accordance with and subject to the terms, provisions, conditions and limitations set forth in the CDA Documents.

Section 3.2. Mechanic's Liens.

(a) Developer acknowledges and agrees that neither TxDOT nor TxDOT's right, title and interest in and to the Facility and Facility Right of Way may or shall be subject to claims or liens for labor or materials in any way arising out of or relative to Developer's activities, including Design Work and Construction Work.

(b) In the event any lien for labor or materials is recorded upon TxDOT's interest in the Premises, Developer shall, within 60 days after obtaining knowledge thereof:

(i) Record a valid release of lien;

(ii) Procure and record a bond in such form and amount and issued by such surety as is required by applicable Laws to release TxDOT's interest in the Premises from the lien and from any action brought to foreclose the lien; or

(iii) Deposit with a third party escrow agent reasonably acceptable to TxDOT sufficient cash to cover the amount of the subject lien claim, including interest and costs; under irrevocable, binding authorization and instructions for the escrow agent to pay out of such deposit to any subsequent judgment holder the amount of any judgment arising from litigation with regard to the subject lien. The giving of any contrary instructions by Developer shall be strictly prohibited and constitute a default by Developer hereunder.

ARTICLE IV

ASSIGNMENT, SUBLETTING AND CHANGE IN CONTROL

Section 4.1. Assignment by Developer.

(a) Developer shall not voluntarily or involuntarily sell, assign, convey, transfer, pledge, mortgage or otherwise encumber its interests in this Lease or the Premises except to the extent specifically permitted under Article 21 of the Agreement.

(b) Developer shall not sublease or grant any other special occupancy or use of the Premises to any other Person except to the extent specifically permitted under Article 21 of the Agreement.

(c) Developer shall not voluntarily or involuntarily cause, permit or suffer any Change in Control except to the extent specifically permitted under Article 21 of the Agreement.

Section 4.2. Assignment by TxDOT. TxDOT may transfer and assign its rights, title and interests in the Agreement, this Lease and other CDA Documents as provided in Section 21.4 of the Agreement.

Section 4.3. Notice and Assumption. Assignments and transfers permitted under Section 4.1 shall be effective only upon TxDOT's receipt of written notice of the assignment or transfer and a written recordable assumption by the transferee (except as otherwise provided in Section 21 of the Agreement) in form and substance set forth in Section 21.5 of the Agreement.

ARTICLE V

ENCUMBRANCE AND LENDER RIGHTS

Section 5.1. Funding Agreements and Security Documents. The rights of Developer to mortgage, pledge, hypothecate, deed in trust or assign to any Lender Developer's interest in the leasehold estate created by this Lease, are set forth in, and subject to the terms and conditions of Article 4 of the Agreement.

Section 5.2. Lenders' Rights. Any Lender that holds a Funding Agreement and Security Document and satisfies the conditions and limitations set forth in Section 20.1 of the Agreement shall have and retain the rights specified in Article 20 of the Agreement, which rights, including Lender third party beneficiary rights, are, without duplication, applicable to this Lease.

ARTICLE VI

QUIET ENJOYMENT

Section 6.1. Quiet Enjoyment. Except as expressly provided otherwise by, and subject to all the terms and conditions of, this Lease and the other CDA Documents, TxDOT covenants that (a) Developer may quietly and peaceably hold, occupy, use and enjoy the Premises for the Term without ejection or interference by TxDOT or any Person claiming by, through or under TxDOT, and (b) TxDOT will protect and defend Developer's right to possession, control and operation of the Premises as provided in this Lease and CDA Documents against the claims of any Person claiming by, through or under TxDOT.

Section 6.2. Right of Entry. Developer shall permit TxDOT, the Independent Engineer and their respective authorized agents, employees, representatives, contractors and subcontractors to enter upon the Premises for any purpose relating to TxDOT's or the Independent Engineer's rights or obligations under the CDA Documents or Independent Engineer Agreement or under any other circumstances specified in this Lease and/or the other CDA Documents, including but not limited to the following:

(a) Entry upon the Premises to monitor, inspect and audit the same and Developer's activities as provided in the CDA Documents; and

(b) TxDOT's right to enter upon the Premises in the exercise of any of its remedies under Section 17.3 of the Agreement or upon effective termination of the Agreement.

No such exercise of the right of entry or loss of use of the Premises by reason thereof shall be compensable, except to the extent of any Compensation Amount or Termination Compensation that may be owing pursuant to the Agreement.

ARTICLE VII

DEFAULTS AND REMEDIES

Section 7.1. Events of Default. The events constituting a default of Developer under this Lease shall consist of:

(a) Failure by Developer to timely pay to TxDOT monies due and payable to TxDOT hereunder;

(b) Failure by Developer to observe and perform any covenant, term or condition required to be observed or performed by Developer under this Lease; and

(c) Each and every other Developer Default set forth in Section 17.1.1 of the Agreement.

For each of the above events constituting a default of Developer under this Lease, Developer shall be entitled to notice of default and opportunity thereafter to cure to the extent provided in the Agreement.

Section 7.2. Remedies of TxDOT. TxDOT's rights and remedies with respect to any default by Developer under this Lease shall be exclusively governed by the Agreement. In no event shall TxDOT have the right to terminate this Lease prior to termination of the Agreement in accordance with its terms.

Section 7.3. No Double Recovery. The double counting of a remedy because a default is simultaneously a default under this Lease and the Agreement is contrary to the intent of the Parties.

ARTICLE VIII

SURRENDER ON TERMINATION

On the Termination Date, this Lease shall terminate and Developer shall surrender possession and control of the Premises to TxDOT in accordance with all provisions of the CDA Documents, including but not limited to Sections 8.10 and 8.11 and Article 19 of the Agreement.

ARTICLE IX

MISCELLANEOUS

Section 9.1. Relationship of Parties. The relationship of Developer to TxDOT under this Lease shall be one of lessee to lessor, and not of agent, partner, joint venturer or employee; and TxDOT shall have no rights to direct or control the activities of Developer or any Developer-Related Entity. Officials, employees and agents of TxDOT, including its Authorized Representative, shall in no event be considered employees, agents, partners or representatives of Developer or any Lender.

Section 9.2. Waiver. All the provisions respecting waiver of rights, obligations and remedies set forth in Section 24.4 of the Agreement are hereby incorporated herein by reference and made a part hereof.

Section 9.3. Third Parties. Nothing in the provisions of this Lease is intended to create duties or obligations to or rights in third parties not a party to this Lease, except for Lenders to the extent provided herein and in the Agreement, or to affect the legal liability of either Party by imposing any standard of care respecting duties and obligation different from the standard of care imposed by Law.

Section 9.4. Notices. All notices, authorizations and other communications required under this Lease between TxDOT and Developer shall be given as provided in Section 24.12 of the Agreement.

Section 9.5. Agreement Controls. The provisions of the Agreement shall apply to this Lease in the same manner as to the Agreement and are incorporated herein by reference. All capitalized terms used but not defined herein shall have the respective meanings given them in the Agreement.

Section 9.6. Successors and Assigns. This Lease shall be binding upon and shall inure to the benefit of TxDOT and Developer and their permitted successors, assigns and legal representatives.

Section 9.7. No Brokers. Each Party represents and warrants that it has not dealt with any real estate broker or agent or any finder in connection with this Lease.

Section 9.8. Disputes and Governing Law and Venue. All Claims and Disputes arising under this Lease shall be resolved according to Sections 17.7 and 17.8 of the Agreement. This Lease shall be governed and construed in accordance with the laws of the State of Texas applicable to contracts executed and to be performed within such State.

Section 9.9 Counterparts. This instrument may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 9.10. Severability. If any term or provision of this Lease, the deletion of which would not adversely affect the receipt of any material benefit by either Party hereunder, shall be held to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby and each other term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by Law. The Parties intend and agree that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, the dispute resolution body shall supply as a part of this Lease an enforceable clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible.

[Signature Page Immediately Follows]

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Lease in two original counterparts on the date first written above.

TxDOT **TEXAS DEPARTMENT OF TRANSPORTATION**

By: _____
Name: Amadeo Saenz, P.E.
Title: Executive Director

DEVELOPER _____, a Texas
_____

By:_____
Name: _____
Title:_____

AMENDMENT TO FACILITY LEASE

NORTH TARRANT EXPRESS - FACILITY

This Amendment to Lease (the "Amendment") is made as of _____, 20__, by and between the **TEXAS DEPARTMENT OF TRANSPORTATION**, a public agency of the State of Texas ("TxDOT") and _____, a _____ ("Developer").

RECITALS

A. TxDOT and Developer executed a Facility Lease dated _____, 20__ (the "Lease"), covering certain premises that are a part of the North Tarrant Express –Facility and the Facility Right of Way, and described in Article I of the Lease (the "Premises").

B. TxDOT and Developer desire to amend the Lease as set forth herein.

NOW, THEREFORE, for valuable consideration, the receipt and adequacy of which are hereby acknowledged, TxDOT and Developer hereby amend the Lease as set forth below:

AGREEMENT

Section 1. Definitions. Capitalized terms used but not defined in this Amendment have the respective meanings set forth in the Lease.

Section 2. Amendment of Premises. There is hereby added to the Premises under the Lease all the real property described in Exhibit A attached hereto, together with all the improvements now or hereafter located thereon owned by TxDOT, including the portion of the Facility thereon, subject to the exclusions and reservations set forth in Section 1.2 of the Lease (the "Added Premises"). TxDOT hereby leases, lets, demises and rents to Developer, and Developer hereby leases and rents from TxDOT, the Added Premises, on and subject to all the terms and conditions set forth in the Lease. Wherever the term "Premises" is used in the Lease, it is hereby deemed to include and refer to the Additional Premises.

Section 3. No Further Amendments. Except as expressly modified by this Amendment, all provisions of the Lease, as the same may have been amended prior to this Amendment, are hereby ratified and confirmed and shall remain in full force and effect.

Section 2. 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.

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Lease in two original counterparts on the date first written above.

[Signature Page Immediately Follows]

TxDOT **TEXAS DEPARTMENT OF TRANSPORTATION**

By:_____
Name: Amadeo Saenz, P.E.
Title: Executive Director

DEVELOPER _____, a Texas
_____

By: _____
Name: _____
Title:_____

After recording return document to:

_____
_____
_____
_____
Attn: _____

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE is made this ____ day of _____, 20__ by and between the **TEXAS DEPARTMENT OF TRANSPORTATION**, a public agency of the State of Texas ("TxDOT") and _____, a _____ ("Developer").

Witnesseth:

1. TxDOT and Developer have this day entered into a Lease (the "Lease") and on _____, 200__ TxDOT and Developer entered into a related Comprehensive Development Agreement, North Tarrant Express Facility (the "Agreement") under which Developer has agreed to, and does hereby, lease from TxDOT, and TxDOT has agreed to, and does hereby, lease to Developer, on the terms and conditions set forth in the Lease and Agreement, the premises in the County of _____ in the State of Texas legally described in Exhibit A attached hereto and made a part hereof, all for the purpose of financing, developing, constructing, operating and maintaining the Facility on the Facility Right of Way as described and defined in the Lease and Agreement. All capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Agreement.

2. The Lease sets forth the names and addresses of the parties thereto.

3. The term of the Lease for the property described in Exhibit A attached hereto commences upon the Operating Commencement Date and shall continue until the date that is 52 years after the Effective Date.

4. The term of the Lease is subject to earlier termination in accordance with the Agreement. Termination of the Agreement in accordance with its terms shall automatically result in termination of the Lease, as provided in Section 19.6 of the Agreement. The term of this Lease may be extended only as provided in the Agreement.

5. In the event of any conflict between the terms of this Memorandum and the terms of the Lease, the terms of the Lease shall control.

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Memorandum of Lease on the date first written above, for the purpose of providing an instrument for recording.

TxDOT **TEXAS DEPARTMENT OF TRANSPORTATION**

By:_____
Name: _____
Title: Executive Director

DEVELOPER _____,
a _____

By:_____
Name: _____
Title:_____

STATE OF TEXAS)
) ss.
COUNTY OF _____)

Before me, _____ (insert the name and character of the officer), on this day personally appeared _____, known to me (or proved to me on the oath of _____ or through _____ (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, 20___.

_____

(Personalized Seal) Notary Public's Signature

STATE OF TEXAS)
) ss.
COUNTY OF _____)

Before me, _____ (insert the name and character of the officer), on this day personally appeared _____, known to me (or proved to me on the oath of _____ or through _____ (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, 20___.

_____

(Personalized Seal) Notary Public's Signature

After recording return document to:

_____
_____
_____
_____
Attn: _____

AMENDMENT TO MEMORANDUM OF LEASE

THIS AMENDMENT TO MEMORANDUM OF LEASE is made this ____ day of _____, 20__ by and between the **TEXAS DEPARTMENT OF TRANSPORTATION**, a public agency of the State of Texas ("TxDOT") and _____, a _____ ("Developer").

Witnesseth:

1. TxDOT and Developer entered into a Memorandum of Lease dated _____, 200__ and recorded on _____, 20___ in the official public records of the County of _____ in the State of Texas **[select whichever is applicable: [**in Volume _____, Page _____**][**as Document No. _____**]]** (as the same may have been previously amended of record, the "Memorandum of Lease").

2. The premises subject to the Lease are hereby amended by adding the real property described in Exhibit A attached hereto.

3. Except as expressly amended hereby, the Memorandum of Lease remains unchanged and in full force and effect.

4. In the event of any conflict between the terms of this Amendment to Memorandum of Lease and the terms of the Lease, the terms of the Lease shall control.

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Amendment to Memorandum of Lease on the date first written above, for the purpose of providing an instrument for recording.

TxDOT **TEXAS DEPARTMENT OF TRANSPORTATION**

By:_____
Name: _____
Title: Executive Director

DEVELOPER _____,
a _____

By:_____
Name: _____
Title:_____

STATE OF TEXAS)
) ss.
COUNTY OF _____)

Before me, _____ (insert the name and character of the officer), on this day personally appeared _____, known to me (or proved to me on the oath of _____ or through _____ (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, 20___.

_____

(Personalized Seal) Notary Public's Signature

STATE OF TEXAS)
) ss.
COUNTY OF _____)

Before me, _____ (insert the name and character of the officer), on this day personally appeared _____, known to me (or proved to me on the oath of _____ or through _____ (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, 20___.

_____

(Personalized Seal) Notary Public's Signature

EXHIBIT 4

TOLL REGULATION

A. User Classifications

"User Classifications" are defined by (a) occupancy combined with (b) either (i) vehicle dimensions and the presence or absence of one or more trailers as follows: Exempt Vehicles, High Occupancy Vehicles, Motorcycles, Single Occupancy Vehicles, Automobiles with one trailer, Large trucks, Large trucks with one trailer and Large trucks with more than one trailer or (ii) vehicle axle count as follows: Exempt Vehicles, High Occupancy Vehicles, Motorcycles, vehicles with 2 axles, vehicles with 3 axles, vehicles with 4 axles, vehicles with 5 axles and vehicles with 6 axles and (c) the class of Special Vehicles. The size of a trailer, or the combination of vehicle and trailer dimensions, does not affect a User Classification unless the combined dimensions exceed the characteristics of a Special Vehicle. The following definitions shall apply:

1. "Single Occupancy Vehicles" means motor vehicles other than Motorcycles without trailers, not larger than 20 feet in length, eight and a half feet in width and seven feet in height, with one person as an occupant.

2. "High Occupancy Vehicles" means motor vehicles without trailers, not larger than 20 feet in length, eight and a half feet in width and seven feet in height, with a minimum number of persons as occupants. The minimum number of occupants shall, as of the Effective Date, be two persons, but the minimum number of occupants may be changed at any time by written notice from TxDOT to Developer to either three persons or two persons, in TxDOT's sole discretion.

3. "Automobiles with one trailer" means Single or High Occupancy Vehicles pulling one trailer, and the combined dimensions of the vehicle and trailer do not exceed the dimensions of a Special Vehicle.

4. "Large Trucks" means motor vehicles larger than Single Occupancy Vehicles but not larger than 46 feet in length, eight and a half feet in width and 12 feet in height.

5. "Large Trucks with one trailer" means Large Trucks pulling one trailer, and the combined dimensions of the vehicle and trailer do not exceed the dimensions of a Special Vehicle.

6. "Large Trucks with more than one trailer" means Large Trucks pulling more than one trailer, and the combined dimensions of the vehicle and all of its trailers do not exceed the dimensions of a Special Vehicle.

7. "Motorcycles" means motor vehicles with two or three wheels not larger than Single Occupancy Vehicles.

8. "Special Vehicles" means motor vehicles meeting one or more of the following characteristics: (i) over eight and a half feet in width; (ii) over 14 feet in height; (iii) over 73 and a half feet in length; (iv) over 80,000 pounds in weight; or (v) otherwise required to obtain a permit for travel on Highways under applicable Law.

B. Toll Segments

1. The Managed Lanes are divided into toll segments ("Toll Segments"), measured between defined points, as defined in Table B-1 [to be inserted from Proposal]. Notwithstanding anything to the contrary herein, each Toll Segment shall be deemed to consist of only those portions of the Facility within the Toll Segment that have achieved Service Commencement.

Table B-1

Toll Segment	Description	Point (STA)	Point (STA)	Length (mi.)

2. Developer shall not modify the Toll Segments unless it submits a justification to and receives a written approval from TxDOT in TxDOT's sole discretion before implementation.

C. Toll Operations

1. During the initial 180 days after the first Service Commencement Date, Developer shall operate the Managed Lanes in each Toll Segment in Schedule Mode. After the initial 180 days after the first Service Commencement Date, Developer shall operate the Managed Lanes in each Toll Segment in Dynamic Mode.

2. At each entry point to each Toll Segment, Developer shall include a sign or a series of signs ("Toll Information Sign") that displays pricing for a minimum of the Toll Segment to be entered and a maximum of three Toll Segments. The Toll Information Signs shall meet the requirements of the Manual on Uniform Traffic Control Devices with reference to signage and be located to provide sufficient time for vehicles to elect not to enter the Toll Segment.

3. Notwithstanding anything herein to the contrary, under no circumstances shall a User be charged more than the lowest of the following: (a) a toll based on the latest published Base Toll Schedule (when in Schedule Mode); (b) a toll based on the latest published temporary discounts (if any); (c) a toll based on the latest published schedule of Toll Factors; (d) a toll based on the latest published schedule of Toll Segment Lengths (as defined in Section F.6); or (e) what is displayed to the User in any Toll Information Sign.

4. If Developer desires to establish or cancel a temporary discount with respect to any toll, it shall give written notice of the establishment or cancellation to TxDOT prior to implementation or withdrawal thereof.

5. At all times after 15 days prior to the first Service Commencement Date, Developer shall make available on an Internet website, through a telephonic request and upon request at Developer's offices during reasonable business hours, by facsimile copy without charge or by mailing a copy if the written request is accompanied by a self-addressed stamped envelope, the then-current Base Toll Schedule (when in Schedule Mode), temporary discounts (if any), schedule of Toll Factors for each User Classification, schedule of Toll Segment Lengths, schedule of Video Transaction Toll Premiums and schedule of Incidental Charges.

6. Subject to Section 3.1 of the Agreement, Developer shall have the right to charge a Toll Segment Toll (defined in Section F.1).

D. Schedule Mode

The requirements set forth in this Section D shall apply while in Schedule Mode.

1. Not later than 180 days before the first Service Commencement Date, Developer shall prepare and submit to TxDOT for review and comment a schedule showing the Base Toll for each Toll Segment and direction for each hour of the week during non-Peak Periods and for each half hour of the week during Peak Periods in the format set forth in Table D-1 below (the "Base Toll Schedule"), any temporary discounts in accordance with Section C.4, a schedule of initial Toll Segment Lengths in accordance with Section F.6, a schedule of initial Toll Factors in accordance with Section F.2, a schedule of Video Transaction Toll Premiums in accordance with Section H and a schedule of Incidental Charges in accordance with Section I.

Table D-1
Sample Toll Segment Base Toll Schedule Windows

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
6:00 AM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
6:30 AM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
7:00 AM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
7:30 AM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
8:00 AM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
8:30 AM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
9:00 AM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
10:00 AM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
11:00 AM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
12:00 PM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
1:00 PM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
2:00 PM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
3:00 PM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
3:30 PM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
4:00 PM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
4:30 PM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
5:00 PM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
5:30 PM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
6:00 PM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
6:30 PM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX

7:00 PM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
8:00 PM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
9:00 PM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
10:00 PM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
11:00 PM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
12:00 AM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
1:00 AM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
2:00 AM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
3:00 AM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
4:00 AM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
5:00 AM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX

OCCUPANCY

= Peak Periods

= Non-Peak Periods

2. Not later than 120 days before the first Service Commencement Date, Developer shall publish the initial Base Toll Schedule, temporary discounts (if any), schedule of initial Toll Segment Lengths, schedule of initial Toll Factors, schedule of Video Transaction Toll Premiums and schedule of Incidental Charges as follows:

   a. Developer shall publish such information in two English-language newspapers and one Spanish-language newspaper having general circulation in the vicinity of the Facility and on an Internet website for general public viewing (i.e., non-passcode).

   b. Developer shall publish a second notice not later than 10 days before the first Service Commencement Date in the same newspapers and website.

3. Subject to Sections F.1 and F.4, during Schedule Mode, if Developer desires to implement any change to the Base Toll Schedule, at least seven days prior to the effective date of any change Developer shall provide TxDOT with a written revised Base Toll Schedule and shall publish such schedule in the same manner as set forth in Sections D.2.a and D.2.b.

E. Dynamic Mode

The requirements set forth in this Section E shall apply while in Dynamic Mode. In addition, Developer may elect to continue publishing any tolling information including the Base Toll Rate Schedule while in Dynamic Mode.

Developer shall maintain indicative averages (which may include historical or other relevant information) for a minimum of the previous 180 days (or such lesser period if less than 180 days of Dynamic Mode have elapsed), broken out by Toll Segment and direction during a minimum of every hour during non-Peak Periods and every half hour during Peak Periods, of Base Tolls on the Managed Lanes or as otherwise approved by TxDOT, and the applicable Toll Segment Lengths, Toll Factors and Video Transaction Toll Premiums. Developer shall make this information available, to any member of the public, on an Internet website, through a telephonic request and upon request at Developer's offices during reasonable business hours, by facsimile copy without charge or by mailing a copy if the written request is accompanied by a self-addressed stamped envelope.

F. Toll Calculation

1. Toll Segment Toll

"Toll Segment Toll" with respect to a Toll Segment means the product of the Base Toll multiplied by the Toll Factor, rounded to the nearest five cents ($0.05).

2. Toll Factor

a. Developer shall determine the toll factor for each User Classification (the "Toll Factor"). Each Toll Factor shall not exceed the applicable Maximum Toll Factor as shown in Table F-1(a) or F-1(b). Developer shall select and use only one table for the Term. Any proposed change by Developer to Table F-1(a) or F-1(b) shall constitute a proposed change in User Classification subject to the provisions of Section 3.2 of the Agreement.

Table F-1(a)
Size/Occupancy-Based Classification

User Classification	Maximum Toll Factor
Exempt Vehicles	0.0
HOV and Motorcycles for valid transponder account holders that self declare (or are otherwise identified) as HOVs or Motorcycles during Peak Periods during the HOV Discount Period	Discount Factor
SOV (and HOV and Motorcycles other than above)	1.0
Automobiles with one trailer	2.0
Large trucks	3.0
Large trucks with one trailer	4.0
Large trucks with more than one trailer	5.0

Table F-1(b)
Axle/Occupancy-Based Classification

User Classification	Maximum Toll Factor
Exempt Vehicles	0.0
HOV and Motorcycles for valid transponder account holders that self declare (or are otherwise identified) as HOVs or Motorcycles during Peak Periods during the HOV Discount Period	Discount Factor
2 Axle (and HOV and Motorcycles other than above)	1.0
3 Axle	2.0
4 Axle	3.0
5 Axle	4.0
6 Axle	5.0

b. Subject to Section F.2.a, if Developer desires to change the Toll Factors, at least 15 days prior to the effective date of any change Developer shall provide TxDOT with a written revised schedule of Toll Factors and shall publish such schedule in the same manner (without reference to the time periods) as set forth in Sections D.2.a and D.2.b.

3. Base Toll

The "Base Toll" for each Toll Segment is defined as the Base Toll Rate multiplied by the Toll Segment Length.

4. Base Toll Rates

a. Subject to Section F.5, Developer shall set the toll rates for each Toll Segment and direction (the "Base Toll Rates").

b. Subject to Section F.5, during Schedule Mode, Developer shall have the right to change the Base Toll Rates at any time, but not more frequently than once every month.

c. Subject to Section F.5, during Dynamic Mode, Developer shall have the right to change the Base Toll Rates at any time, but not more frequently than once every 5 minutes.

5. Base Toll Rate Cap

a. The "Base Toll Rate Cap" shall initially be $0.75 per mile per Toll Segment per direction and shall be adjusted every year, beginning January 1, 2010, by a percentage equal to the percentage increase in the CPI between the CPI for the second to last December before the date of the increase and the CPI for the last December before the date of the increase.

b. Notwithstanding anything herein to the contrary, during the initial 180 days after the Service Commencement Date, the toll rate may not exceed the $0.75 per mile traveled, regardless of traffic conditions, except with TxDOT's prior written approval in TxDOT's sole discretion.

c. After the initial 180 days after the first Service Commencement Date, subject to the requirement that Developer may not change the Base Toll Rate more frequently than once every five minutes, the Base Toll Rates may exceed the Base Toll Rate Cap only if Developer complies with the following provisions:

i. If each of the highest five of the ten previous Average Volumes in a Toll Segment is more than 3300 pce/h on 2 lane facilities or more than 5100 pce/h on 3 lane facilities, or if each of the lowest five of the ten previous Average Speeds in a Toll Segment is lower than 50 mph, then the Base Toll Rate in such Toll Segment shall immediately (subject to the requirement that Developer may not change the Base Toll Rate more frequently than once every five minutes) be increased by multiplying the then-existing Base Toll Rate by a Demand Factor between 1.0 and 1.25.

ii. If each of the highest five of the ten previous Average Volumes in a Toll Segment is between 2500 and 3300 pce/h on 2 lane facilities or between 4000 and 5100 pce/ph on 3 lane facilities, and if each of the lowest five of the ten previous Average Speeds in a Toll Segment is above 50 mph, then the Base Toll Rate in such Toll Segment shall not be changed.

iii. If each of the lowest five of the ten previous Average Volumes in a Toll Segment is less than 2500 pce/h on 2 lane facilities or less than 4000 pce/h on 3 lane facilities, and if each of the lowest five of the ten previous Average Speeds in a Toll Segment is above 50 mph, then the Base Toll Rate in such Toll Segment shall immediately (subject to the requirement that Developer may not change the Base Toll Rate more frequently than once every five minutes) be reduced by multiplying the then-existing Base Toll Rate by a Demand Factor between 0.75 and 1.0.

iv. The "Demand Factor" for a Toll Segment is calculated by subtracting or adding the underlined amount that corresponds to the applicable change in passenger car equivalents per hour per lane in clauses (1) through (5) below or by subtracting or adding the underlined amount that corresponds to Average Speeds being less than 50 mph in clause (6) below to an initial factor of 1.0 (to the extent clause (6) applies and any of clauses (1) through (5) also applies, clause (6) shall take precedence):

1. equal to or greater than 0 and less than 50 pce/h/l – 0.05

2. equal to or greater than 50 and less than 100 pce/h/l – 0.10

3. equal to or greater than 100 and less than 150 pce/h/l – 0.15

4. equal to or greater than 150 and less than 200 pce/h/l – 0.20

5. equal to or greater than 200 pce/h/l – 0.25

6. each of the lowest five of the ten previous Average Speeds is less than 50 mph – 0.00 - 0.25 (as determined by Developer).

6. Toll Segment Length

a. Developer may elect to charge a User who travels less than the complete length of a Toll Segment a reduced toll based on the actual portion of the Toll Segment traveled or a toll based on the complete length of the Toll Segment. The "Toll Segment Length" means either the complete length of a Toll Segment or the actual portion of a Toll Segment traveled, based on Developer's election.

b. Subject to Section F.6.a, if Developer desires to change its methodology of calculating the Toll Segment Length, or upon a change in any Toll Segment Length, at least 15 days prior to the effective date of any change Developer shall provide TxDOT with a written revised schedule of Toll Segment Lengths and shall publish such schedule in the same manner (without reference to the time periods) as set forth in Sections D.2.a and D.2.b.

G. Performance and Measurement Requirements

1. At all times after the Service Commencement Date for each Toll Segment:

a. Developer shall measure the speed of every vehicle for each Managed Lane of the Toll Segment at points no greater than half-mile spacing ("Vehicle Speed"), and shall calculate the average Vehicle Speed for each 60-second period per direction for each Toll Segment ("Average Speeds"). Developer shall calculate the average of the Average Speeds for every consecutive 15-minute period for each Toll Segment, per direction, beginning at the top of the hour. Developer shall record every vehicle for each Managed Lane of the Toll Segment at points no greater than half-mile spacing ("Vehicle Volume"), and shall calculate the average Vehicle Volume for each 60-second period per direction for each Toll Segment ("Average Volumes").

b. Developer shall deliver weekly reports to TxDOT and Independent Engineer summarizing:

i. The Average Speeds during all time periods where the Average Speed for each Toll Segment (as it may be amended under Section G.1.a) was below 50 mph (e.g., Tuesday, 10:14 a.m. to 10:40 a.m. – Toll Segment 2 – Avg. 48 mph);

ii. The reason any Average Speeds were below 50 mph (e.g., Incident in Managed Lanes – Stalled Car); and

iii. Any corrective action taken to raise Average Speeds (e.g., responded to incident and instituted lane recovery procedures within response parameters).

c. Developer shall deliver monthly reports to TxDOT and Independent Engineer that describe the elements listed below. The report shall be in electronic format and shall include all of the raw data listed below in a format that can readily be reviewed for compliance with the CDA Documents:

i. Vehicle Speed and Vehicle Volume for each Managed Lane per direction in each Toll Segment;

ii. Average Speeds and Average Volumes (pce/h), per direction, for each Toll Segment;

iii. Average of the Average Speeds, per direction, for each Toll Segment;

iv. Tolling data including User Classification, Base Toll, Toll Segment Length, Base Toll Rates, Toll Segment Toll and temporary discounts (if any) for each tolling point in each Toll Segment:

v. for each valid transponder account holder that self-declares (or is otherwise identified) as an HOV or Motorcycle during Peak Periods during the HOV Discount Period, the date, time and amount of the undiscounted toll and a unique transaction identifier; and

vi. the total HOV discount for the month that is potentially eligible for reimbursement to Developer.

d. Developer shall retain all raw and reduced data for a minimum of five years to facilitate periodic auditing purposes. Outdated material shall be disposed of no earlier than December 31 of the year where there is a complete and full record of the preceding five years worth of data.

e. TxDOT shall have the right (but not the obligation) to perform activities to enforce the valid use of the HOV self-declaration lanes and to validate the entitlement of Users to the HOV discount, including by providing policing services or other means. Developer shall provide assistance to TxDOT in accordance with Section 21.3.1.4 of the Technical Provisions.

2. Commencing 181 days after the first Service Commencement Date, Developer shall monitor Average Volumes and Average Speeds in the Managed Lanes per direction for each Toll Segment for compliance when the Base Toll Rate exceeds the Base Toll Rate Cap as follows:

a. Developer shall deliver a weekly report to TxDOT and Independent Engineer for the Toll Segment:

i. Summarizing any and all time periods where the speeds were above 50 mph, the Base Toll Rate was at or above the Base Toll Rate Cap and the Average Volume thresholds were exceeded;

ii. Summarizing Average Volumes in passenger car equivalents per hour per lane of Segments 10 minutes prior to, during and 10 minutes after implementation of a Base Toll Rate above the Base Toll Rate Cap;

iii. Documenting that the Base Toll Rate Cap was exceeded because Average Volumes increased or Average Speeds decreased in accordance with Section F.5.c; and

iv. Documenting that the Base Toll Rate was reduced to values below the Base Toll Rate Cap as Average Volumes decreased or Average Speeds increased.

b. For each Toll Segment that operated above the Base Toll Rate Cap, Developer shall provide a monthly report to TxDOT summarizing the time of each occurrence, the duration, reasons for exceeding and mitigation measures taken to increase Average Speed and reduce Average Volumes. The report shall be in electronic format and shall include all of the raw data listed below in a format that can be readily reviewed for compliance with the CDA Documents.

i. Average Speed and Average Volumes (pce/h) per direction in each Toll Segment operating above the Base Toll Rate Cap.

ii. Toll data including User Classification, Base Toll, Toll Segment Length, Base Toll Rates, Demand Factor, Toll Segment Toll and temporary discounts (if any) for each tolling point in each Toll Segment operating above the Base Toll Rate Cap.

iii. Documentation that the Base Toll Rate was reduced to values below the Base Toll Rate Cap as Average Volumes decreased or Average Speed increased.

3. Commencing 270 days after the first Service Commencement Date and commencing 60 days after each subsequent Service Commencement Date (if later), subject to Sections G.4 and G.5, Developer shall maintain Average Speeds in the Managed Lanes of the Toll Segment at or above 50 mph.

4. Developer shall be excused from its obligation to maintain Average Speeds in the Managed Lanes of a Toll Segment at or above 50 mph only if such failure is caused by events that are beyond Developer's control and are not due to any act, omission, negligence, recklessness, willful misconduct, breach of contract or Law or violation of a Governmental Approval of any of the Developer-Related Entities, upon providing to TxDOT adequate written evidence thereof. Examples of events that are beyond Developer's control include:

a. An Incident (beyond the control of any Developer-Related Entity) within the Managed Lanes or General Purpose Lanes that is responded to by Developer and measures instituted by Developer to clear the Incident and return lane availability as required under the CDA Documents and the Incident Management Plan. Documentation of corrective action include ITS still photos and video with time stamps, Courtesy Patrol/Motorist Assistance or Operations Manager records, auditable data records provided from automated ITS dispatch records.

b. An Incident (beyond the control of any Developer-Related Entity) within the Managed Lanes or General Purpose Lanes that is responded to by authorized emergency

vehicles, as defined in Section 541.201, Transportation Code. Documentation of corrective action include Official Police Reports showing dates and times dispatched, time arrived, time cleared.

c. Incidents or recurring congestion (beyond the control of any Developer-Related Entity) adjacent to the Facility outside the limits of responsibility of the Developer. Documentation of corrective action include ITS still photos and video with time/date stamps.

d. Severe/Inclement weather. Documentation of corrective action include but are not limited to ITS still photos and video with time/date stamps, Weather Radar Snapshots with time/date stamps, vehicle volumes, etc.

e. TxDOT suspends tolling under Section 3.4 of the Agreement.

f. Developer is in strict compliance with Section F.5.c.

5. If at any time the posted speed limit on any portion of the Managed Lanes is less than 60 mph, then (a) the Average Speeds requirement under Sections G.3 and G.4 for such portion of the Managed Lanes shall be reduced to the posted speed limit minus 10 mph and (b) the corresponding Noncompliance Point thresholds under Attachment 1 of Exhibit 18 to the Agreement will each be reduced by the amount of the reduction to the Average Speeds.

H. Video Transaction Toll Premiums

1. This Section H shall not apply during any period in which (a) the NTTA Tolling Services Agreement is in effect and NTTA is performing the tolling services thereunder or (b) the TxDOT Tolling Services Agreement is in effect.

2. In addition to the right to charge Toll Segment Tolls, Developer shall have the right, except as provided in this Section H to charge amounts, with respect to Video Transactions, reasonably necessary for Developer to recover (a) its reasonable out-of-pocket and documented costs and expenses and (b) a reasonable and documented amount to reflect the same collection risk assumed by NTTA in the NTTA Tolling Services Agreement, but no other risk.

3. Subject to Section H.2, if Developer desires to implement such Video Transaction Toll Premiums, or a change in the Video Transaction Toll Premiums, at least 15 days prior to the effective date of any implementation or change, Developer shall provide TxDOT with a study establishing that such rate meets, and does not exceed, the requirements of Section H-2. TxDOT shall have the opportunity to review and provide comment on such rate prior to any implementation or change. Developer shall also provide a written revised schedule of Video Transaction Toll Premiums and shall publish such schedule in the same manner as set forth in Sections D.2.a and D.2.b.

4. Video Transaction Toll Premiums shall not apply to each of the following circumstances:

   a. Usage by Exempt Vehicles;

b. Usage by vehicles during any time that TxDOT is liable to pay tolls pursuant to Section 3.4.3 of the Agreement; and

c. Any Transponder Transaction is rejected due to insufficient funds in the customer's account, unless Developer resubmits, or (if applicable) causes the Transponder Issuer to resubmit, the Transaction for settlement once per day after the Transaction is transmitted for processing and the account remains insufficient to pay the full toll charge each time of resubmission through the date for mailing a Video Transaction billing statement to the customer on account of the rejected Transponder Transaction. Developer shall determine the date for mailing a Video Transaction billing statement, provided it shall be consistent with Section I.1.

5. During the Operating Period after the Service Commencement Date, Developer shall seek to regularly receive from its Contractor (other than NTTA or TxDOT) performing back office toll collection and enforcement services (the "tolling services Contractor") (or to compile if Developer performs back office tolling services itself), in accordance with TxDOT's interoperability protocols, consolidated master lists of good or valid transponders of Transponder Issuers. Before Developer transmits a Transaction to a CSC Host, Developer shall compare the transponder, if any, to the most recently updated version of the consolidated master list. If the transponder is listed, Developer shall transmit the Transaction to the CSC Host as a Transponder Transaction. If the transponder is not so listed, Developer shall transmit the Transaction, including the transponder information, to the CSC Host as a potential Video Transaction. At the initiation of its processing, Developer shall, or shall require its tolling services Contractor (other than NTTA or TxDOT) to, compare the license plate information to transponder accounts of the Transponder Issuers to determine whether there is an inactive, suspended or unlisted account due to balances below required low balance thresholds. If so, then the Transaction shall initially be treated as a Transponder Transaction, subject to reclassification as a Video Transaction, as more particularly set forth in Section H.4.c.

6. Developer shall have the right to treat as Video Transactions, and (except as provided otherwise in this Section H) to charge and collect, in addition to Toll Segment Tolls, the Video Transaction Toll Premium for, Transactions that normally would constitute Transponder Transactions in the following circumstances and subject to the following terms and conditions:

   a. The Transponder Issuer for the Transponder Transactions must be a Person other than Developer or its Affiliates, and other than the tolling services Contractor (which may include TxDOT).

   b. The Transponder Issuer and Developer must not have a legally enforceable agreement in effect (whether direct or via designated third party beneficiary rights) providing rights, obligations and remedies regarding financial interoperability and funds transfer.

   c. The Transponder Issuer must have chronically failed to remit to Developer (or its tolling services Contractor) payments for Transponder Transactions on the Facility within the applicable time period provided to the Transponder Issuer under its interoperability protocols, agreements and arrangements with TxDOT or Developer's tolling services Contractor. For this purpose, "chronically fails" means and is limited

to (i) if the Transponder Issuer is obligated to make batched remittances at a frequency no greater than five Business Days, then five consecutive failures, or eight failures in any 20 consecutive cycles, (ii) if the Transponder Issuer is obligated to make batched remittances at a frequency greater than five Business Days but no greater than 15 Days, then three consecutive failures, or five failures in any 15 consecutive cycles, and (iii) if the Transponder Issuer is obligated to make batched remittances at a frequency greater than 15 Days, two consecutive failures or three failures in any six consecutive cycles. However, there shall be excluded from such measures of chronic failure any failure, up to a maximum time period of 30 days per incident, of a Transponder Issuer to make remittances due to computer system malfunctions or downtime beyond the Transponder Issuer's reasonable control, or due to damage or destruction of such computer system or the facilities in which they are located or operated.

d. Developer, rather than its tolling services Contractor (if any), must bear the risk of the Transponder Issuer's failure to remit payments.

e. Developer must deliver to the Transponder Issuer written notice (i) of the provisions of this Section H.6, (ii) that chronic failure to remit payments has occurred and (iii) that Developer intends to cease recognizing Transponder Transactions by the Transponder Issuer's customers if the Transponder Issuer does not rectify the chronic failure and provide to Developer reasonable assurance, as described in Section H.6.i, of future timely payments within ten Business Days after the date of notice.

f. If the Transponder Issuer fails to rectify and provide reasonable assurance within such time period, Developer must post notice on the Facility website and in a newspaper of broad, general circulation in the Facility area announcing to the public that transponders issued by the Transponder Issuer will cease to be recognized on the Facility and customers holding such transponders will be subject to Video Transaction Toll Premiums from and after a date stated in the notice. Such date shall be no earlier than seven days after the date the notice is posted.

g. If the conditions in clauses a. through f. above are satisfied, then with respect to prior Transponder Transactions remaining unpaid by the Transponder Issuer after lapse of such time period, Developer may elect to (i) seek recovery from the Transponder Issuer to the extent available under applicable Law and/or (ii) seek to collect directly from the subject Users the Transponder Transaction tolls and treat the same as Video Transactions, except no Video Transaction Toll Premium may be charged. If the User shows that he or she previously paid the subject tolls via debit to its customer account, Developer shall cease efforts to collect the subject tolls from the User. If the date Developer receives a duplicate payment is after the date a debit is made to the User's customer account for the same toll, Developer shall refund the overcharge to the User.

h. If the conditions in subsections a. through f. above are satisfied, then in order to process future subject Transactions as Video Transactions and charge Video Transaction Toll Premiums, Developer may not seek to process or collect such Video Transactions through electronic debiting of the customer's account with the Transponder Issuer. If Developer does seek to process or collect through electronic debiting of the customer's account with the Transponder Issuer, then the Transaction

shall be treated as a Transponder Transaction or Video Transaction, as the case may be, in accordance with the Agreement and without regard to this Section H.6.

i. Developer shall cease to process Transactions by the Transponder Issuer's customers as Video Transactions, and shall again treat them as Transponder Transactions, at such time, if any, that (i) the Transponder Issuer remits to Developer or its tolling services Contractor in full all tolls due but unpaid for prior Transponder Transactions transmitted to it for payment, and (ii) provides to Developer reasonable assurance of future timely payments. Developer shall have the right to require, as such reasonable assurance, a direct agreement with the Transponder Issuer providing rights, obligations and remedies regarding financial interoperability and funds transfer on commercial terms and conditions comparable to those enjoyed by other Transponder Issuers having agreements or memoranda of understanding with the Transponder Issuer, and reasonable security.

I. Incidental Charges

1. Developer will have the right to charge reasonable Incidental Charges to its customers to recover its reasonable out-of-pocket and documented costs and expenses directly incurred with respect to the items, services and work for which they are levied, subject to the following:

   a. If Developer issues a paper statement to a customer utilizing a transponder issued by Developer, a paper statement fee may be levied to capture the cost of providing a paper summary by mail of (i) transponder account activity and (ii) Video Transaction charges. The paper statement fee shall be $1.50 and shall increase every two years, beginning January 1, 2008, by a percentage equal to the percentage increase in the CPI between the CPI for the third to last December before the date of increase and the CPI for the last December before the date of increase; provided that if Developer retains a public agency to provide back office tolling services, paper statement fees for paper summaries requested by the agency's transponder account customers may be at the standard rate customarily charged by the public agency from time to time. If the summary is provided in electronic form only, no paper statement fee shall be levied. Developer shall not charge a Video Transaction User more than one paper statement fee per month unless the Video Transaction User specifically requests more frequent paper statements;

   b. A charge may be levied for a new transponder issued by Developer or its Affiliate that will reflect the cost to Developer of acquiring the equipment. If Developer retains a public agency to provide back office tolling services including transponder issuance by the public agency, such charges may equal the standard general rates the public agency charges from time to time for its account holders respecting toll facilities operated by the public agency; and

   c. A fee may be levied for toll violation processing that will reflect the overall cost to Developer of violation processing. This fee is in additional to lawful penalties for toll violations. If Developer retains a public agency to provide back office toll violation processing and enforcement services, such fees may equal the standard rates the public agency customarily charges from time to time regarding toll violations on its own facilities, provided the same are in accordance with Law applicable to the agency. Where NTTA or TxDOT is the tolling service provider, a Transaction shall

be classified as a violation or subject to a violation notice, collection agency action or court proceedings as provided in the NTTA Tolling Services Agreement or TxDOT Tolling Services Agreement, as applicable, and as is consistent with NTTA's or TxDOT's practices regarding customers of its own facilities. With regard to all other tolling service providers, no Transaction shall be classified as a violation or subject to a violation notice, collection agency action or court proceedings unless and until (a) Developer has first delivered to the User a paper billing statement providing 30 days to pay and a second past due paper billing statement providing an additional 30 days to pay, and (b) Developer has provided a 15-day waiting period after the second 30-day period elapses. Developer shall include in each second past due paper billing statement for the same Video Transaction and each violation notice a notice that the User will owe further fees, penalties and costs if payment is not made. The second past due paper billing statement must satisfy the notice required under Section 228.055 of the Code. No paper statement fee shall be charged for any violation notice.

2. Subject to Section I.1, if Developer desires to implement any change to the Incidental Charges, at least 15 days prior to the effective date of any change, Developer shall provide TxDOT with a written revised schedule of Incidental Charges and shall publish such schedule in the same manner as set forth in Sections D.2.a and D.2.b.

J. Definitions

Discount Factor – 0.5 or any other factor between 0 and 1 as determined by TxDOT in TxDOT's sole discretion.

Dynamic Mode – A pricing methodology commencing after 180 days after the Service Commencement Date whereby the Base Toll Rate may change no more frequently than once every five minutes and that follows all the other requirements pertaining to Dynamic Mode set forth in this Exhibit 4.

Passenger Car Equivalents (pce) – As calculated in the most current version of the TRB Highway Capacity manual in order to account for the effects of buses and trucks on operations (if necessary) calculated on a per minute basis, as appropriate.

Peak Periods – 6:30 a.m. to 9:00 a.m. and 3:00 p.m. to 6:30 p.m. on Business Days or any other six-hour or four-hour period as designated by TxDOT in TxDOT's sole discretion.

Schedule Mode – A pricing methodology commencing on the Service Commencement Date whereby the Base Toll Rate may change no more frequently than once every month and that follows all the other requirements pertaining to Schedule Mode set forth in this Exhibit 4.

Transaction – A transponder or video/OCR read at a predetermined gantry location, this includes manual verification of video/OCR reads as well.

EXHIBIT 5

FACILITY PLAN OF FINANCE

[TO BE PROVIDED]

EXHIBIT 6

LIST OF INITIAL FUNDING AGREEMENTS AND INITIAL SECURITY DOCUMENTS

Funding Agreements

Security Documents

EXHIBIT 7

COMPENSATION TERMS

Part A Revenue Payments

1. General

Subject to Section 17.6.3 of the Agreement, Developer shall pay to TxDOT the amounts determined in accordance with this Part A of Exhibit 7 (the "Revenue Payment Amount"), and interest earned on such amounts prior to distribution at the same rate as the blended average rate earned on the Toll Revenue Account.

For Federal income tax purposes, the Revenue Payment Amount shall be allocated as follows:_____ _____(***to be provided in executed version***).

2. Calculation of Revenue Payment Amount

2.1 Subject to Sections 2.2, 2.3 and 3, the Revenue Payment Amount shall be calculated at the end of each calendar year, commencing at the end of the third full calendar year following the first Service Commencement Date (e.g., if the first Service Commencement Date is March 1, 2011, commencing at the end of the 2014 calendar year) for the cumulative period thereto, and continuing until the end of the Term, and shall equal the sum of the following minus all Revenue Payment Amounts, if any, paid in previous calendar years pursuant to this Section 2.1:

2.1.1 The portion of the cumulative Toll Revenues to date within Band 1, as shown in Attachment 1 to this Exhibit 7, multiplied by the applicable Revenue Payment percentage for such Band as shown in Attachment 1; plus

2.1.2 The portion of the cumulative Toll Revenues to date within Band 2, as shown in Attachment 1 to this Exhibit 7, multiplied by the applicable Revenue Payment percentage for such Band as shown in Attachment 1; plus

2.1.3 The portion of the cumulative Toll Revenues to date within Band 3, as shown in Attachment 1 to this Exhibit 7, multiplied by the applicable Revenue Payment percentage for such Band as shown in Attachment 1; plus

2.1.4 The portion of the cumulative Toll Revenues to date within Band 4, as shown in Attachment 1 to this Exhibit 7, multiplied by the applicable Revenue Payment percentage for such Band as shown in Attachment 1; plus

2.1.5 The portion of the cumulative Toll Revenues to date within Band 5, as shown in Attachment 1 to this Exhibit 7, multiplied by the applicable

Revenue Payment percentage for such Band as shown in Attachment 1; plus

2.1.6 The portion of the cumulative Toll Revenues to date within Band 6, as shown in Attachment 1 to this Exhibit 7, multiplied by the applicable Revenue Payment percentage for such Band as shown in Attachment 1.

2.2 The Band values are stated on a calendar year basis, starting with the calendar year in which the first Service Commencement Date occurs. In the calculation of revenue sharing, if the operating period in the first or last calendar year is less than a full calendar year, the applicable amounts of the Revenue Band floors and ceilings will be adjusted pro rata based on the number of operating days. For the last calendar year of the Term, Toll Revenues shall include those revenues that are accrued or earned but not yet received in such calendar year.

2.3 The Parties shall update the Ultimate Scope Financial Model to reflect only the impact of any NTPs issued or the achievement of any early trigger date(s) for NTP Capacity Improvements, as applicable, in each instance that any of the following occurs (a) TxDOT issues NTP GL, NTP ML, or NTP IC, (b) the General Purpose Capacity Improvement Early Trigger Date has been achieved or (c) the Managed Lane Capacity Improvement Early Trigger Date has been achieved. Attachment 1 to this Exhibit 7 shall be deemed replaced with a Revenue Payments table that will be automatically generated from the updated Ultimate Scope Financial Model. The Parties shall promptly execute an amendment to the Agreement to confirm substitution of such table for Attachment 1 to this Exhibit 7, but this provision shall be effective even if the Parties fail to execute such amendment.

3. Payment Procedures

3.1 The Revenue Payment Amount shall be payable to TxDOT according to the following procedures.

3.1.1 Within 15 days after the end of each calendar year or partial calendar year during the Term, commencing at the end of the third full calendar year following the first Service Commencement Date for the cumulative period thereto, Developer shall deliver to TxDOT (a) a written preliminary calculation of the Revenue Payment Amount in accordance with Part A, Section 2.1 and (b) subject to Section 3.3 below and Section 17.6.3 of the Agreement, full payment of the Revenue Payment Amount as so calculated.

3.1.2 Within 90 days after the end of each calendar year or partial calendar year during the Term, commencing at the end of the third full calendar year following the first Service Commencement Date for the cumulative period thereto, Developer shall deliver to TxDOT (a) a written final calculation of the Revenue Payment Amount in accordance with Part A, Section 2.1, (b) an audited financial statement prepared by a reputable independent certified public account according to U.S. GAAP, consistently applied, setting forth the total Toll Revenues for the subject calendar year, and (c) subject to Section 3.3 below and Section 17.6.3 of

the Agreement, either payment of any additional Revenue Payment Amount as so calculated or a written request for any refund of any prior overpayment of the Revenue Payment Amount for the subject calendar year, as so calculated.

3.1.3 TxDOT shall have up to 120 days after receipt of the items set forth in Part A, Section 3.1.2 to dispute Developer's calculation of the Revenue Payment Amount or to request further reasonable clarification or amendment to the calculation. Developer shall deliver to TxDOT such reasonable clarification or amendment within 30 days after receipt of TxDOT's written request therefor. If TxDOT does not agree with the calculation of the Revenue Payment Amount, the Dispute shall be resolved according to the Dispute Resolution Procedures.

3.1.4 Upon final determination of the Revenue Payment Amount, to the extent the result is a positive figure, subject to Section 3.3 below and Section 17.6.3 of the Agreement, Developer shall immediately pay to TxDOT the additional amount owing, together with interest thereon, commencing 90 days after the end of the calendar year or partial calendar year for which it was due until the date paid, at a floating rate equal to the LIBOR in effect from time to time.

3.1.5 Upon final determination of the Revenue Payment Amount, to the extent the result indicates an overpayment to TxDOT, TxDOT shall immediately refund the overpayment to Developer, together with interest thereon, commencing 30 days after TxDOT receives the written final calculation and audited financial statement pursuant to Section 3.1.2 until the date paid, at a floating rate equal to the LIBOR in effect from time to time.

3.2 Developer's payment obligations under this Part A shall survive expiration or any earlier termination of the Term.

3.3 Notwithstanding anything to the contrary in this Part A, Developer shall have the option, in accordance with this Section 3.3, to defer any amounts otherwise owing to TxDOT under this Part A during the first 10 years after the first Service Commencement Date upon advance written notice to TxDOT of Developer's election to defer payment of any such amounts in accordance with this Section 3.3. Any amounts deferred under this Section 3.3 shall be due no later than the date that is 10 years after the first Service Commencement Date with interest at a floating rate equal to the LIBOR in effect from time to time, provided that upon termination of the Agreement for any reason, any such amounts plus interest shall be due on the date of termination. Developer shall provide TxDOT with a written statement in form acceptable to TxDOT on December 31 of any year that Developer has deferred payment of any amounts under this Section 3.3 of each amount deferred and the amount of interest owing thereon.

Part B Refinancing Gain Payment; Gain from Certain Initial Financings

1. Developer shall pay to TxDOT (a) 75% of any Refinancing Gain from a Refinancing using credit assistance under the TIFIA commitment for the Facility obtained pursuant to TxDOT's application under the TIFIA credit assistance program (as it may be

extended whether by application of TxDOT or Developer), as well as from any changes Developer obtains to the TIFIA terms under TxDOT's application (such as but not limited to facility size, interest rate spread margins, repayment terms, or overall debt facility duration compared to the Base Case Financial Model), (b) 75% of any Refinancing Gain from a Refinancing using PABs under the PABs allocation for the Facility obtained pursuant to TxDOT's application to the U.S. Department of Transportation (as it may be extended whether by application of TxDOT or Developer), as well as from any changes Developer obtains to the PABs terms (such as but not limited to facility size, interest rate spread margins, repayment terms, or overall debt facility duration compared to the Base Case Financial Model) and (c) 50% of any Refinancing Gain from a Refinancing not covered under clause (a) or (b) above. The foregoing shall not apply, however, if such Refinancing is an Exempt Refinancing.

2. TxDOT's portion of the Refinancing Gain shall be calculated as if realized entirely in the year in which the Refinancing occurs and Developer shall pay to TxDOT TxDOT's portion of the Refinancing Gain concurrently with the close of the Refinancing; provided, however, if Developer demonstrates that it will only be able to actually make Distributions on account of such Refinancing Gain over future years, then (a) the calculation of the Refinancing Gain shall be made on a Net Present Value basis (as such term is defined under the definition of Refinancing Gain) and (b) TxDOT shall reasonably approve, and the Parties shall set forth in writing, a payment schedule spreading payments of such portion of the Refinancing Gain over such future years corresponding with the anticipated timing of such future Distributions. Notwithstanding any such payment schedule, the unpaid amount shall be due and payable in full to TxDOT upon any failure to pay a scheduled payment when due, if such failure is not cured within the cure period set forth in Section 17.1.2.3 of the Agreement plus (if applicable) the cure period available to then-existing Lenders under Section 20.4.2 of the Agreement.

3. Concurrently with delivering to TxDOT draft proposed Funding Agreements and Security Documents in connection with any such Refinancing, Developer shall also deliver to TxDOT its calculation of the anticipated Refinancing Gain, if any, together with any back-up documentation for its calculation.

4. If the Facility Plan of Finance does not include TIFIA funding but Developer closes with TIFIA financing at Financial Close, or if the Facility Plan of Finance does not include PABs funding but Developer closes with PABs financing at Financial Close, then Developer shall pay to TxDOT (a) 75% of the incremental benefit realized due to the use of credit assistance under the TIFIA commitment for the Facility obtained pursuant to TxDOT's application under the TIFIA credit assistance program (as it may be extended whether by application of TxDOT or Developer), and (b) 75% of any incremental benefit realized due to the use of PABs under the PABs allocation for the Facility obtained pursuant to TxDOT's application to the U.S. Department of Transportation (as it may be extended whether by application of TxDOT or Developer). If the Facility Plan of Finance includes TIFIA and/or PABs funding and Developer changes the TIFIA and/or PABs terms (such as but not limited to facility size, interest rate spread margins, repayment terms, or overall debt facility duration) prior to Financial Close, TxDOT will be entitled to receive 75% of the net incremental benefit realized due to these changes. Such incremental benefit under (a) or (b) shall be calculated and payable in the same manner as Refinancing Gain under Section 2 of this Part B.

Any incremental benefit described under (a) or (b) shall be calculated based on the Base Case Financial Model and Facility Plan of Finance assuming that TIFIA and/or PABs are replacing the most expensive debt in the Facility Plan of Finance.

5. For Federal income tax purposes, the Refinancing Gain payment shall be allocated as follows:_____ (***to be provided in executed version***).

Part C Payment of Public Funds

1. Public Funds Amount

TxDOT shall pay to Developer the amount of $_____ [***provided in executed version from Proposal Form K-1, Box 1***] (the "Public Funds Amount") in accordance with this Part C. The Public Funds Amount is not subject to change for any reason whatsoever, except the market interest rate adjustment described in Section 4.1.4.5 of the Agreement.

2. Schedule of Values

Within ninety days after NTP1, and concurrent with the Facility Baseline Schedule, the Developer shall submit to TxDOT a complete Schedule of Values for all Payment Activities as described below for TxDOT's approval. The Schedule of Values level of detail shall be based on the WBS Levels shown in Attachment 2-2 of the Technical Provisions. No payment of the Public Funds Amount, if applicable, will be made until the Schedule of Values is approved by TxDOT.

The following pertains to presentation of the Schedule of Values:

- The Payment Activities shall be organized and grouped according to the approved WBS with subtotals for each WBS item at each WBS level.

- The Schedule of Values shall contain for each Payment Activity from the Facility Baseline Schedule, the activity identification number, the activity description, the quantity, the applicable unit, unit price and scheduled value.

If it becomes necessary to add, combine, eliminate or modify any Payment Activities due to changes in the Work, a revised Schedule of Values as derived from a revised Facility Baseline Schedule, shall be submitted 14 days after the respective Change Order, Relief or Compensation Event is executed, for acceptance by TxDOT.

3. Draft Payment Request

3.1 Developer shall submit a draft Payment Request to TxDOT and the Independent Engineer at a maximum frequency of once every three months. Developer shall submit each draft Payment Request no earlier than seven days following the end of each three-month period. Developer shall not submit the first draft Payment Request prior to the later of (i) three months following NTP2 or (ii) the date of Financial Close.

3.2 The Payment Request shall include one hard copy and one electronic copy of a cover sheet, a listing of Completed Payment Activities, the three corresponding

Progress Reports for the period covered by the Payment Request (see Section 2.1.1.2.5 of the Technical Provisions), a certificate, and supporting documents, as follows:

3.2.1 The cover sheet shall contain:

- TxDOT assigned contract number and title;
- Invoice number (numbered consecutively starting with "1");
- Period covered by the Payment Request (inclusive calendar dates);
- Cumulative Facility Funds Completed, Cumulative Public Funds Paid Amount and Payment Request Amount;
- Maximum amount payable based on the Maximum Payment Curve;
- Total additional amount remaining to be paid by TxDOT;
- Authorized signature and title of signatory; and
- Date that the Payment Request was signed.

3.2.2 The listing of Completed Payment Activities shall be grouped by WBS and contain:

- Payment Activity ID;
- Payment Activity description;
- Payment Activity Scheduled Value;
- Total earned based on the Schedule of Values for the three-month period at WBS Level II; and
- Total earned based on the Schedule of Values for the Facility to date.

3.2.3 The certificate shall be in the form included as Attachment 2 to Exhibit 7, with no additions or deletions other than those approved by TxDOT.

3.2.4 Supporting documents to be determined under Section 3.3.

3.3 Sample formats for the Payment Request cover sheet and listing of Completed Payment Activities are shown in Attachment 2 to Exhibit 7. Developer may present variations to these formats for TxDOT approval at least 15 days prior to the submittal of the first Payment Request. Once TxDOT has approved the formats, the formats shall not change unless approved by TxDOT prior to submittal to TxDOT. Developer shall obtain TxDOT's approval of the requirements for the supporting documents which are to be included with the Payment Request within 45 days after issuance of NTP2.

3.4 Subject to Section 5.4 of this Part C, the "Payment Request Amount" will be determined as follows:

Total Public Funds Request (Proposal Form K-1, Box 1) Total Facility D-B Costs (Proposal Form P-BSP, Box A)	X	Sum of Schedule of Values of 100% Completed Payment Activities	—	Total Funds Paid by TxDOT

Partially completed Payment Activities are not eligible for payment.

4. Payment Request Review and Progress Status Meetings

4.1 Developer shall schedule and hold Payment Request review and progress status meeting(s) with TxDOT and the Independent Engineer within seven days after it submits the draft Payment Request. The Payment Request review and progress status meetings shall address and finalize the following:

4.1.1 Actual activity start dates, finish dates and forecast dates.

4.1.2 Total earned based on the Schedule of Values for the three-month period and for the Facility to date.

4.1.3 Incorporation of and summary list of all approved Change Orders.

4.1.4 Critical Path(s) and analysis of potential performance areas.

4.1.5 Written summary of actions that are either in consideration or are being taken to minimize areas of potential impact or concerns.

4.2 Upon approval by TxDOT, TxDOT and Developer shall sign the draft Payment Request indicating that it has been approved.

5. Payment Request and Payment

5.1 Within seven days after each Payment Request review and progress status meeting, Developer shall submit to TxDOT the Payment Request based on the approved draft Payment Request.

5.2 No Payment Request will be reviewed or processed until TxDOT receives a complete Payment Request in compliance with the requirements of this Part C.

5.3 Within 30 days after receipt by TxDOT of each complete Payment Request, TxDOT will pay Developer the amount of the Payment Request approved for payment, subject to the Maximum Payment Curve (see Section 5.4 of this Part C), less any amounts owing to TxDOT by Developer.

5.4 Payment of each Payment Request is limited by the cumulative cap on payments as set forth in the Maximum Payment Curve. In other words, at no time will Developer's cumulative total payments of the Public Funds Request exceed the

cumulative total payments permitted by the Maximum Payment Curve. Payment of any amounts included in a Payment Request that are in excess of the maximum aggregate amount payable under the Maximum Payment Curve shall be deferred until such time, if any, that such deferred amounts can be paid without aggregate payments exceeding the Maximum Payment Curve.

6. Payment to Design-Build Contractor

Upon receipt of payment from TxDOT, Developer shall promptly pay the Design-Build Contractor out of the amount paid to Developer on account of the Design-Build Contractor's work, the amount to which the Design-Build Contractor is entitled. Developer shall, by appropriate agreement with the Design-Build Contractor, require the Design-Build Contractor to make payments to its subcontractors and suppliers in a similar manner. TxDOT shall have no obligation to pay or to see to the payment of money to the Design-Build Contractor or its subcontractors or suppliers, except as may otherwise be required by Law.

7. Payment to Developer for NTP Capacity Improvements

In the event that TxDOT issues one or more of the NTPs for the NTP Capacity Improvements, TxDOT shall pay to Developer within six months after the Service Commencement Date for the Work pertaining to such NTP(s), in good and immediately available funds, the amount of:

- $ _____ for General Purpose Capacity Improvement [***to be provided in executed version from Proposal Form K-1, Part C***] multiplied by the factor for the period in which TxDOT issues the NTP (see table below);

- $ _____ for Interchange Capacity Improvement [***to be provided in executed version from Proposal Form K-1, Part C***];

- $ _____ for Managed Lane Capacity Improvement [***to be provided in executed version from Proposal Form K-1, Part C***] multiplied by the factor for the period in which TxDOT issues the NTP (see table below)

Year in which NTP is issued	**Factor**
Prior to 2 years after NTP2	1.000
2 years after NTP2 to prior to 3 years after NTP2	1.010
3 years after NTP2 to prior to 4 years after NTP2	0.990
4 years after NTP2 to prior to 5 years after NTP2	0.990
5 years after NTP2 to prior to 6 years after NTP2	0.966
6 years after NTP2 to prior to 7 years after NTP2	0.946
7 years after NTP2 to prior to 8 years after NTP2	0.916
8 years after NTP2 to prior to 9 years after NTP2	0.878
9 years after NTP2 to prior to 10 years after NTP2	0.834
10 years after NTP2 to prior to 11 years after NTP2	0.784
11 years after NTP2 to prior to 12 years after NTP2	0.726

12 years after NTP2 to prior to 13 years after NTP2	0.662
13 years after NTP2 to prior to 14 years after NTP2	0.597
14 years after NTP2 to prior to 15 years after NTP2	0.520
15 years after NTP2 to prior to 16 years after NTP2	0.437
16 years after NTP2 to prior to 17 years after NTP2	0.347
17 years after NTP2 to prior to 18 years after NTP2	0.242
18 years after NTP2 to prior to July 1, 2029	0.125
After July 1, 2029	0.000

The payment to Developer for NTP Capacity Improvements is not subject to change for any reason whatsoever, except that TxDOT shall have the right, at its option, to obtain pricing for the NTP Capacity Improvements pursuant to Change Order or Directive Letter procedures under Section 14.1 or 14.3 of the Agreement, in which case payment shall equal the lesser of the amount under this Section C.7 or the amount determined pursuant to the Change Order or Directive Letter.

8. Landscaping and Aesthetics Budget

For the purposes of this Agreement and coordination with the local communities and TxDOT, the Developer shall allocate $_____ [***see table below for allocations***] toward landscaping and the aesthetics Elements identified in Section 15.2 of the Technical Provisions. The actual cost may vary depending upon Final Design and the approved Aesthetics Plan, but all parties will work towards developing a design that meets the above budget. If NTP IC is issued, an additional $_____ [***to be included from table below***] shall be allocated toward such landscaping and aesthetics elements.

Scope Item	**Landscaping and Aesthetics Budget**
Mandatory Scope	$4.0M
General Purpose Capacity Improvement	$0 M
IH35W Managed Toll Lane Direct Connectors	$0.5M
Interchange Capacity Improvements	$3.5M
Subsegment A	$3.0M
Subsegment B	$4.0M
Subsegment C	$7.0M

Managed Lane Capacity Improvement - Subsegment A	$0 M
Managed Lane Capacity Improvement - Subsegment B	$0 M
Managed Lane Capacity Improvement - Subsegment C	$0 M

9. No Waiver

No payments shall be construed as an acceptance of any defective work or improper materials.

10. Disputes

Failure by TxDOT to pay any amount in dispute shall not alleviate, diminish or modify in any respect Developer's obligation to perform under the CDA Documents and Developer shall not cease or slow down its performance under the CDA Documents on account of any such amount. Any dispute regarding such payment shall be resolved pursuant to the Dispute Resolution Procedures.

Part D Payment of HOV Discount

Within 30 days after TxDOT receives all of the monthly reports described in Section G.1.c of Exhibit 4 to the Agreement for each quarter ending on the last day of March, June, September and December during the HOV Discount Period, TxDOT shall pay Developer the total undisputed amount of the HOV discount incurred during the quarter for valid transponder account holders that self-declare (or are otherwise identified) as HOVs or Motorcycles during Peak Periods during the HOV Discount Period. TxDOT reserves the right to adjust any payments for errors in previous payments.

Part E Interoperability Fee Adjustment

1. The "Benchmark Interoperability Rate" is 8%.

2. Developer shall deliver a report to TxDOT and the Independent Engineer in standardized form acceptable to TxDOT within 10 days following each month, itemizing each Interoperability Fee Developer paid during the month and the amount of any adjustment in connection with such fee under this Part E.

3. If Developer paid total Interoperability Fees in a month that are greater than those it would pay assuming the Benchmark Interoperability Rate, then TxDOT shall pay the difference to Developer within 15 days after TxDOT's receipt of the applicable report.

4. If Developer paid total Interoperability Fees in a month that are less than those it would pay assuming the Benchmark Interoperability Rate, then Developer shall pay the difference to TxDOT within 15 days after the end of the month.

ATTACHMENT 1 TO EXHIBIT 7

[INSERT PROPOSAL FORM U IN THE EXECUTED AGREEMENT.]

ATTACHMENT 2 TO EXHIBIT 7

North Tarrant Express –Facility
TxDOT Contract No. xx-xxxPxxxx
Invoice No: xx
Invoice Period: _____, 20__ through _____, 20__

Payment Request Cover Sheet
(Part C, Section 3.2.1)

Total Facility Cost	$x,xxx,xxx,xxx.00 ***[to be provided in executed version (Proposal Form P-BSP)]***	
Public Funds Amount		$xxx,xxx,xxx.00 ***[to be provided in executed version (Proposal Form K, Box 1)]***
Sum of Schedule of Values of Completed Payment Activities		$xxx,xxx,xxx.00
Total amount of Public Funds Amount Paid		$xx,xxx,xxx.00
Payment Request Amount		$xx,xxx,xxx.00
Maximum amount payable based on Maximum Payment Curve		$xxx,xxx,xxx.00
Remaining Facility Construction Costs	$xxx,xxx,xxx.00	
Remaining amount of Public Funds Amount not paid		$xxx,xxx,xxx.00

North Tarrant Express –Facility
TxDOT Contract No. xx-xxxPxxxx
Invoice No: xx
Invoice Period: _____, 20__ through _____, 20__

LISTING OF COMPLETED PAYMENT ACTIVITIES
(Part C, Section 3.2.2)

Activity ID No.	Activity Description	Scheduled Value - $
1.A.3. Structures **1.A.3.1. Bridge No. 12**		**#########**
13121	Install EBML bridge substructure	#########
13122	Install WBML bridge substructure	#########
13125	Install EBML bridge superstructure	#########
13126	Install WBML bridge superstructure	#########
1.B.1. Project Management and Administration **1.B.1.1. Scheduling**		**#########**
02110	Maintain Schedule – February 2009	#########
02111	Maintain Schedule – March 2009	#########
TOTAL		**#########**
1.C.1. ROW/Utility Adjustments **1.C.1.1 ROW Acquisitions**		#########
07101	Acquire Parcel 101	#########
07102	Acquire Parcel 102	#########
TOTAL		**#########**
TOTAL EARNED _____, 20__ – _____, 20__		**#######.##**
TOTAL EARNED TO DATE		**#######.##**

CERTIFICATE
(Part C, Section 3.2.3)

In order to induce the Texas Department of Transportation ("TxDOT") to make payment as requested by this Payment Request, Developer hereby certifies, represents and warrants to TxDOT as follows:

1. Unless otherwise indicated, capitalized terms used herein shall have the meanings set forth in that certain Comprehensive Development Agreement between TxDOT and Developer.

2. The Work associated with each Payment Activity described in the exhibits and documents attached hereto is 100% complete and has been fully performed in a prudent manner and in compliance with the requirements of the CDA Documents; all necessary materials to perform such Work have been provided in accordance with the provisions of the CDA Documents and Design-Build Contract; and the information contained in such exhibits and documents is true, complete and correct in all material respects.

3. The amount specified in the Payment Request has been computed in accordance with, and is due and payable under, the terms and conditions of the Agreement, has not been the subject of any previous Payment Request (unless disputed or rejected for payment) and is not the subject of any pending Payment Request from Developer.

4. No Developer Default has occurred and is continuing that has not been reported to TxDOT.

5. The representations and warranties of Developer set forth in the Agreement are true and correct as of the date of this Payment Request.

6. No event of default or event under the Design-Build Contract which with the giving of notice or the lapse of time would result in an event of default under the Design-Build Contract has occurred and is continuing as of the date hereof.

7. All Governmental Approvals necessary for the Work that are Developer's obligation to obtain pursuant to the CDA Documents and to which this Payment Request relates have been secured, except to the extent TxDOT and the issuing Governmental Entity have granted a written exception, and there exists no reason to believe that any future Governmental Approvals that are Developer's obligation to obtain pursuant to the CDA Documents for the Work cannot be secured.

8. Neither Developer nor the Design-Build Contractor is barred or suspended from providing goods or services to any local, state or federal agency. Except for any specific subcontractor or Supplier listed as barred or suspended in an attachment hereto, each subcontractor and Supplier for the Work has certified in its respective invoice to the Design-Build Contractor that it is not barred or suspended from providing goods or services to any local, state or federal agency, and to Developer's knowledge no subcontractor or Supplier has been so barred or suspended.

9. As of the date hereof, Developer has been paid all amounts due to it under the CDA Documents and the Design-Build Contractor, each other prime Contractor for Secured Work, and all subcontractors, Suppliers, Utility Owners and other third parties engaged or retained by Developer or the Design-Build Contractor for performance of Secured Work or supply of related services, materials or equipment have been paid all amounts due under their respective contracts or purchase agreements (in each case, other than amounts to be paid pursuant to this Payment Request, and in each case other than retainage and amounts in dispute of which

Developer has previously given TxDOT written notice setting forth in detail the amounts in dispute).

10. Prevailing wages have been paid to all employees of Developer, the Design-Build Contractor and all subcontractors in accordance with the rates set forth in the Agreement.

11. Also attached hereto are:

(a) A certificate and release signed by the Design-Build Contractor, each other prime Contractor for Secured Work, and each subcontractor or Supplier Utility Owner or other third party engaged or retained for performance of Secured Work or supply of related services, materials or equipment included in any preceding Payment Request for which Developer received payment, certifying that it has received payment in full for such services, materials or equipment, except only for retainage and amounts in dispute, stating any amounts in dispute and waiving and releasing any and all claims, liens or security interests, known or unknown, suspected or unsuspected, arising out of such services, materials or equipment against any person or property whatsoever, including TxDOT, the State, the Facility, any Payment Bond and any letters of credit, except potential claims against retainage, or letters of credit or certificates of deposit for retainage.

(b) An updated Schedule of Values reflecting the true Work performed.

(c) A current Maximum Payment Curve inclusive of all approved adjustments.

(d) An "Affidavit of Wages Paid" submitted by the Design-Build Contractor, each other prime Contractor for Secured Work, and each subcontractor, certifying wages paid and compliance with applicable prevailing wage requirements.

(e) Other support documentation as required by the Agreement or as appropriate to support this Payment Request.

"Developer"

_____

By: _____

Its: _____

Date: _____

_____

By: _____

Its: _____

Date: _____

ATTACHMENT 3 TO EXHIBIT 7

MAXIMUM PAYMENT CURVE

[TO BE ATTACHED TO THE EXECUTED AGREEMENT]

EXHIBIT 8

FEDERAL REQUIREMENTS

Exhibit Description	No. of Pages
Attachment 1 – Federal Provisions	2
Attachment 2 – FHWA Form 1273	25
Attachment 3 – Wage Determination of the Secretary of Labor	4
Attachment 4 – Equal Employment Opportunity	5
Attachment 5 – Affirmative Action	5
Attachment 6 – Debarment and Suspension Certification	1
Attachment 7 – Lobbying Certification	2
Attachment 8 – Compliance with Section 1604(b)(3) of SAFETEA-LU	1
Attachment 9 – Compliance with Buy America Requirements	2

ATTACHMENT 1 TO EXHIBIT 8

FEDERAL REQUIREMENTS FOR FEDERAL-AID CONSTRUCTION FACILITIES

GENERAL. — The work herein proposed will be financed in whole or in part with Federal funds, and therefore all of the statutes, rules and regulations promulgated by the Federal Government and applicable to work financed in whole or in part with Federal funds will apply to such work. The "Required Contract Provisions, Federal-Aid Construction Contracts, Form FHWA 1273," are included in this Exhibit 8. Whenever in said required contract provisions references are made to:

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

(b) “contractor”, “prime contractor”, “bidder” or “prospective primary participant”, such references shall be construed to mean Developer or its authorized representative and/or the Design-Build Contractor or its authorized representative, as may be appropriate under the circumstances;

(c) “contract” or “prime contract”, such references shall be construed to mean the Design-Build Contract;

(d) “subcontractor”, “supplier”, “vendor”, “prospective lower tier participant” or “lower tier subcontractor”, such references shall be construed to mean, as appropriate, Contractors (other than NTTA) other than the Design-Build Contractor; and

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

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

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

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

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

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

CONVICT PRODUCED MATERIALS

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

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

FHWA FORM 1273 SECTIONS VII.1 AND VII.2 INAPPLICABLE – Pursuant to 23 CFR 635.116(d), the requirements of Sections VII.1 and VII.2 of FHWA Form 1273 (Attachment 2 to Exhibit 8 to the Agreement) are inapplicable to the Agreement.

ACCESS TO RECORDS

a. As required by 49 CFR 18.36(i)(10), Developer and its Contractors shall allow FHWA and the Comptroller General of the United States, or their duly authorized representatives, access to all books, documents, papers, and records of Developer and Contractors which are directly pertinent to any grantee or subgrantee contract, for the purpose of making audit, examination, excerpts, and transcriptions thereof. In addition, as required by 49 CFR 18.36(i)(11), Developer and its Contractors shall retain all such books, documents, papers, and records for three years after final payment is made pursuant to any such contract and all other pending matters are closed.

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

ATTACHMENT 2 TO EXHIBIT 8

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

FHWA Form 1273

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I. GENERAL

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.

3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.

4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:

   Section I, paragraph 2;

   Section IV, paragraphs 1, 2, 3, 4, and 7;

   Section V, paragraphs 1 and 2a through 2g.

5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.

6. Selection of Labor: During the performance of this contract, the contractor shall not:

   a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or

   b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

II. NONDISCRIMINATION

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

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

    a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.

    b. The contractor will accept as his operating policy the following statement:

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

2. **EEO Officer**: The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.

3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

    a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)

c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.

5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.

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

d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

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

a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.

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

a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.

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

c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.

9. **Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.

   a. The records kept by the contractor shall document the following:

      i. The number of minority and non-minority group members and women employed in each work classification on the project;

      ii. The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;

      iii. The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and

      iv. The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.

   b. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the job training is being required by special provision, the contractor will be required to collect and report training data.

III. NONSEGREGATED FACILITIES

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

1. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

2. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit

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

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

IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

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

1. General:

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

b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the

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

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

2. Classification:

a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.

b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:

i. the work to be performed by the additional classification requested is not performed by a classification in the wage determination;

ii. the additional classification is utilized in the area by the construction industry;

iii. the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

iv. with respect to helpers, when such a classification prevails in the area in which the work is performed.

c. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour

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

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

3. Payment of Fringe Benefits:

a. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor or subcontractors, as appropriate, shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly case equivalent thereof.

b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

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

a. Apprentices:

i. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.

ii. The allowable ratio of apprentices to journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the

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

iii. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

iv. In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

b. Trainees:

i. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration.

ii. The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered

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

iii. Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.

iv In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Helpers:

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

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

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

6. Withholding:

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

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

7. Overtime Requirements:

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

8. Violation:

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

9. Withholding for Unpaid Wages and Liquidated Damages:

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

V. STATEMENTS AND PAYROLLS

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

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

1. Compliance with Copeland Regulations (29 CFR 3)

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

2. Payrolls and Payroll Records:

a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.

b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.

c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime

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

d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

i. that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;

ii. that such laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 3;

iii that each laborer or mechanic has been paid not less that the applicable wage rate and fringe benefits or cash equivalent for the classification of worked performed, as specified in the applicable wage determination incorporated into the contract.

e. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.

f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

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

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

a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.

b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.

c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.

2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

VII. SUBLETTING OR ASSIGNING THE CONTRACT

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635).

   a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.

   b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

VIII. SAFETY: ACCIDENT PREVENTION

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SHA contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

these and similar acts, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

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

- ***"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or***

- ***Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or***

- ***Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;***

- ***Shall be fined not more than $10,000 or imprisoned not more than 5 years or both."***

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

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

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

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

2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.

3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

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

1. Instructions for Certification - Primary Covered Transactions

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

a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage

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

f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

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

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

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and

d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

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

3. Instructions for Certification - Lower Tier Covered Transactions:

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

a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to

which this proposal is submitted for assistance in obtaining a copy of those regulations.

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

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

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

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

* * * * *

XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

   a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

   b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such recipients shall certify and disclose accordingly.

ATTACHMENT 3 TO EXHIBIT 8

FEDERAL PREVAILING WAGE RATE

(Subject to change)

GENERAL DECISION: **TX20080043** 02/08/2008 TX43

Date: February 8, 2008
General Decision Number: **TX20080043** 02/08/2008

Superseded General Decision Number: TX20070045

State: Texas

Construction Types: Heavy and Highway

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

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

Modification Number Publication Date
0 02/08/2008

SUTX2004-004 11/09/2004

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

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

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

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

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

WAGE DETERMINATION APPEALS PROCESS

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

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

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

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

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

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

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

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

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

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

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

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END OF GENERAL DECISION

ATTACHMENT 4 TO EXHIBIT 8

EQUAL EMPLOYMENT OPPORTUNITY

SPECIAL PROVISION
000---001
Standard Federal Equal Employment Opportunity
Construction Contract Specifications (Executive Order 11246)

1. As used in these specifications:

   a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;

   b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

   c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

   d. "Minority" includes:

      Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

      Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

      Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

      American Indian or Alaskan Native (all persons having origins in any of the original peoples of North American and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Hometown Plan area (including goals and timetables) shall be in accordance with that plan for those trades which have unions participating in the Hometown Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved

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

4. The contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing contracts in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the contract is being performed. Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any Office of Federal Contract Compliance Programs office or any Federal procurement contracting officer. The contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.

7. The contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

    a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each construction project. The contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

    b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or woman sent by the contractor, or when the contractor has other information that the union referral Process has impeded the contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the contractor’s EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the contractor's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractor's EEO policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the contractor's EEO policy and the contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the contractor has achieved its goals for women generally, the

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

10. The contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

16. In addition to the reporting requirements set forth elsewhere in this contract, the contractor and the subcontractors holding subcontracts, not including material suppliers, of $10,000 or more, shall submit for every month of July during which work is performed, employment data as contained under Form PR 1391 (Appendix C to 23 CFR, Part 230), and in accordance with the instructions included thereon.

ATTACHMENT 5 TO EXHIBIT 8

AFFIRMATIVE ACTION

SPECIAL PROVISION
000--1981
Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)

1. **General.**

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

2. **Goals.**

a. Goals for minority and female participation are hereby established in accordance with 41 CFR 60-4.

b. The goals for minority and female participation expressed in percentage terms for the contractor's aggregate work force in each trade on all construction work in the covered area, are as follows:

Goals for minority participation in each trade (per- cent)	**Goals for female participation in each trade (per-cent)**
See Table 1	6.9

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

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

3. **Subcontracting.**

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

4. **Covered area.**

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

5. **Reports.**

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

Table 1

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

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

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

Hays	24.1	Lynn	19.5
Hemphill	11.0	Madison	27.4
Henderson	22.5	Marion	22.5
Hidalgo	72.8	Martin	18.9
Hill	18.6	Mason	20.0
Hockley	19.5	Matagorda	27.4
Hood	18.2	Maverick	49.4
Hopkins	17.2	McCulloch	20.0
Houston	22.5	McLennan	20.7
Howard	18.9	McMullen	49.4
Hudspeth	49.0	Medina	49.4
Hunt	17.2	Menard	20.0
Hutchinson	11.0	Midland	19.1
Irion	20.0	Milam	18.6
Jack	17.2	Mills	18.6
Jackson	27.4	Mitchell	10.9
Jasper	22.6	Montague	17.2
Jeff Davis	49.0	Montgomery	27.3
Jefferson	22.6	Moore	11.0
Jim Hogg	49.4	Morris	20.2
Jim Wells	44.2	Motley	19.5
Johnson	18.2	Nacogdoches	22.5
Jones	11.6	Navarro	17.2
Karnes	49.4	Newton	22.6
Kaufman	18.2	Nolan	10.9
Kendall	49.4	Nueces	41.7
Kennedy	44.2	Ochiltree	11.0
Kent	10.9	Oldham	11.0
Kerr	49.4	Orange	22.6
Kimble	20.0	Palo Pinto	17.2
King	19.5	Panola	22.5
Kinney	49.4	Parker	18.2
Kleberg	44.2	Parmer	11.0
Knox	10.9	Pecos	18.9
Lamar	20.2	Polk	27.4
Lamb	19.5	Potter	9.3
Lampasas	18.6	Presidio	49.0
LaSalle	49.4	Rains	17.2

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

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

ATTACHMENT 6 TO EXHIBIT 8

DEBARMENT AND SUSPENSION CERTIFICATION

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

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

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and

d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

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

ATTACHMENT 7 TO EXHIBIT 8

CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

1. The prospective Developer/Contract certifies, to the best of its knowledge and belief, that:

    a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of **ANY** Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

    b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with **THIS** Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, and shall include a copy of said form in its proposal or bid, or submit it with the executed CDA or Contract.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

3. Developer/Contractor shall require that the language of this certification be included in all lower tier Contracts which exceed $100,000 and that all such recipients shall certify and disclose accordingly.

4. The undersigned certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the undersigned understands and agrees that the provisions of 31 U.S.C. §3801, et seq., apply to this certification and disclosure, if any.

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

NOTE: DEVELOPER AND EACH CONTRACTOR IS REQUIRED, PURSUANT TO FEDERAL LAW, TO INCLUDE THE ABOVE LANGUAGE IN CONTRACTS OVER $100,000 AND TO OBTAIN THIS LOBBYING CERTIFICATE FROM EACH CONTRACTOR BEING PAID $100,000 OR MORE.

ATTACHMENT 8 TO EXHIBIT 8

COMPLIANCE WITH SECTION 1604(b)(3) OF THE SAFE, ACCOUNTABLE, FLEXIBLE, EFFICIENT TRANSPORTATION EQUITY ACT: A LEGACY FOR USERS (SAFETEA-LU) AND WITH THE AGREEMENT BETWEEN THE TEXAS DEPARTMENT OF TRANSPORTATION AND THE FEDERAL HIGHWAY ADMINISTRATION

(THE "TOLL AGREEMENT")

1. **Monitoring and Reporting**

   a. The agreement between TxDOT and the FHWA included in the Reference Information Documents ("Toll Agreement") requires TxDOT to annually monitor and report to FHWA the Facility's performance with respect to the achievement of established performance goals.

   b. To enable TxDOT to perform such monitoring and submit such reports, Developer shall perform such monitoring, shall coordinate with Governmental Entities as necessary to collect applicable information and shall provide to TxDOT not later than February 1 after the end of each calendar year, starting with the calendar year in which the first Service Commencement Date occurs, a draft monitoring report containing all of the data required in Attachment 2 of the Toll Agreement, in form reasonably acceptable to TxDOT. Developer shall verify the contents of the monitoring report and submit a final monitoring report, in form reasonably acceptable to TxDOT, not later than March 15 of each such calendar year. Developer shall cooperate with TxDOT in finalizing the monitoring report. If FHWA prescribes a form of monitoring report from TxDOT, including any certifications regarding the performance of the Facility, then Developer shall deliver to TxDOT a monitoring report and any required certifications in the same form.

2. **Annual Audit of Records**

   a. The Toll Agreement requires TxDOT to annually audit the records of the Facility for compliance with the provisions of the Toll Agreement, and to report the audit results to FHWA. The Toll Agreement provides that in lieu of TxDOT performing the audit, TxDOT may deliver to FHWA a report of an independent auditor furnished by Developer.

   b. To enable TxDOT to comply with such annual audit requirement as it relates to compliance with the obligation in the Toll Agreement to adequately maintain the Facility, Developer shall prepare and deliver to TxDOT a written report of the results of each quarterly Audit Inspection and Asset Condition Score by Developer. TxDOT shall have the right to deliver to FHWA copies of such reports, as well as copies of reports from the Independent Engineer of its Audit Inspections and its assessments of the accuracy of Developer's O&M Records. In addition, Developer shall permit FHWA to audit Developer's O&M Records upon request.

c. If FHWA requires an annual audit to verify compliance with the Toll Agreement's provisions regarding use of Toll Revenues, then to enable TxDOT to comply with such annual audit requirement, Developer shall deliver to TxDOT, not later than 90 Days after the end of each Fiscal Year of Developer during the Term, an audited financial statement. The audited financial statement shall include statements of revenues and expenses, assets and liabilities, and net profits from operations. The audited statements shall be prepared by a reputable, independent certified public accountant according to U.S. GAAP, consistently applied. TxDOT shall have the right to deliver copies of such audited statements to FHWA.

ATTACHMENT 9 TO EXHIBIT 8

COMPLIANCE WITH BUY AMERICA REQUIREMENTS

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

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

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

At Developer's request, TxDOT may, but is not obligated to, seek a waiver of Buy America requirements if grounds for the waiver exist. However, Developer certifies that it will comply with the applicable Buy America requirements if a waiver of those requirements is not available or not pursued by TxDOT. A request for a waiver shall be treated as a Change Request under Section 14.2 of the Agreement.

BUY AMERICA CERTIFICATE

Certificate of Compliance

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

Date: _____

Signature:_____

Developer's Name: _____

Title: _____

Or

Certificate for Noncompliance

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

Date: _____

Signature: _____

Developer's Name: _____

Title: _____

EXHIBIT 9

MILESTONE SCHEDULE

Milestone	Deadline
NTP2 Conditions Deadline	The latter of (a) 180 days after the date TxDOT issues NTP1 or (b) the date Financial Close occurs
NTP GP Preliminary Work Deadline	30 days after the date TxDOT issues NTP GP under Section 7.7.2.3(a) of the Agreement
NTP IC Preliminary Work Deadline	60 days after the date TxDOT issues NTP IC under Section 7.7.2.4 of the Agreement
NTP ML Preliminary Work Deadline	30 days after the date TxDOT issues NTP ML under Section 7.7.2.5(a) of the Agreement
Commencement of Construction Work	___ days after the date TxDOT issues NTP2 [when executing the CDA, fill in the number of days from Developer's Proposal Form O]
Service Commencement Deadline	The earlier of (a) ____ days after the date TxDOT issues NTP2 or (b) 60 days after Substantial Completion. If TxDOT issues NTP IC, the number of days will be extended by 200 days. If TxDOT issues NTP GP and/or NTP ML prior to 24 months after issuance of NTP2 or 36 months after issuance of NTP2 or later, the number of days will not be extended. If TxDOT issues NTP GP and/or NTP ML 24 months after issuance of NTP2 or later but prior to 36 months after issuance of NTP2, the number of days will be extended by 90 days. [when executing the CDA, fill in the number of days from Developer's Proposal Form O]
Final Acceptance Deadline	90 days after the last Service Commencement Deadline

Long Stop Date	18 months after the applicable Service Commencement Deadline

EXHIBIT 10

PRELIMINARY BASELINE SCHEDULE

[TO BE PROVIDED]

EXHIBIT 11

HAZARDOUS MATERIALS RISK ALLOCATION TERMS

All risks associated with the discovery of Hazardous Materials within the Facility Right of Way at any time during the Term will be borne by Developer, except as follows.

1. If there occurs any release of Hazardous Materials in, on or under a section of the Facility during the course of TxDOT's operation and maintenance thereof pursuant to Section 8.3 of the Agreement, then TxDOT at its own expense shall manage, treat, handle, store, remediate, remove, transport (where applicable) and dispose of such Hazardous Materials in accordance with applicable Law and Governmental Approvals.

2. Except as provided in Section 3 below, TxDOT shall compensate Developer for 50% of Developer's reasonable, out-of-pocket costs and expenses directly attributable to the handling, transport, removal and disposal of Pre-existing Hazardous Materials encountered by Developer (the "total chargeable Hazardous Materials costs") that exceed $3,000,000 (the "Hazardous Materials Allowance") but do not exceed $6,000,000, and 100% of the total chargeable Hazardous Materials costs that exceed $6,000,000.

3. None of the costs and expenses related to TxDOT Releases of Hazardous Materials shall be chargeable under Section 2 above. None of the following costs and expenses shall be chargeable under Section 2 above or reimbursable by TxDOT:

(a) Costs and expenses to the extent attributable to Developer Releases of Hazardous Materials;

(b) Delay and disruption costs and expenses;

(c) Costs and expenses that could be avoided by the exercise of commercially reasonable efforts to mitigate and reduce cost; and

(d) Developer's administrative and overhead expenses arising out of or relating to Pre-existing Hazardous Materials.

4. Within 90 days following any month in which Developer encounters any Pre-existing Hazardous Materials, Developer shall deliver to TxDOT a written reconciliation, including all invoices, receipts and supporting documentation reasonably required by TxDOT, setting forth with particularity the total chargeable Hazardous Materials costs. If the total chargeable Hazardous Materials costs exceed the Hazardous Materials Allowance, TxDOT shall pay to Developer the applicable portion of such excess set forth in Section 2 above within 30 days after receipt of such reconciliation and supporting documentation.

5. TxDOT will retain generator and arranger status for Pre-existing Hazardous Materials and TxDOT Release(s) of Hazardous Material in accordance with Section 7.9.5 of the Agreement.

6. Developer may be entitled to schedule and performance relief to the extent that the discovery of Hazardous Materials, including TxDOT Release(s) of Hazardous Materials, constitutes a Relief Event pursuant to Section 13.1 of the Agreement.

7. Developer may be entitled to termination of the Agreement and Lease and certain termination compensation to the extent that the presence or release of Hazardous Materials becomes an Extended Relief Event pursuant to Section 19.2 of the Agreement.

8. TxDOT Release(s) of Hazardous Materials is a Compensation Event.

9. Developer shall be responsible for all Hazardous Materials Management for Developer Release(s) of Hazardous Materials, even if the required Hazardous Materials Management extends beyond the end of the Term. Developer's responsibility for Hazardous Materials Management for all Hazardous Materials other than Developer Release(s) of Hazardous Material (except for liability for damages for breach of such obligations) shall end at the end of the Term.

EXHIBIT 12

HANDBACK REQUIREMENTS RESERVE ELEMENTS AND RESERVE FUNDING MECHANISM

1. Developer shall make deposits to the Handback Requirements Reserve by the last day of each calendar quarter, commencing with the first calendar quarter of the fifth full calendar year before the end of the Term, and continuing thereafter.

2. Developer shall make quarterly deposits into the Handback Requirements Reserve so that by the ***beginning*** of each of the last four full calendar years during the Term the Handback Requirements Reserve will contain an amount equal to:

   (a) For all Elements having a Required Residual Life equal to or less than 20 years for which the Developer has validly exercised its option under Section 8.10.1.2 of the Agreement, the summation across all such Elements of the following factors, as set forth in the most recent Renewal Work Schedule (as it may be revised pursuant to the Handback Requirements): the estimated cost to perform the Renewal Work on such Element (including all associated costs and fees) at the end of its Residual Life multiplied by a fraction the numerator of which is the Required Residual Life minus the Residual Life at Handback and the denominator of which is the Required Residual Life thereof, multiplied by a fraction the numerator of which is four minus the number of full calendar years until the beginning of the last full calendar year of the Term and the denominator of which is four, plus

   (b) For all other Elements (i.e. those Elements that have a Required Residual Life exceeding 20 years and those Elements having a Required Residual Life equal to or less than 20 years for which the Developer has not exercised its option pursuant to Section 8.10.1.2), the summation across all such Elements of the estimated cost to perform the Renewal Work on each such Element prior to expiration of the Term in accordance with the Handback Requirements multiplied by a fraction the numerator of which is four minus the number of full calendar years until the year in which the Renewal Work is scheduled to be performed pursuant to the Renewal Work Schedule (as it may be revised pursuant to the Handback Requirements) and the denominator of which is four; plus

   (c) 10% of the amounts under clauses (a) and (b) above as a contingency.

3. Developer's quarterly deposits in a year shall equal one-fourth of the amount required to be deposited in such year as described in Section 2 above, provided that if Developer's aggregate actual draws during the current calendar year exceed the planned draws by more than 10% (including draws to fund Safety Compliance work allowed under Section 8.11.3.1 of the Agreement), Developer shall adjust its quarterly deposits for the remainder of the calendar year in order to make up the excess draws.

4. In determining the amount of Developer's deposits to be made in the current calendar year, the Parties shall take into account the total amount in the Handback Requirements Reserve at the end of the immediately preceding calendar year and Developer's planned draws from the Handback Requirements Reserve during the current calendar year.

5. If at any time during the course of Renewal Work on an Element the actual incurred costs thereof are such that the balance in the Handback Requirements Reserve for such Element is less than the total amount required to be funded to the Handback Requirements Reserve for such Element, Developer shall promptly increase its deposits in order to fully make up the difference.

6. If after completion of and payment in full for Renewal Work on an Element there remains an unused balance in the Handback Requirements Reserve for such Element during the Term, the unused balance shall be reallocated and credited toward required balances in the Handback Requirements Reserve for other Elements.

EXHIBIT 13

2004 Specifications

DBE SPECIAL PROVISIONS

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

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

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

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

a. The Contractor will solicit DBEs through reasonable and available means, as defined in 49 CFR Part 26, Appendix A and the Department's DBE Program, or show a good faith effort to meet the DBE goal for this contract.

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

c. The requirements of this Special Provision shall be physically included in any subcontract.

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

2. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) Detailed description of:

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

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

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

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

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

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

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

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

(2) Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the Contractor might otherwise prefer to perform the work items with its own forces.

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

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

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

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

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

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

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

(10) If the Program Manager of the BOP Office determines that the Contractor has failed to meet the good faith effort requirements, the Contractor will be given an opportunity for reconsideration by the Director of the BOP Office.

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

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

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

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

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

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

4. Eligibility of DBEs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

For purposes of this Section (1.A.c.(1)), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the

premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

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

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

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

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

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

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

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

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

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

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

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

6. Records and Reports.

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

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

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

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

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

7. Compliance of Contractor.

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

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

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

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

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

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

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

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

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

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

EXHIBIT 14

DEVELOPER'S DBE PERFORMANCE PLAN

[TO BE PROVIDED]

EXHIBIT 15

DEVELOPER'S JOB TRAINING / SMALL BUSINESS MENTORING PROGRAM

[TO BE PROVIDED]

EXHIBIT 16

REQUIRED CAPACITY IMPROVEMENTS, FACILITY EXTENSIONS AND TECHNOLOGY ENHANCEMENTS

A. Capacity Improvements

1. Principles

1.1. This Exhibit 16 sets forth the criteria, requirements and provisions in respect of Capacity Improvements.

2. General Purpose Capacity Improvement Trigger *(to be removed from the Executed Version if Option 1 is included in the Base Scope Proposal)*

2.1 The General Purpose Capacity Improvement Trigger Event shall occur on the earlier of (i) 18 months prior to December 31, 2030 or (ii) the General Purpose Capacity Improvement Early Trigger Date.

2.2 The calculations required pursuant to this Section 2.2 shall be made for each calendar year (the "GP Calculation Year"), commencing with the year in which the first Service Commencement Date occurs and continuing until the earlier of the date of the General Purpose Capacity Improvement Trigger Event or the date on which NTP GP is issued.

2.2.1 Within 15 days after the end of each GP Calculation Year, Developer and TxDOT shall jointly calculate using a 5% discount rate the present value (as of January 1 of the year the Effective Date occurs) of each of the following:

(A) Excess Revenues minus any Revenue Payment Amounts calculated pursuant to Part A, Section 2 of Exhibit 7 from the first Service Commencement Date through the end of such GP Calculation Year; and

(B) Revenue Losses commencing the second July 1st following the end of such GP Calculation Year (in order to account for the period allowed under Section 2.4) and continuing until December 31, 2030.

2.2.2 For purposes of this Section 2, "Excess Revenues" for each GP Calculation Year are calculated as the actual Toll Revenues commencing on the first day of the GP Calculation Year through the end of such GP Calculation Year minus the amount calculated pursuant to (i) or (ii), as applicable:

(i) if Service Commencement of the Managed Lane Capacity Improvement has not been achieved, the Base Case Toll Revenues from the first day of the GP Calculation Year through the end of the GP Calculation Year; or ***[if the Managed Lane Capacity Improvement is included in the Base Scope***

Proposal, delete "if Service Commencement of the Managed Lane Capacity Improvement has not be achieved,"]

(ii) if Service Commencement of the Managed Lane Capacity Improvement has been achieved, then for all periods during the GP Calculation Year prior to such Service Commencement the Base Case Toll Revenues, plus for all periods on and after such Service Commencement Date through the end of the GP Calculation Year, the Toll Revenues set forth on Revenue Line 3 as provided in the Base Case Financial Model. ***[if the Managed Lane Capacity Improvement is included in the Base Scope Proposal, delete this subparagraph (ii)]***

2.2.3 For purposes of this Section 2, "Revenue Losses" for each calendar year are calculated pursuant to (i) or (ii) as applicable:

(i) if Service Commencement of the Managed Lane Capacity Improvement has not been achieved, the Base Case Toll Revenues minus the Toll Revenues set forth on Revenue Line 1 as provided in the Base Case Financial Model; or ***[if the Managed Lane Capacity Improvement is included in the Base Scope Proposal, delete "if Service Commencement of the Managed Lane Capacity Improvement has not be achieved,"]***

(ii) if Service Commencement of the Managed Lane Capacity Improvement has been achieved, as the Base Case Toll Revenues minus the Toll Revenues set forth on Revenue Line 3 minus the Toll Revenues set forth on Revenue Line 2. ***[if the Managed Lane Capacity Improvement is included in the Base Scope Proposal, delete this subparagraph (b)]***

2.2.4 Revenue Line 1 represents the forecast of Toll Revenues in the Base Case Financial Model assuming that the General Purpose Capacity Improvement is opened on the first Service Commencement Date and the Managed Lane Capacity Improvement is opened in 2030. Revenue Line 2 represents the forecast of Toll Revenues in the Base Case Financial Model assuming that both the General Purpose Capacity Improvement and the Managed Lane Capacity Improvement are opened on the first Service Commencement Date. Revenue Line 3 represents the forecast of Toll Revenues in the Base Case Financial Model assuming that the General Purpose Capacity Improvement is opened in 2030 and the Managed Lane Capacity Improvement is opened on the first Service Commencement Date.

2.2.5 When the amount calculated pursuant to Section 2.2.1(A) equals or exceeds the amount calculated pursuant to Section 2.2.1(B), then the January 1 immediately following the end of the GP Calculation Year will be considered the General Purpose Capacity Improvement Early Trigger Date.

2.3 When TxDOT determines it is possible, based on traffic and revenue trends, that (A) could equal or exceed (B) (each calculated pursuant to Section 2.2.1) prior to the end of the calendar year, the calculations set forth in Section 2.2 shall be performed by the parties on a semi-annual basis for each six-month period ending on June 30th and December 31st. If a calculation made for the six-month period ending on December 31st indicates that (A) equals or exceeds (B) (each calculated pursuant to Section 2.2.1), then the next January 1st (i.e. the first day after such six-month period) will be considered the General Purpose Capacity Improvement Early Trigger Date. If a calculation is made for the six-month period ending on June 30th, then the amount calculated pursuant to Section 2.2.1 (B) shall be Revenue Losses commencing the second January 1st thereafter and continuing until December 31, 2030. If a calculation made for the six-month period ending on June 30th indicates that (A) equals or exceed (B), then the next July 1st (i.e. the first day after such six-month period) will be considered the General Purpose Capacity Improvement Early Trigger Date.

2.4 Developer shall achieve Service Commencement for the General Purpose Capacity Improvement on or before 18 months following the occurrence of the General Purpose Capacity Improvement Trigger Event, and for all purposes of this Agreement such date will constitute the Service Commencement Deadline for the General Purpose Capacity Improvement.

3. Managed Lane Capacity Improvement Trigger *(to be removed from the Executed Version if Option 7, 8 or 9 is included in the Base Scope Proposal or if none of Option 4, 5 and 6 are included in the Base Scope Proposal)*

3.1 The Managed Lane Capacity Improvement Trigger Event shall occur on the earlier of (i) 18 months prior to the December 31, 2030 or (ii) the Managed Lane Capacity Improvement Early Trigger Date.

3.2 The calculations required pursuant to this Section 3.2 shall be made for each calendar year (the "ML Calculation Year"), commencing with the year in which issuance of NTP GP or the date the General Purpose Capacity Trigger Event occurs, as applicable, and continuing until the earlier of the date of the Managed Lane Capacity Improvement Trigger Event and the date on which NTP ML is issued.

3.2.1 Within 15 days after the end of each ML Calculation Year Developer and TxDOT shall jointly calculate using a 5% discount rate the present value (as of January 1 of the year the Effective Date occurs) of each of the following:

(A) Excess Revenues minus any Revenue Payment Amounts calculated pursuant to Part A, Section 2 of Exhibit 7 commencing on the date of issuance of NTP GP or the date the General Purpose Capacity Trigger Event occurs, whichever is earlier, through the end of such ML Calculation year; and

(B) Revenue Losses commencing the second July 1st following the end of such ML Calculation Year, (in order to account for the period allowed under Section 3.4) and continuing until December 31, 2030.

3.2.2 For purposes of this Section 3, "Excess Revenues" for each ML Calculation Year shall equal the actual Toll Revenues commencing on the first day of the ML Calculation year (or, for the first ML Calculation Year, commencing on the General Purpose Capacity Improvement Trigger Date or the date of issuance of NTP GP, as applicable) through the end of such ML Calculation Year minus the amount calculated for the same period pursuant to (i) and/or (ii), as appropriate, as follows:

(i) for all periods from the General Purpose Capacity Improvement Trigger Date or the date of issuance of NTP GP, as applicable, through the day prior to the Service Commencement Date for the General Purpose Capacity Improvement, the cumulative Base Case Toll Revenues, and

(ii) for all periods from the Service Commencement Date for the General Purpose Capacity Improvement through the end of the ML Calculation Year, the cumulative Toll Revenues set forth on Revenue Line 1 as provided in the Base Case Financial Model.

3.2.3 For purposes of this Section 3, "Revenue Losses" shall equal the Toll Revenues set forth on Revenue Line 1 minus the cumulative Toll Revenues set forth on Revenue line 2.

3.2.4 When the GP Trigger Credit plus the amount calculated pursuant to Section 3.2.1(A) equals or exceeds the amount calculated pursuant to Section 3.2.1(B), then the January 1 immediately following the end of the ML Calculation Year will be considered the Managed Lane Capacity Improvement Early Trigger Date.

The GP Trigger Credit shall equal the amount calculated pursuant to Section 2.2.1(A) minus the amount calculated pursuant to Section 2.2.1(B), each calculated as of the earlier of the General Purpose Capacity Improvement Trigger Date or the date of issuance of NTP GP.

[if the General Purpose Capacity Improvement is included in the Base Scope Proposal and the Managed Lane Capacity Improvement is not included in the Base Scope Proposal, this Section 3.2 will be conformed to reflect commencement of the calculations as of the first Service Commencement Date]

3.3 When TxDOT determines it is possible, based on traffic and revenue trends, that the amount calculated pursuant to Section 3.2.1(A) could equal or exceed the amount calculated pursuant to Section 3.2.1(B) prior to the end of the calendar year, the calculations set forth in Section 3.2 shall be performed by the parties on a semi-annual basis for each six-month period ending on June 30th and December 31st. If a calculation made for the six-month period ending on December 31st indicates that the amount calculated pursuant to Section 3.2.1(A) equals or exceeds the amount calculated pursuant to Section 3.2.1(B), then the next January 1st (i.e. the first day after such six-month period) will be considered the Managed Lane Capacity Improvement Early Trigger Date. If a calculation is

made for the six-month period ending on June 30th, then (B) shall be the Revenue Losses commencing the second January 1st thereafter and continuing until December 31, 2030. If such calculation indicates that the amount calculated pursuant to Section 3.2.1(A) equals or exceeds the amount calculated pursuant to Section 3.2.1(B), then the next July 1st (i.e. the first day after such six-month period) will be considered the Managed Lane Capacity Improvement Early Trigger Date.

3.4 Developer shall achieve Service Commencement for the Managed Lane Capacity Improvement on or before 18 months following the occurrence of the Managed Lane Capacity Improvement Trigger Event, and for all purposes of this Agreement such date will constitute the Service Commencement Deadline for the Managed Lane Capacity Improvement.

4. Exceptions

Developer shall have no obligation to undertake a Capacity Improvement if the same is subject to obtaining a separate record of decision or other separate action thereon under NEPA and a no action alternative is selected.

5. Costs and Financing

Developer acknowledges and represents that the cost of mandatory Capacity Improvements and future financing therefor are incorporated into the Base Case Financial Model. Accordingly, Capacity Improvements required under this Exhibit 16 shall be at Developer's sole cost and expense and shall not be treated as a Compensation Event or otherwise entitle Developer to any Claim against TxDOT. If the Capacity Improvement requires TxDOT to undertake any environmental study, investigation, analysis, assessment or documentation under NEPA, Developer shall reimburse TxDOT on a current basis for all its reasonable costs and expenses of such work, including TxDOT's Recoverable Costs. Reimbursement shall be due within 30 days after each date that TxDOT delivers to Developer a written request together with reasonable written evidence of the costs and expenses incurred.

B. Facility Extensions

No Facility Extensions are required.

C. Technology Enhancements

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

(a) The costs incurred to implement such Technology Enhancements cannot be reasonably recovered (including a reasonable rate of return on equity invested) over the remaining Term;

(b) Developer submits to TxDOT a reasonable analysis demonstrating item (a) above, and setting forth reasonably detailed cost and financial information for such Technology Enhancements, including information on cost subsidies from TxDOT; and

(c) Developer does not receive from TxDOT, within 60 days after TxDOT receives such analysis, written notice under which TxDOT commits to subsidize such cost, to the extent necessary to enable Developer to recover such costs (including a reasonable rate of return on equity invested). TxDOT's commitment to subsidize such cost may take the form of a commitment to pay as costs of such improvements are incurred or to pay an up front lump sum payment, in either case to the extent necessary to enable Developer to realize a reasonable rate of return on its own additional equity invested.

EXHIBIT 17

INSURANCE COVERAGE REQUIREMENTS

1. Builder's Risk Insurance During Construction

At all times during the period from the Operating Commencement Date until the last Service Commencement Date and during any other period in which other construction work is in progress during the Operating Period (including elements of initial construction not required to be constructed as part of achieving Substantial Completion, unless covered by property insurance pursuant to Section 2 of this Exhibit 17), Developer shall, or shall require the Design-Build Contractor, to procure and keep in force a policy of builder's risk insurance as specified below.

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

(b) The policy shall cover (i) all property, roads, buildings, structures, fixtures, materials, supplies, foundations, pilings, machinery and equipment that are part of or related to the portions or elements of the Facility under construction, and the works of improvement, including permanent and temporary works and materials, and including goods intended for incorporation into the works located at the Site, in storage or in the course of inland transit on land to the Site, and (ii) unless covered by property insurance pursuant to Section 2 of this Exhibit 17, all existing property and improvements that are within the construction work zone or are or will be affected by the Construction Work.

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

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

(e) The policy shall include coverage for (i) foundations, including pilings, but excluding normal settling, shrinkage, or expansion, (ii) physical damage resulting from machinery accidents but excluding normal and natural wear and tear, corrosion, erosion, inherent vice or latent defect in the machinery, (iii) plans, blueprints and specifications, (iv) physical damage resulting from faulty work or faulty materials, but excluding the cost of making good such faulty work or faulty materials, (v) physical damage resulting from design

error or omission but excluding the cost of making good such design error or omission, (vi) demolition and debris removal coverage, (vii) the increased replacement cost due to any change in applicable codes or other Laws, (viii) expense to reduce loss, (ix) building ordinance compliance, with the building ordinance exclusion deleted, and (x) "soft cost expense" (including costs of Governmental Approvals, mitigation costs, attorneys' fees, and other fees and costs associated with such damage or loss or replacement thereof).

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

2. Property Insurance

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

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

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

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

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

restoration and repair of the damage or loss (with unspent proceeds, if any, to be disposed of in the same manner as proceeds in the Handback Requirements Reserve).

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

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

3. Business Interruption Insurance

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

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

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

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

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

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

4. Commercial General Liability Insurance

At all times during the Term, Developer shall procure and keep in force, or cause to be procured and kept in force, commercial general liability insurance as specified below. During any period in which Developer, at its election, maintains in effect builder's third party liability

insurance pursuant to Section 5 below, the commercial general liability Insurance Policy need not duplicate the builder's third party liability insurance coverage.

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

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

(i) Contractual liability;

(ii) Premises/operations;

(iii) Independent contractors;

(iv) Products and completed operations (with acknowledgement that the Facility constitutes the premises and not a product);

(v) Broad form property damage (including nuisance; interference with rights of way, water, light or air; false arrest; detainment; and broader definition of "damage");

(vi) Hazards commonly referred to as "XCU", including explosion, collapse and underground property damage;

(vii) Fellow employee coverage for supervisory personnel;

(viii) Incidental medical malpractice;

(ix) No exclusion for work performed within 50 feet of a railroad;

(x) Except with regard to indemnifying a professional advisor, consultant, sub-consultant, Supplier or manufacturer engaged by Developer, no application of any limitation or exclusion for bodily injury or property damage arising out of professional services, including engineering, architecture and surveying, in any manner to (A) coverage respecting Developer's supervision, coordination, management, scheduling or other similar services or (B) the products and completed operations coverage;

(xi) Broad named insured endorsement; and

(xii) Non-owned automobile liability, unless covered by the automobile liability policy pursuant to Section 6 of this Exhibit 17.

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

(d) TxDOT and the Indemnified Parties shall be the named insureds. The policy shall be written so that no act or omission of a named insured shall vitiate coverage of the other named insured.

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

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

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

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

5. Builder's Third Party Liability Insurance

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

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

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

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

6. Automobile Liability Insurance

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

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

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

(c) Developer's policy shall have a combined single limit per policy period of not less than $25,000,000.

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

7. Pollution Liability Insurance

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

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

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

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

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

8. Professional Liability Insurance

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

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

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

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

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

9. Workers' Compensation Insurance

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

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

(b) A voluntary compensation endorsement;

(c) An alternative employer endorsement; and

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

10. Employer's Liability Insurance

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

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

(b) Developer shall be the named insured.

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

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

11. Railroad Protective Liability Insurance

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

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

12. Contractors' Insurance

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

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

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

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

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

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

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

EXHIBIT 18

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

1. Noncompliance Points System

The table attached as Attachment 1 to this Exhibit 18 identifies the Developer failures and breaches that may result in the assessment of Noncompliance Points, the number of Noncompliance Points that may be assessed for each such failure or breach, and the cure period available to Developer for each such failure or breach, other than for Developer's failure to submit a deliverable by its due date.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Liquidated Damage Amounts

3.1 For Late Service Commencement and Late Final Acceptance

(a) Subject to clause (c) below, liquidated damages for late Service Commencement for either Facility Segment shall equal $5,600 per day for each day that the Service Commencement Date for such Facility Segment is later than the Service Commencement Deadline for such Facility Segment, as the Service Commencement Deadline may be extended pursuant to this Agreement.

(b) Liquidated damages for late Final Acceptance shall equal $5,600 per day for each day that the date of Final Acceptance is later than the Final Acceptance Deadline as the Final Acceptance Deadline may be extended pursuant to this Agreement.

(c) If liquidated damages would accrue simultaneously for failure to meet the Service Commencement Deadline for both Facility Segments, then the amount of the liquidated damages shall equal the amount if there were failure to meet the Service Commencement Deadline for only one Facility Segment. If liquidated damages would accrue simultaneously for failure to meet a Service Commencement Deadline and the Final Acceptance Deadline, then only the liquidated damages for failure to meet the Service Commencement Deadline shall accrue.

3.2 For Single Noncompliance Point

Liquidated damages under Section 17.4.2.1 of the Agreement on account of the assessment of any single Noncompliance Point shall equal $8,400 per point, subject to Sections 18.3.1.2 and 18.3.1.3 of the Agreement. For the avoidance of doubt, Tier 1, Tier 2 and Tier 3 Noncompliance Points shall be assessed under this Section 3.2 at 100% of the assigned number of points.

3.3 For Accumulated Uncured Noncompliance Points

Liquidated damages under Section 17.4.2.2 of the Agreement on account of the accumulation of assessed Uncured Noncompliance Points as provided in Section 2 above shall equal $11,500 per day and shall continue as provided in Section 17.4.2.2 of the Agreement. For the avoidance of doubt, Tier 1, Tier 2 and Tier 3 Noncompliance Points shall be assessed under this Section 3.3 at 100% of the assigned number of points.

3.4 For Lane Rental Charges

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

(b) Lane Rental Charges shall apply to both scheduled and unscheduled occurrences. Lane Rental Charges shall be assessed for every quarter hour or part thereof. For the period between the Operating Commencement Date and the applicable Service Commencement Date, Developer shall report to the Independent Engineer on a daily basis any General Purpose Lane closures or reduced widths which give rise to Lane Rental Charges. Liquidated damages shall be applied according to Table 3.4-1.

(c) Developer shall not be assessed Lane Rental Charges for rolling lane closures for the purpose of construction activities above operational General Purpose Lanes. In this context a rolling lane closure is defined as a lane closure of less than 15 minutes during the period of Period D provided that (i) the lanes are reopened such that queued traffic is dispersed.

Table 3.4-1 Lane Rental Charges

Number of General Purpose Lanes Closed Or Reduced In Width Below Minimum	Hourly Lane Rental Charge (Each Direction)			
	Period A (Weekday Peak Hours)	Period B (Weekday Off-Peak Hours)	Period C (Weekend Peak Hours	Period D (Night Time Hours
1	$75,000	$55,000	$20,000	$7,000
2	$120,000	$90,000	$50,000	$17,000
3	$175,000	$155,000	$80,000	$40,000
4	$210,000	$180,000	$100,000	$60,000

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

(i) Period A: Refer to description of "Peak Hours" provided in Exhibit 1 of the Agreement
(ii) Period B: Refer to description of "Off-Peak Hours" provided in Exhibit 1 of the Agreement
(iii) Period C: Refer to description of "Peak Hours" provided in Exhibit 1 of the Agreement
(iv) Period D: Refer to description of "Night Time Hours" provided in Exhibit 1 of the Agreement

(e) Developer shall only be required to pay to TxDOT Lane Rental Charges if any of the following clauses applies: (i) Developer shall be required to pay to TxDOT the portion of the cumulative Lane Rental Charges assessed during Period A, Period B, Period C and Period D, if any, that exceeds the amounts specified in Table 3.4-2 (ii) Developer shall be required to pay to TxDOT the portion of the cumulative Lane Rental Charges assessed during Period A and Period B shown on Table 3.4-1, if any, or (iii) Developer shall be required to pay to TxDOT the portion of the cumulative Lane Rental Charges assessed during Period A and Period B shown on Table 3.4-1, if any, to the extent that such assessment did not commence within Period C or Period D. To the extent that more than one such clause applies, Developer shall only be assessed Lane Rental Charges under one such clause. If the cumulative Lane Rental Charges assessed during Period A, Period B, Period C and Period D do not exceed the amounts shown in Table 3.4-2, Developer shall not be required to pay Lane Rental Charges.

Table 3.4-2: Excused Amount of Lane Rental Charges

Scope of Work Element	Period A (Weekday Peak Hours)	Period B (Weekday Off-Peak Hours)	Period C (Weekend Peak Hours	Period D (Night Time Hours	Cumulative Total
Mandatory Scope	$0	$0	$1.1m	$2.72m	$3.82m
General Purpose Capacity Improvement	$0	$0	$0	$0	$0
IH35W Managed Lane Direct Connectors	$0	$0	$0	$0.272m	$0.272m
Interchange Capacity Improvement	$0	$0	$1.1m	$2.72m	$3.82m
Subsegment A	$0	$0	$0.88m	$1.6m	$2.48m
Subsegment B	$0	$0	$0.88m	$3.2m	$4.08m
Subsegment C	$0	$0	$0.88m	$3.2m	$4.08m
Managed Lane Capacity Improvement – Subsegment A	$0	$0	$0	$0	$0
Managed Lane Capacity Improvement – Subsegment B	$0	$0	$0	$0	$0
Managed Lane Capacity Improvement – Subsegment C	$0	$0	$0	$0	$0

3.5 Adjustments

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

ATTACHMENT 1 TO EXHIBIT 18

NONCOMPLIANCE POINTS TABLE

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

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

List of Noncompliance Items, Assessment Categories and Cure Periods

Ref	Main Heading	Subheading	Failure to:	Assessment Category	Cure Period	Number of Points	Tier Group
1	General	General Requirements	Comply with any Technical Provision Section entitled "General Requirement", except where provided elsewhere in this Attachment 1 to Exhibit 18.	B	14 Days	1	Tier 2
2	General	Governmental Approval	Deliver to TxDOT prior to beginning construction any executed copy of a Governmental Approval the Developer obtained as required by Section 6.2.1 of the Agreement.	B	7 Days	1	Tier 2
3	General	Governmental Approval	Submit any application for a Governmental Approval to TxDOT for approval or review and comment prior to submitting to any Governmental Entity as required by Section 6.2.2 of the Agreement.	A	7 Days	1	Tier 2
4	General	Governmental Approval	Comply with the provisions of Section 6.2.5 of the Agreement with respect to Additional Properties outside the Facility Right of Way.	C	None	1	Tier 1
5	Facility Management	Meetings	Comply with a meeting requirement of any Technical Provision Section, except where provided elsewhere in this Attachment 1 to Exhibit 18.	C	None	1	Tier 2
6	General	Notification of breach	Notify TxDOT and Independent Engineer of the occurrence of any breach or failure specified in this Attachment in accordance with Section 18.2.1 of the Agreement.	C	None	2	Tier 1
7	General	TxDOT and Independent Engineer access	Comply with any provisions under Sections 9.3.1.3 or 9.3.3.3 of the Agreement with respect to cooperation with, and access for, TxDOT's Authorized Representative(s) and or Independent Engineer to the Facility, Developer's Facility offices and operations buildings, and Developer's data.	A	1 Day	1	Tier 1
8	General	TxDOT and Independent	Respond to TxDOT's or the Independent Engineer's comments or objections or modify a Submittal in accordance with Section 6.3.7.2	A	7 Days	1	Tier 2

Ref	Main Heading	Subheading	Failure to:	Assessment Category	Cure Period	Number of Points	Tier Group
		Engineer comments to Submittals	of the Agreement.				
9	General	TxDOT Facilities	Comply with the requirements of Section 2.9 of the Technical Provisions.	A	7 Days	1	Tier 3
10	Financial	Reports	Within two Business Days after the Effective Date and within two Business Days after the date of Financial Close, deliver to TxDOT an update of the audit and opinion obtained from the independent model auditor that provided to TxDOT an opinion on suitability of the Base Case Financial Model, as required by Section 5.2.4 of the Agreement.	B	7 Days	1	Tier 2
11	Insurance	Verification of coverage	Provide TxDOT with copies of insurance policies and evidence of payment of premiums in accordance with Section 16.1.2.4 of the Agreement.	A	21 Days	1	Tier 2
12	Contracting and Labor Practices	Adoption of written ethical policies	Implement written policies for ethical standards within 90 days after the Effective Date in accordance with Section 10.7 of the Agreement	B	30 Days	2	Tier 2
13	Contracting and Labor Practices	Affiliates	Submit a copy of the proposed contract with an Affiliate in accordance with Section 10.5.2 of the Agreement.	B	7 Days	1	Tier 2
14	Contracting and Labor Practices	Compliance with DBE plan	Comply with the requirements of Section 10.9 of the Agreement in connection with the Disadvantaged Business Enterprise (DBE) Program.	A	30 Days	2	Tier 2
15	Contracting and Labor Practices	Disclosure of Contracts and Contractors	Provide TxDOT and the Independent Engineer with a list of all Contracts, Contractors, guarantees of Key Contracts and the guarantors with each monthly report required under this Agreement or the Technical Provisions in accordance with Section 10.1.1 of the	B	7 Days	1	Tier 2

Ref	Main Heading	Subheading	Failure to:	Assessment Category	Cure Period	Number of Points	Tier Group
			Agreement.				
16	Contracting and Labor Practices	Notification of Contractors	Comply with the requirements of Section 10.1.2 of the Agreement	B	14 Days	1	Tier 2
17	Facility Management	Audit	Carry out internal audits of the Facility Management Plan at the times prescribed in the Facility Management Plan in accordance with Section 9.1.6 of the Agreement.	B	7 days	1	Tier 1
18	Facility Management	Construction Quality Management	Construct the Works in accordance with the requirements of Section 2.2.8 of the Technical Provisions	A	30 Days	1	Tier 1
19	Facility Management	Contractors	Cause each of its Contractors (other than NTTA) at every level to comply with the applicable requirements of the approved Facility Management Plan in accordance with Section 9.1.7 of the Agreement.	B	7 Days	1	Tier 2
20	Facility Management	Contractors	Comply with the requirements of Section 10.2.1 of the Agreement.	A	7 Days	4	Tier 2
21	Facility Management	Coordination	Comply with a requirement of any Technical Provision Section, entitled “Administrative Requirements” except where provided elsewhere in this Attachment 1 to Exhibit 18.	B	7 Days	1	Tier 2
22	Facility Management	Deliverables	Prepare, implement, maintain, update or submit a Plan, a report, a deliverable or a submittal required by, or compliant with, any Technical Provision Section or the Agreement, except where provided elsewhere in this Attachment 1 to Exhibit 18.	B	7 Days	1	Tier 2
23	Facility Management	Document Management	Manage documents in accordance with Section 2.1.2 of the Technical Provisions.	A	7 Days	1	Tier 2

Ref	Main Heading	Subheading	Failure to:	Assessment Category	Cure Period	Number of Points	Tier Group
24	Facility Management	Inspection	Comply with a requirement of any Technical Provision Section or the Agreement with regard to inspection, except where provided elsewhere in this Attachment 1 to Exhibit 18.	B	2 Days	2	Tier 1
25	Facility Management	ITS	Provide and maintain ITS interoperability over the Term of the Agreement and coordinate said ITS with the Electronic Toll Collection System (ETCS) such that the communication requirements of the ETCS are accommodated all in accordance with the requirements of Section 17 of the Technical Provisions.	B	90 Days	1	Tier 1
26	Facility Management	Key Personnel	Comply with a requirement with regard to Key Personnel of any Technical Provision Section or the Agreement, except where provided elsewhere in this Attachment 1 to Exhibit 18.	B	14 Days	2	Tier 1
27	Facility Management	Maintenance and inspection of records	Keep, maintain and make available to TxDOT and the Independent Engineer all books, records and documents in accordance with Sections 22.1.1, 22.1.2 or 22.1.3. of the Agreement.	A	7 Days	1	Tier 1
28	Facility Management	Quality Management	Establish and maintain updated and comply with the requirements of a Quality Management Plan in accordance with Section 7.2.2 or 9.1 of the Agreement or Section 2.2 of the Technical Provisions.	A	7 Days	2	Tier 1
29	Facility Management	Safety	Observe the requirements of the safety plan or to carry out any construction, operation or maintenance activity in contravention of (or in absence of) the safety plan or in a manner that represents a hazard to project workers or the general public in accordance with Section 2.5 of the Technical Provisions.	A	1 Day	3	Tier 1
30	Facility Management	Schedule	Comply with a schedule requirement of any Technical Provision Section or the Agreement, except where provided elsewhere in this Attachment 1 to Exhibit 18.	B	7 Days	2	Tier 2
31	Facility	Submission	Develop and submit a part of, or change or addition or revision to, the FMP at the time required all in accordance with Sections 9.1.2 or	B	14 Days	1	Tier 2

Ref	Main Heading	Subheading	Failure to:	Assessment Category	Cure Period	Number of Points	Tier Group
	Management		9.1.3 of the Agreement and Attachment 2-1 to the Technical Provisions.				
32	Facility Management	Traffic Management	Provide a Lane Closure Notice in accordance with Section 18.3.1.1.2 of the Technical Provisions.	A	1 Day	1	Tier 3
33	Environmental Compliance	Air quality	Take measures to minimize or mitigate the effects of dust; or, within one hour adjust such measures; all in accordance with Section 4.3.3.1 of the Technical Provisions.	B	4 Hours	1	Tier 2
34	Environmental Compliance	CEPP	Maintain and update the complete Comprehensive Environmental Protection Program (CEPP) as required by Sections 4.3 and 4.4 of the Technical Provisions.	A	7 Days	2	Tier 1
35	Environmental Compliance	Contravention of Environmental Approvals	Follow the CEPP or any of its constituent parts for any work activity as required by Section 4.3 of the Technical Provisions.	B	1 Day	1	Tier 1
36	Environmental Compliance	Environmental Approvals	Comply with Section 4.2 of the Technical Provisions.	B	7 Days	5	Tier 1
37	Environmental Compliance	Mitigation	Comply with the requirements of Sections 7.9.1 or 8.1.4 of the Agreement	B	7 Days	3	Tier 1
38	Environmental Compliance	Noise	Comply with Section 4.3.2 of the Technical Provisions with respect to noise.	B	1 Hour	1	Tier 1
39	Environmental Compliance	Notification	Notify TxDOT of Hazardous Materials or a Recognized Environmental Condition as set forth in Section 7.9.1 of the Agreement.	A	1 Day	1	Tier 1
40	Environmental	Property	Comply with Section 11.2.1 or 18.3.1 of the Technical Provisions.	A	4 Hours	1	Tier 1

Ref	Main Heading	Subheading	Failure to:	Assessment Category	Cure Period	Number of Points	Tier Group
	Compliance	Access					
41	Environmental Compliance	Public hearings	Organize public hearings or meetings as required by Section 4.3 of the Technical Provisions.	A	30 Days	4	Tier 1
42	Utility Adjustments	Maintain service	Maintain a utility service fully operational in accordance with Section 6.4 of the Technical Provisions.	A	3 Days	3	Tier 1
43	Utility Adjustments	Record keeping	Maintain accurate records of utility work or to provide copies to TxDOT in accordance with Section 7.5.4.6 of the Agreement or Section 6.1.5 or 6.4.9 of the Technical Provisions.	A	7 Days	1	Tier 1
44	Utility Adjustments	Utility Information	Prepare and submit to TxDOT the utility information in accordance with Section 7.5.5 of the Agreement.	B	30 Days	1	Tier 1
45	Design and Construction	Construction Requirements	Comply with a construction requirement of any Technical Provision Section, except where provided elsewhere in this Attachment 1 to Exhibit 18.	A	30 Days	1	Tier 1
46	Design and Construction	Construction warranties	Ensure extension of third parties warranties to TxDOT or failure to correct any defective Work that would void any such warranty all as required by Section 7.12.1 of the Agreement.	A	14 Days	1	Tier 2
47	Design and Construction	Design Requirements	Comply with a requirement of any Technical Provision Section, entitled ”Design Requirements” except where provided elsewhere in this Attachment 1 to Exhibit 18.	A	30 Days	1	Tier 1
48	Design and Construction	Implementation of Directive Letters	Implement Directive Letters in accordance with Section 14.1.6 of the Agreement.	B	14 Days	3	Tier 1
49	Design and Construction	Land Surveys	Comply with Section 9 of the Technical Provisions except where provided elsewhere in this Attachment 1 to Exhibit 18.	A	7 Days	1	Tier 2

Ref	Main Heading	Subheading	Failure to:	Assessment Category	Cure Period	Number of Points	Tier Group
50	Design and Construction	Punch list	Prepare, maintain or deliver a Punch List, or a modification thereto, to TxDOT and the Independent Engineer, all as required by Section 7.8.2.3 of the Agreement.	B	30 Days	1	Tier 2
51	Design and Construction	ROW (Generally)	Comply with the requirements of Sections 7.3 or 7.4 of the Technical Provisions.	A	7 Days	7	Tier 3
52	Design and Construction	Testing	Provide test results or reports as required by Section 9.3.4 of the Agreement.	B	7 Days	1	Tier 2
53	Design and Construction	Traffic Management	Comply with the requirements of Section 18.4 of the Technical Provisions.	B	4 Hours	2	Tier 1
54	Tolling	Disclosure	Disclose policies regarding privacy of Patron Confidential Information to Patrons in accordance with Section 8.8.8 of the Agreement.	A	7 Days	1	Tier 1
55	Tolling	Managed Lanes Speed	Gather vehicle speed data as set forth in Exhibit 4 of the Agreement, for every 3 hours or part thereof that such data is not gathered.	C	None	6	Tier 2
56	Tolling	Publicity of toll rates	Publicize and make available or otherwise provide the current or prevailing toll rate in accordance with Exhibit 4 of the Agreement.	C	None	2	Tier 1
57	Tolling	Toll pricing	Comply with the Segment tolling methodology in accordance with Exhibit 4 of the Agreement, other than as provided elsewhere in this Attachment 1 to Exhibit 18.	C	None	4	Tier 1
58	Tolling	Tolling Operations	Comply with the requirements of Section 21.3 or 21.5 of the Technical Provisions.	B	7 Days	3	Tier 1
59	Tolling	Toll discounts	Deliver a monthly report to TxDOT and/or Independent Engineer that includes: (i) for each valid transponder account holder that self-declares (or is otherwise identified) as an HOV or Motorcycle during	B	14 Days	1	Tier 1

Ref	Main Heading	Subheading	Failure to:	Assessment Category	Cure Period	Number of Points	Tier Group
			Peak Periods during the HOV Discount Period, the date, time and amount of the undiscounted toll and a unique transaction identifier; and (ii) the total HOV discount for the month that is potentially eligible for reimbursement to Developer, all in accordance with the requirements of Exhibit 4.				
60	Tolling	User privacy	Comply with Section 8.8.1 of the Agreement.	A	7 Days	2	Tier 1
61	Tolling	User privacy	Comply with Section 8.8.4 of the Agreement, other than as provided elsewhere in this Attachment 1 to Exhibit 18.	A	7 Days	2	Tier 1
62	Tolling	User privacy	Protect Patron Confidential Information as required by Section 8.8.4 of the Agreement with respect to one or more individuals in an isolated incident as opposed to a systematic or repetitive breach.	C	None	2	Tier 1
63	Operations and Maintenance	Access	Provide access to systems in accordance with Section 22.3.4 of the Technical Provisions	C	None	1	Tier 1
64	Operations and Maintenance	Incident Management Plan	Comply with provisions in accordance with Section 22.3.5 of the Technical Provisions	B	14 days	2	Tier 1
65	Operations and Maintenance	Asset Condition	Achieve a mean Asset Condition Score of 3.5 or more for any Element Category in any quarterly audit as described in Section 19 of the Technical Provisions: a) For each Element Category with a mean Asset Condition Score of less than 3.5 and greater than 2.	C	None	6	Tier 1
66	Operations and Maintenance	Asset Condition	Achieve a mean Asset Condition Score of 3.5 or more for any Element Category in any quarterly audit as described in Section 19 of the Technical Provisions: b) For each Element Category with a mean Asset Condition Score of 2 or less and greater than 1.	C	None	9	Tier 1
67	Operations and	Asset Condition	Achieve a mean Asset Condition Score of 3.5 or more for any Element Category in any quarterly audit as described in Section 19	C	None	12	Tier 1

Ref	Main Heading	Subheading	Failure to:	Assessment Category	Cure Period	Number of Points	Tier Group
	Maintenance		of the Technical Provisions: c) For each Element Category with a mean Asset Condition Score of 1 or less.				
68	Operations and Maintenance	Asset Condition	Achieve a mean Asset Condition Score of 2.5 or more for any Element Category as described in Section 19.6.6 of the Technical Provisions: c) For each Element Category with a mean Asset Condition Score of 2 or less.	C	None	6	Tier 1
69	Operations and Maintenance	Asset Condition	Achieve a mean Asset Condition Score of 2.5 or more for any Element Category as described in Section 19.6.6 of the Technical Provisions: c) For each Element Category with a mean Asset Condition Score of 1 or less.	C	None	9	Tier 1
70	Operations and Maintenance	Asset Condition	Achieve an Asset Condition Score of 3 or more in any quarterly audit as described in Section 19 of the Technical Provisions: a) For each Asset Condition Score of 2.	C	None	6	Tier 1
71	Operations and Maintenance	Asset Condition	Achieve an Asset Condition Score of 3 or more in any quarterly audit as described in Section 19 of the Technical Provisions: b) For each Asset Condition Score of 1.	C	None	9	Tier 1
72	Operations and Maintenance	Asset Condition	Achieve an Asset Condition Score of 2 or more as described in Section 19.6.6 of the Technical Provisions.	C	None	6	Tier 1
73	Operations and Maintenance	Category 1 Defect	Address a Category 1 defect within the time period shown in Table 19-2 (Performance and Measurement Table).	B	Stated in column entitled "Response to defects" in Perfor-mance and Measure-	3	Tier 1

Ref	Main Heading	Subheading	Failure to:	Assessment Category	Cure Period	Number of Points	Tier Group
					ment Table		
74	Operations and Maintenance	Category 2 Defect	Address a Category 2 defect within the time period shown in Table 19-2 (Performance and Measurement Table).	B	Stated in column entitled "Response to defects" in Perfor-mance and Measure-ment Table	1	Tier 1
75	Operations and Maintenance	Handback Requirements Reserve	Establish and fund the Handback Requirements Reserve when required and provide appropriate account information in accordance with Section 8.11 or Exhibit 12 of the Agreement.	B	30 Days	2	Tier 2
76	Operations and Maintenance	Incident Management Plan	Comply with the requirements in respect of the Incident Management Plan as required by Section 8.9.2.4 of the Agreement, or 22.3.5 of the Technical Provisions where the failure impacts or has potential to impact on the level of service provided to Users or TxDOT's ability to meet its obligation	B	7 Days	4	Tier 1
77	Operations and Maintenance	Lane Closures	Comply with Section 18.3.1.1.2 of the Technical Provisions.	B	1 Day	3	Tier 1
78	Operations and Maintenance	Maintenance Management	Coordinate with TxDOT to achieve a smooth transition of maintenance activities from TxDOT in accordance with Section 19 of the Technical Provisions.	B	4 days	3	Tier 1
79	Operations and	Maintenance	Comply with the requirements in respect of the Maintenance	B	7 Days	2	Tier 1

Ref	Main Heading	Subheading	Failure to:	Assessment Category	Cure Period	Number of Points	Tier Group
	Maintenance	Management Plan	Management Plan as required by Section 19.2 of the Technical Provisions except where provided elsewhere in this Attachment 1 to Exhibit 18.				
80	Design and Construction	Meetings	Conduct progress meetings with TxDOT at least once a month or other requested meetings during the course of design and construction in accordance with Section 7.11.3 of the Agreement; or at TxDOT's request conduct regular quarterly meetings or otherwise meet with TxDOT in accordance with Section 8.4.4 of the Agreement.	A	7 Days	1	Tier 2
81	Operations and Maintenance	Operations Management Plan	Comply with the requirements in respect of the Operations Management Plan as required by Section 22.2 of the Technical Provisions where the failure impacts or has potential to impact on the level of service provided to Users or TxDOT's ability to meet its obligation, except where provided elsewhere in this Attachment 1 to Exhibit 18.	B	7 Days	3	Tier 2
82	Operations and Maintenance	Patrolling	Conduct patrols in accordance with Section 22.3.3 of the Technical provisions.	C	None	5	Tier 2
83	Operations and Maintenance	Record keeping	Create an O&M Record in accordance with Section 19.2 of the Technical Provisions.	A	2 Days	1	Tier 1
84	Operations and Maintenance	Record keeping	Provide information updates to the Maintenance Management Information System in accordance with Section 2.1.2 or 19.2 of the Technical Provisions.	A	2 Days	1	Tier 1
85	Operations and Maintenance	Safety	Implement and perform safety and compliance work in accordance with Section 12.4.2 of the Agreement.	B	3 Days	2	Tier 1
86	Operations and Maintenance	Technology Enhancements	Make technology enhancements as and when necessary in accordance with Section 12.1.3 of the Agreement.	A	30 Days	2	Tier 1

Ref	Main Heading	Subheading	Failure to:	Assessment Category	Cure Period	Number of Points	Tier Group
87	Operations and Maintenance	Traffic Control Plans	Submit a Traffic Control Plan to TxDOT 10 days before its planned implementation as required by Section 18.3.1 of the Technical Provisions.	B	1 Day	1	Tier 2
88	Operations and Maintenance	Traffic Control Plans	Implement traffic control measures in a manner consistent with a Traffic Control Plan as required by Section 18.3.1 of the Technical Provisions.	B	1 Day	3	Tier 2
89	Operations and Maintenance	Traffic Management Plan	Comply with the Traffic Management Plan as required by Section 18.2 of the Technical Provisions where the failure impacts or has the potential to impact on the level of service provided to Users or TxDOT's ability to meet its obligations.	B	1 Day	3	Tier 1
90	Operations and Maintenance	Updated Standards	Submit a proposed schedule for completing the new improvements, all in accordance with the requirements of Section 8.1.2.4 of the Agreement.	B	14 days	1	Tier 1
91	Operations and Maintenance	Updated Standards	Complete construction and installation of the new improvements all in accordance with the requirements of Section 8.1.2.4 of the Agreement.	B	30 Days	1	Tier 1
92	Tolling	Managed Lanes Speed	Maintain the average of Average Speeds at or above 50 miles per hour in the Managed Lanes for each Toll Segment and for every consecutive 15 minute period, beginning at the top of the hour, in accordance with Exhibit 4, Section G of the Agreement; such that for each 15 minute period the average of Average Speeds is less than 35 miles per hour.	C	None	3	Tier 1
93	Tolling	Managed Lanes Speed	Maintain the average of Average Speeds at or above 50 miles per hour in the Managed Lanes for each Toll Segment and for every consecutive 15 minute period, beginning at the top of the hour, in accordance with Exhibit 4, Section G of the Agreement; such that for each 15 minute period the average of Average Speeds is greater	C	None	2	Tier 1

Ref	Main Heading	Subheading	Failure to:	Assessment Category	Cure Period	Number of Points	Tier Group
			than or equal to 35 miles per hour and less than 40 miles per hour.				
84	Tolling	Managed Lanes Speed	Maintain the average of Average Speeds at or above 50 miles per hour in the Managed Lanes for each Toll Segment and for every consecutive 15 minute period, beginning at the top of the hour, in accordance with Exhibit 4, Section G of the Agreement; such that for each 15 minute period the average of Average Speeds is greater than or equal to 40 miles per hour and less than 45 miles per hour.	C	None	1	Tier 2
85	Tolling	Managed Lanes Speed	Maintain the average of Average Speeds at or above 50 miles per hour in the Managed Lanes for each Toll Segment and for every consecutive 15 minute period, beginning at the top of the hour, in accordance with Exhibit 4, Section G of the Agreement; such that for each 15 minute period the average of Average Speeds is greater than or equal to 45 miles per hour and less than 50 miles per hour.	C	None	1	Tier 3

EXHIBIT 19

DISPUTES BOARD AGREEMENT

THIS DISPUTES BOARD AGREEMENT is made and entered into this ___ day of _____, 20__, (the "Effective Date") by and between the Texas Department of Transportation ("TxDOT"), and _____, a _____ ("Developer"). TxDOT and Developer are sometimes referred to individually herein as a "Party" and collectively as the "Parties."

RECITALS

A. TxDOT and Developer are parties to that certain Comprehensive Development Agreement, North Tarrant Express –Facility, dated as of the Effective Date.

B. Section 17.8.4 of the Agreement, provides for the establishment and operation of a disputes review board to resolve each Dispute if, as and when a Dispute arises under the Agreement, other than certain Disputes specified in Section 17.8.1.1(b) of the Agreement.

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

Section 1. Definitions and References.

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

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

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

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

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

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

3.1 Selection of Disputes Board Candidates and Disputes Board Members.

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

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

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

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

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

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

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

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

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

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

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

3.3 Removal of Disputes Board Member; Appointment of Replacement.

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

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

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

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

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

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

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

Section 4. Qualifications and Conduct of Disputes Board Members.

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

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

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

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

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

4.3.2 No approval or deemed approval by the Evaluating Party of a proposed candidate for inclusion on the Nominating Party's Disputes Board Member Candidates List shall constitute a waiver of any objection to a Conflict of Interest or Misconduct of such individual under Section 4.2, except that any matter fully disclosed in an individual's Disclosure Statements prior to inclusion of such individual on the Nominating Party's Disputes Board Member Candidates List with the approval or deemed approval of the Evaluating Party may not be subsequently asserted by the Evaluating Party as a Conflict of Interest or Misconduct constituting grounds for termination and removal of such individual from the Nominating Party's Disputes Board Member Candidates List or from service as a Disputes Board member.

Section 5. Procedures and Scope of Work of the Disputes Board.

5.1 Procedures; Modification of Procedures. The Disputes Board shall conduct its proceedings to resolve a Dispute in accordance with the requirements specified or referenced herein; provided, however, that:

(a) The Parties may jointly modify the procedures applicable to the Disputes Board's proceedings to resolve a Dispute, effective upon the Disputes Board Chair's receipt of the Parties' written notice describing such modification in detail (the foregoing being without limitation to any requirements applicable to the Parties' amendment of the Agreement or any requirements applicable to modification of the DRP Rules or the Sections of the Code under which the DRP Rules are promulgated); and

(b) The Disputes Board may modify the procedures applicable to its proceedings to resolve a Dispute so as to be more responsive to the needs of the Parties, provided that (i) the Disputes Board Chair issues written notice to the Parties describing the proposed modification in detail and (ii) both Parties give their written consent thereto. Such modification shall take effect upon the Disputes Board Chair's receipt of the Parties' written consent.

5.2 Jurisdiction. If a responding Party asserts that a particular claim, demand, dispute, disagreement or controversy is a matter identified in Section 17.8.1.5 of the Agreement as beyond the Dispute Board's authority, the Disputes Board shall hear, consider and render a determination with respect to such assertion as a preliminary matter prior to consideration of the underlying matter. If the Disputes Board determines that the claim, demand, dispute, disagreement or controversy is a matter identified in Section 17.8.1.5 of the Agreement as beyond its authority, then it shall issue a Disputes Board Decision dismissing the same, without prejudice to the claiming Party's right to appeal such Disputes Board Decision in accordance with Section 17.8.4 of the Agreement or to pursue the claim, demand, dispute, disagreement or controversy in the proper jurisdiction. If the Disputes Board determines the claim, demand, dispute, disagreement or controversy is a matter within its authority, it shall issue such determination in writing to the Parties, including its reasoning, proceed to consideration of the underlying matter, and include in the Disputes Board Decision on the underlying matter findings of fact, conclusions and a decision on the issue of its authority. No appeal may be taken from the Disputes Board's determination that it has the requisite authority over the matter until a Disputes Board Decision is rendered on the underlying matter. If the responding Party asserts lack of authority before the Disputes Board prior to hearings on the underlying matter, then the responding Party's appearance in the Disputes Board proceedings to contest the underlying matter shall be without waiver of or prejudice to its right to appeal in accordance with Section 17.8 of the Agreement the Disputes Board's determination of authority.

5.3 Procedures for Disputes Board's Resolution of Disputes.

5.3.1 The Disputes Board shall conduct its proceedings in accordance with the Commercial Rules, including any time periods listed therein for actions by the Disputes Board. "Commercial Rules" means the dispute resolution proceedings set forth in Attachment 2 attached hereto. For Fast-Track Disputes, the time frames provided in the Commercial Rules for Expedited Procedures (as defined in Attachment 2) shall apply in accordance with the Commercial Rules.

5.3.2 Each Disputes Board member, or the Disputes Board Chair on behalf of the Disputes Board, shall promptly notify the Parties if any circumstance has arisen or is likely to arise that would prevent prompt resolution of the applicable Dispute in accordance with the Commercial Rules and this Disputes Board Agreement.

5.3.3 The following provisions pertain to Small Claims:

(a) A "Small Claim" is a Claim or related or similar Claims that arise fairly contemporaneously out of the same set of acts, events or circumstances, that the Parties mutually agree to have resolved solely by the Disputes Board Chair, and that the Parties mutually agree will be subject to an aggregate cap on award. A non-binding example of a Small Claim is where the cumulative amount in controversy of a Claim or related or similar Claims is $500,000 or less.

(b) Once the Disputes Board Chair is appointed to resolve a Small Claim, the other two Disputes Board member shall be released from further service. Alternately, the Parties may, but are not obligated to, bypass appointment of two Dispute Board members and directly select a mutually acceptable individual from the Dispute Board Member Candidates Lists to serve as the Disputes Board Chair to resolve the Small Claim. Thereafter, in the context of the Disputes Board Chair's resolution of a Small Claim hereunder, all references in the dispute resolution procedures established in Section 17.8.4 of the Agreement to the "Disputes Board" or the "Disputes Board members" shall mean and refer to the Disputes Board Chair. At any time prior to the close of the Disputes Board hearing under R-27 of the Commercial Rules, if, due to amendment of the Dispute as to the amount in controversy, aggregation of the Dispute with other Disputes or other changes that cause a Party to no longer consent to resolution of the Dispute as a Small Claim by the Dispute Board Chair, such Party may, upon notice to the Disputes Board Chair and the other Party, withdraw its assent to resolution of the Dispute as a Small Claim by the Disputes Board Chair and require that a full three-member Disputes Board be empanelled to resolve such Dispute.

(c) The Disputes Board Chair shall have no authority to award compensation or damages in a Disputes Board Decision regarding a Small Claim aggregating more than the mutually agreed aggregate cap on award, and TxDOT or Developer as the claiming Party, as the case may be, asserting a Small Claim hereby irrevocably waives any right, at law or in equity, to any damages or award arising out of such Small Claim in excess of such cap

5.4 Aggregation of Disputes. Either Party shall be entitled to request the Disputes Board to aggregate the consideration of multiple Disputes for resolution by the Disputes Board where common questions of fact, Law and contract interpretation and the efficiencies to be gained in conducting a single proceeding to resolve all such Disputes merit the aggregate consideration of all such Disputes. Upon receipt of such a request, the Disputes Board shall consider the aggregated Disputes in a single proceeding unless, as a preliminary matter, the Disputes Board determines (after considering any evidence presented by the Parties in support of, or in opposition to, the proposed aggregation) that this is inappropriate. The Disputes Board shall revise or deny the proposed aggregation if there are insufficient common questions of fact, Law and contract interpretation among the proposed aggregated Disputes, or if the efficiencies to be gained by conducting a single proceeding to resolve such Disputes are outweighed by the need for separate and independent resolution of some or all of the proposed aggregated Disputes. The Disputes Board shall specify, in a Disputes Board Decision on this matter, which Disputes (if any) are to be aggregated and which Disputes (if any) are to be excluded from aggregation. Those not aggregated shall be considered by a separately empanelled Disputes Board in a separate proceeding. A Disputes Board Decision regarding whether Disputes will be aggregated for resolution in a single proceeding before the Disputes Board shall be final, binding and not subject to appeal.

5.5 Issuance of Disputes Board Decision and Any Minority Report. The Disputes Board should make every effort to reach a unanimous decision among the Disputes Board

members. If this proves infeasible, the dissenting Disputes Board member may prepare a minority report. Within 20 days after the final hearing on a Dispute (and within five days after the final hearing on a Fast-Track Dispute), the Disputes Board Chair shall issue to the Parties the Dispute Board Decision, including the Disputes Board's written findings of fact and conclusions of law in support of the Disputes Board Decision.

5.6 Confidential Materials; Return or Destruction Thereof. "Confidential Materials" are all documents, other written materials and information presented or exchanged in a proceeding before the Disputes Board that are confidential pursuant to Section 17.8.9 of the Agreement. Each Disputes Board member shall maintain the privacy of Confidential Materials pursuant to Section 17.8.9 of the Agreement. Within 30 days after the Disputes Board Chair receives written notice of issuance of a final, non-appealable order on a Dispute that was the subject of a Disputes Board Decision, the Disputes Board Chair shall furnish written notice to each Party listing the Confidential Materials in the Disputes Board's possession and, except for those Confidential Materials that a Party directs the Disputes Board to return to such Party in writing within 15 days after receipt of such notice, the Disputes Board Chair shall destroy all copies of all Confidential Materials in the Disputes Board's possession. Until the time for the Disputes Board Chair's issuance of the foregoing written notice, the Disputes Board shall hold all Confidential Materials in confidence.

5.7 Dissolution of Disputes Board. Once there is issued a final, non-appealable order on a Dispute that was the subject of a the Disputes Board Decision, the Disputes Board shall be dissolved and the Disputes Board members serving on such Disputes Board shall be released from further service.

Section 6. Reserved.

Section 7. TxDOT and Developer Responsibilities.

7.1 TxDOT Responsibilities. TxDOT shall serve upon each Disputes Board member one copy of the Agreement. TxDOT shall also serve upon each Disputes Board member (and concurrently upon Developer) any other documents which are or may become pertinent to the activities of the Disputes Board, including but not limited to any Change Order, Directive Letter or other written direction, instruction, determination or decision of TxDOT.

7.2 Developer Responsibilities. Developer shall serve on each Disputes Board member (and concurrently on TxDOT) one set of any documents which are or may become pertinent to the activities of the Disputes Board, except those documents furnished by TxDOT. Such documents may include, but shall not be limited to, any drawings or sketches, calculations, procedures, schedules, estimates or other documents and Submittals which are used in the performance of the Work or in justifying or substantiating Developer's position.

7.3 Parties' Responsibilities for Costs and Expenses; Cooperation.

7.3.1 Each Party shall be responsible and make payment for its one-half share of all facilities fees, support services costs and other expenses of the Disputes Board's proceedings within 30 days after receipt of invoices for such costs and expenses. A Party that disputes an invoice for any such cost or expense relating to the Disputes Board's proceedings shall notify the other Party of such dispute promptly after receipt of such invoice. If either Party fails to pay its share of the amount owing under any invoice for such costs and expenses at the time required for payment, then, unless the non-paying Party has promptly disputed the amount

due, (a) the other Party may make payment in lieu of the non-paying Party and (b) the paying Party will be entitled to recover (or offset) the amount paid on behalf of the refusing Party, with interest at a floating rate equal to the LIBOR in effect from time to time until the date the amount due is paid, no matter which Party is the prevailing Party.

7.3.2 Each Party shall diligently cooperate with the Disputes Board and the other Party and shall perform such acts as may be necessary to obtain an efficient and expeditious resolution of the Dispute submitted to the Disputes Board. If either Party fails to diligently cooperate with the Disputes Board or the other Party (upon evidence of such failure presented to and evaluated by the Disputes Board) and the Disputes Board determines that such failure was egregious, the Disputes Board shall take into account such egregious failure to cooperate in its Disputes Board Decision; subject, however, to the limitations on the Disputes Board's authority set forth in Section 17.8.4.1 of the Agreement.

Section 8. Term.

Consistent with the DRP Rules, the term of this Disputes Board Agreement shall commence on the Effective Date and continue in full force and effect for the Term of the Agreement and thereafter for so long as either Party has any obligation under the CDA Documents until the applicable statute of limitations on any Dispute in regard to such obligation has expired.

Section 9. Payment of Disputes Board Members' Fees, Costs and Expenses.

9.1 Payment for Services. Payment of fees for work performed and services rendered by each Disputes Board member and for his or her direct out-of-pocket costs and expenses shall be calculated in accordance with the payment terms set forth for such Disputes Board member in his or her Disputes Board Member Joinder Agreement. The personal services of the Disputes Board member are a condition to receiving payments hereunder. Such payments shall be full compensation for work performed and services rendered by each respective Disputes Board member, and for all labor, materials, supplies, equipment and incidentals necessary for such Disputes Board member's participation on the Disputes Board.

9.2 Disputes Board Member Invoices. Each Disputes Board member shall submit invoices concurrently to TxDOT and Developer on a monthly basis for payment of the full amount due for such Disputes Board member's work performed and services rendered in the prior month. Such invoices shall be in a format approved by TxDOT and Developer, accompanied by an itemization of days and hours billed along with a description of activities performed during each day in that billing period, and an itemization of direct non-salary costs incurred supported by copies of the original bills, invoices, expense accounts and miscellaneous supporting data. Such invoices shall specify that the invoiced Party is responsible only for one-half of the invoiced amount. The amount to be paid shall be established from the applicable billing rate set forth in each Disputes Board member's Disputes Board Member Joinder Agreement plus costs and expenses in accordance with such agreement.

9.3 Payment by Parties. Each Party shall be responsible and make payment for one-half of all fees, costs and expenses of the Disputes Board members' service on the Disputes Board. Such costs and expenses include, but are not limited to, required travel of the Disputes Board members, and the costs of witnesses and of any proof produced at the direct request of the Disputes Board. Each Disputes Board member will be paid within 30 days of the Parties' receipt and acceptance of invoices therefor. A Party that disputes a Disputes Board

member's invoice shall notify such member and the other Party in writing of such dispute promptly after receipt of such invoice. If either Party fails to pay its share of the amount owing to any Disputes Board member at the time required for payment, then, unless the non-paying Party has promptly disputed the amount due, (a) the other Party may make payment in lieu of the non-paying Party and (b) the paying Party will be entitled to recover (or offset) the amount paid on behalf of the refusing Party, with interest at a floating rate equal to the LIBOR in effect from time to time until the date the amount due is paid, no matter which Party is the prevailing Party.

9.4 Retention of Cost Records and Accounts. Disputes Board members shall keep available for inspection by representatives of TxDOT and Developer, for a period of five years after final payment, the cost records and accounts pertaining to this Disputes Board Agreement and the performance of work and rendition of services as a member of the Disputes Board. If any claim arising out of the Disputes Board member's services or compensation under this Disputes Board Agreement is initiated before the expiration of the five year period, the Disputes Board member shall retain the cost records and accounts until such claim is completed.

9.5 Parties to Bear Own Costs. Each Party shall bear its own costs arising out of or in connection with the Dispute Resolution Procedures. The Party producing a witness shall bear the fees, costs and expenses of such witness, except that the Parties shall split the expenses for any expert witness retained by the Disputes Board to advise them regarding a Dispute.

Section 10. Nonassignability.

Disputes Board members shall not assign or delegate any of the work or services to be rendered in connection with the Dispute Resolution Procedures without the prior written consent of both TxDOT and Developer.

Section 11. Legal Relations.

11.1 Disputes Board Member as Independent Contractor. The Parties mutually understand and agree that any Disputes Board member, in the performance of duties as a Disputes Board member on the Disputes Board, is acting in the capacity of an independent contractor and not as an employee or agent of TxDOT or Developer. No Disputes Board member will be entitled to any employee benefits from either Party.

11.2 No Effect on Potential Liabilities. Except for the payment, offset and reimbursement obligations agreed to by the Parties as set forth herein, nothing in this Disputes Board Agreement alters the potential liabilities of either Party.

11.3 Damages Waiver. Neither TxDOT nor Developer will hold any Disputes Board member responsible for claims, damages, losses and expenses, including, but not limited to attorneys' fees and expenses, arising out of or resulting from the actions and recommendations of the Disputes Board, and the Parties expressly waive any right to the foregoing, except as a result of fraud, willful misconduct or criminal actions of the applicable Disputes Board member.

Section 12. Applicable Law.

The Disputes for resolution by the Disputes Board shall be governed by and resolved under the Laws of the State of Texas, without regard to conflicts of law principles that would refer one to the Laws of another State.

Section 13. Amendment in Writing.

This Disputes Board Agreement may be altered, amended or revoked only by an instrument in writing signed by each Party. No verbal agreement or implied covenant or agreement shall be held to vary the terms hereof, any statute, law or custom to the contrary notwithstanding.

Section 14. Complementary Provisions; Order of Priority.

The Parties intend for the procedures established in Section 17.8.4 of the Agreement and the terms and conditions of this Disputes Board Agreement to be complementary. In the event of any conflict between this Disputes Board Agreement and Section 17.8.4 of the Agreement, the Agreement shall control.

Section 15. Notices.

Notices hereunder shall be sent as provided in Section 24.12 of the Agreement. The address for each Disputes Board member shall be set forth on the signature page of each Disputes Board Member Joinder Agreement.

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Disputes Board Agreement as of the Effective Date.

Developer:	**TxDOT:**
[ ]	**TEXAS DEPARTMENT OF TRANSPORTATION**
By: _____	
Name: _____	By: _____
Title: _____	Amadeo Saenz, P.E. Executive Director

ATTACHMENT 1 TO DISPUTES BOARD AGREEMENT

DISPUTES BOARD MEMBER JOINDER AGREEMENT

This DISPUTES BOARD MEMBER JOINDER AGREEMENT is entered into this _____ day of _____, _____ by and between _____ [***Specify TxDOT or Developer***] (the "Appointing Party"), and _____, an individual (the "Disputes Board Member").

RECITALS

A. TxDOT and Developer are parties to that certain Comprehensive Development Agreement, North Tarrant Express Facility, dated as of the Effective Date (the "Agreement").

B. Section 17.8.4 of the Agreement provides for the establishment and operation of a Disputes Board) to resolve Disputes.

C. The Appointing Party desires to appoint the Disputes Board Member to the Disputes Board to resolve such a dispute and the Disputes Board Member desires to accept such appointment, each on the terms and conditions set forth in Section 17.8.4, the Disputes Board Agreement and this Disputes Board Member Joinder Agreement.

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

Section 1. Definitions and References.

1.1 Definitions. All capitalized terms used in this Disputes Board Member Joinder Agreement and not defined or modified herein shall have the respective meanings set forth in the Agreement and, if not defined therein, in the Disputes Board Agreement.

1.2 Reference to Disputes Board Agreement and Section 17.8.4 of Agreement. The Disputes Board Agreement and Section 17.8.4 of the Agreement, which, among other things, discusses the Disputes Board's role in resolving Disputes, are incorporated herein by reference.

Section 2. Appointment.

2.1 Appointment. The Appointing Party appoints the Disputes Board Member to the Disputes Board to serve thereupon and resolve the applicable Dispute, and the Disputes Board Member accepts such appointment and agrees to perform such service, in accordance with the terms and conditions of Section 17.8.4 of the Agreement, the Disputes Board Agreement and this Disputes Board Member Joinder Agreement.

2.2 Term of Service. The Disputes Board Member shall serve on the Disputes Board through issuance of a final, non-appealable order concerning the applicable Dispute, except that (a) unless he or she is the Disputes Board Chair, he or she may be earlier dismissed from service pursuant to Section 5.3.3(b) of the Disputes Board Agreement because the dispute to be resolved is a Small Claim; (b) the Disputes Board Member may resign for health

considerations or other reasons of disability; or (c) the Disputes Board Member shall resign if he or she discovers facts or circumstances that would, in such member's good faith judgment, (i) prevent such member from discharging his or her duties in the impartial and objective manner required under the Disputes Board Agreement or (ii) result in a Party terminating such member's appointment For Cause. The Disputes Board Member shall endeavor to give 30 days' notice prior to the effective date of his or her resignation

Section 3. Representations, Warranties and Covenants.

3.1 Representations and Warranties. The Disputes Board Member hereby represents and warrants to TxDOT and Developer that such Disputes Board Member satisfies the Disputes Board Member Qualifications.

3.2 Covenants. The Disputes Board Member covenants to TxDOT and Developer that he or she:

(a) Shall be bound by and perform such member's obligations with respect to the Dispute Resolution Procedures in accordance with Section 17.8.4 of the Agreement;

(b) Shall not engage in any conduct that would be or result in a Disputes Board Member Conflict of Interest or Disputes Board Member Misconduct; and

(c) Shall preserve, maintain and protect the confidentiality of Confidential Materials in accordance with Section 17.8.9 of the Agreement.

Section 4. Compensation.

4.1 Invoicing and Payment. The Disputes Board Member's hourly billing rate and costs and expenses for service on the Disputes Board or means for calculating the same are attached hereto as Annex 1. Invoicing and payment of fees, costs and expenses shall take place in accordance with Sections 9.1, 9.2 and 9.3 of the Disputes Board Agreement.

4.2 No Compensation After Termination. If the Disputes Board Member's appointment to the Disputes Board is terminated, whether For Cause or otherwise, the Disputes Board Member will not be entitled to receive payment for any services rendered or costs and expenses incurred after the date of termination of such appointment.

Section 5. General Provisions.

5.1 Third Party Beneficiary. Whichever of TxDOT or Developer that is not the Appointing Party is an express third party beneficiary of this Disputes Board Member Joinder Agreement entitled to enforce the terms and conditions hereof against the Disputes Board Member.

5.2 Nonassignability. The Disputes Board Member shall not assign or delegate any of the work or services to be rendered in connection with the Dispute Resolution Procedures without the prior written consent of both TxDOT and Developer.

5.3 Disputes Board Member as Independent Contractor. The Disputes Board Member is acting in the capacity of an independent contractor and not as an employee or agent

of TxDOT or Developer. The Disputes Board Member is not entitled to any employee benefits from either Party.

5.4 Consequential Damages Waiver. In no event shall TxDOT or Developer have any liability to the Disputes Board Member other than for payment of the Disputes Board Member's fees, costs and expenses hereunder. Neither TxDOT nor Developer shall be liable to the Disputes Board Member for any special, consequential, indirect, enhanced, punitive, or similar damages (including lost profits that are not direct damages), including but not limited to attorneys' fees and expenses, arising under or in connection with this Disputes Board Member Joinder Agreement, and the Disputes Board Member expressly waives any right to the foregoing.

5.5 Governing Law. This Disputes Board Member Joinder Agreement shall be governed by and construed in accordance with the Laws of the State of Texas, without regard to conflicts of law principles that would refer one to the Laws of another State.

5.6 Entire Agreement. This Disputes Board Member Joinder Agreement, and the documents referenced herein, contain the entire understanding of the parties hereto with respect to the subject matter hereof and supersede all prior agreements, understandings, statements, representations and negotiations between the parties hereto with respect to its subject matter.

5.7 Amendment in Writing. This Disputes Board Member Joinder Agreement may be altered, amended or revoked only by an instrument in writing signed by each Party. No verbal agreement or implied covenant or agreement shall be held to vary the terms hereof, any statute, law or custom to the contrary notwithstanding.

5.8 Survival. This Disputes Board Member Joinder Agreement shall automatically terminate upon expiration or termination of the Disputes Board Member's service hereunder, except that the provisions of Section 4.2 and this Section 5 shall survive termination of this Disputes Board Member Joinder Agreement.

5.9 Counterparts. This instrument may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[Signature Page Immediately Follows]

IN WITNESS WHERE, the parties hereto, intending to be legally bound, have executed this Disputes Board Member Joinder Agreement as of the day and year first set forth above.

Appointing Party:

[***TxDOT or Developer***]

By:_____

Name:_____

Title:_____

Disputes Board Member:

By:_____

Name:_____

Address: _____
_____
_____
_____

Annex 1
to
Disputes Board Member Joinder Agreement

Fees, Costs and Expenses

[***to be attached***]

ATTACHMENT 2 TO DISPUTES BOARD AGREEMENT
COMMERCIAL RULES

R-1. Agreement of The Parties

(a) The "Expedited Procedures" means the rules set forth in Sections E-1 through E-6 below. Unless the Parties determine otherwise, the Expedited Procedures shall apply to Fast-Track Disputes in addition to any other portion of these rules that is not in conflict with the Expedited Procedures.

(b) The "Procedures for Large, Complex Commercial Disputes" means the rules set forth in Sections L-1 through L-3 below. Unless the Parties agree otherwise, such Procedures shall apply to all cases in which the Dispute is valued at $500,000 or more, exclusive of claimed interest, fees and costs provided, however, that the amount of $500,000 shall be adjusted on every fifth anniversary of the Effective Date by the percentage increase (if any) in the CPI between the date the CPI was most recently published before the Effective Date and the date most recently published before the date of adjustment. The Parties may also agree to use such Procedures in cases involving non-monetary Disputes. Such Procedures shall be applied in addition to any other portion of these rules that is not in conflict with the Procedures for Large, Complex Commercial Disputes.

(c) All other cases shall be administered in accordance with Sections R-2 through R-43 of these rules.

(d) If there is any inconsistency between these Commercial Rules and Section 17.8.4 of the Agreement or the Disputes Board Agreement, Section 17.8.4 of the Agreement and the Disputes Board Agreement shall control.

R-2. Disputes Board

The term "Disputes Board" in these Commercial Rules refers to the three member Disputes Board, constituted for a particular case, or to the Disputes Board Chair, as the context requires.

R-3. Assumed Objection

Unless the responding Party states otherwise in its response to the claiming Party's notice of referral of a Dispute to the Disputes Board, all aspects of the Dispute will be deemed denied by the other Party (other than any objection to the Disputes Board's authority to resolve the Dispute, which must be affirmatively asserted).

R-4. Changes of Claim

After notice of referral of a Dispute to the Disputes Board is given or received, if either Party desires to make any amended, new or different claim or counterclaim, it shall be made in writing and filed with the Disputes Board. The Party asserting such an amended, new or different claim or counterclaim shall provide a copy to the other Party, who shall have 15 days from the date of such transmission within which to file an answering statement with the Disputes Board.

R-5. Jurisdiction

(a) The Disputes Board shall have the power to rule on its own jurisdiction, i.e., to determine if the Disputes Board is barred from considering and resolving an alleged Dispute pursuant to Section 17.8.1.5 of the Agreement.

(b) The Disputes Board shall rule on jurisdictional objections as a preliminary matter prior to proceeding with proceedings to resolve the underlying Dispute.

R-6. Administrative Conference

At the request of either Party or upon the Disputes Board's own initiative, the Disputes Board may conduct an administrative conference, in person or by telephone, with the Parties and/or their representatives. The conference may address such issues as the replacement of one or more Disputes Board members, potential mediation of the Dispute, potential exchange of information, a timetable for hearings and any other administrative matters.

R-7. Appointment

Because the Disputes Board Agreement between the Parties specifies a method of appointing a Disputes Board, that designation or method shall be followed.

R-8. Disclosure

(a) Any person appointed or to be appointed as a Disputes Board member shall disclose to the Parties any circumstance likely to give rise to justifiable doubt as to such Disputes Board member's impartiality or independence, including any bias or any financial or personal interest in the resolution of the Dispute or any past or present relationship with the Parties or their representatives. Such obligation shall remain in effect throughout the period of such member's service on the Disputes Board.

(b) In order to encourage disclosure by Disputes Board Members and candidates, disclosure of information pursuant to this R-8 is not to be construed as an indication that the disclosing individual considers that the disclosed circumstance is likely to affect impartiality or independence.

R-9. Disqualification of Disputes Board Member

Each Disputes Board member shall be impartial and independent and shall perform his or her duties with diligence and in good faith, and shall be subject to disqualification for:

(a) inability or refusal to perform his or her duties with diligence and in good faith, and

(b) any grounds for disqualification provided by applicable law, the Disputes Board Agreement or the Agreement.

R-10. No *Ex Parte* Communication with Disputes Board Members

(a) During the period that any Disputes Board member is then serving on a Disputes Board, (i) neither Party, including the members of its Conflicts Group and its counsel or designated representatives, shall communicate ***ex parte*** with such Disputes Board member and

(ii) no Disputes Board member shall communicate ***ex parte*** with any Person (other than other Disputes Board members), including but not limited to, either Party, its counsel or designated representatives, regarding any aspect of the applicable Dispute.

(b) Each Party may communicate in writing or by e-mail with individuals listed on its respective Disputes Board Member Candidates' List for the purposes of (i) ascertaining their availability to serve on a particular Disputes Board and/or (ii) reconfirming such individuals' qualifications under the Disputes Board Member Qualifications and the absence of Conflicts of Interest and Misconduct, provided that the communicating Party simultaneously furnishes copies of all such written correspondence with such individuals to the other Party. ***Ex parte*** communication regarding the substance of any Dispute between a Party and individuals listed on its respective Disputes Board Member Candidates' List is prohibited.

R-11. Hearings After Filling of Vacancies

In the event of the appointment of a substitute Disputes Board member, the panel of Disputes Board members shall determine in its sole discretion whether it is necessary to repeat all or part of any prior hearings.

R-12. Preliminary Hearing

(a) At the request of either Party or at the discretion of the Disputes Board, the Disputes Board may schedule as soon as practicable a preliminary hearing with the Parties and/or their representatives. The preliminary hearing may be conducted by telephone at the Disputes Board's discretion.

(b) During the preliminary hearing, the Parties and the Disputes Board should discuss the future conduct of the case, including clarification of the nature of the Dispute, a schedule for the hearings and any other preliminary matters.

R-13. Exchange of Information; Discovery

(a) At least five Business Days prior to the hearing, the Parties shall exchange (i) copies of all exhibits they intend to submit at the hearing and (ii) lists of witnesses anticipated to be called at the hearing, in each case except for witnesses or exhibits to be offered for the purpose of impeachment or rebuttal.

(b) The Disputes Board Chair is authorized to resolve any disputes concerning the exchange of information or the Parties' discovery.

R-14. Date, Time, and Place of Hearing

The Disputes Board Chair shall set the date, time, and place for each hearing at a neutral and reasonably cost-efficient location in Travis County, Texas that is reasonably convenient for the Parties. The Parties shall respond to requests for hearing dates in a timely manner, be cooperative in scheduling the earliest practicable date, and adhere to the established hearing schedule. The Disputes Board shall send a notice of hearing to the Parties at least five Business Days in advance of the hearing date, unless otherwise agreed by the Parties.

R-15. Attendance of Witnesses

Except for each Party's counsel and other authorized representative, upon the request of either Party or its own initiative, the Disputes Board shall have the power to require the exclusion of any witness or potential witness during the testimony of any other witness.

R-16. Representation

Counsel or other authorized representative may represent each Party. A Party intending to be so represented shall notify the other Party and the Disputes Board of the name and address of the representative at least three days prior to the date set for the hearing at which that person is first to appear. When such a representative initiates or responds for a Party in the course of the Dispute Resolution Procedures, notice is deemed to have been given by the Party represented by such representative.

R-17. Dispute Board Members' Certifications; Witness Oaths

Before proceeding with the first hearing, each Disputes Board member shall have entered into a Disputes Member Joinder Agreement with a Party in which he or she certifies as to his or her meeting the Disputes Board Member Qualifications and the absence of Disputes Board Member Conflicts of Interest and Disputes Board Member Misconduct (and a covenant to not engage in Disputes Board Member Misconduct). The Disputes Board shall require witnesses to testify under oath.

R-18. Stenographic Record

Any Party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other Party of these arrangements at least three days in advance of the hearing. The requesting Party shall pay the cost of the record. If the transcript is agreed by the Parties, or determined by the Disputes Board to be the official record of the proceeding, it must be provided to the Disputes Board and made available to the other Party for inspection, at a date, time, and place determined by the Disputes Board.

R-19. Interpreters

Any Party wishing an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of the service.

R-20. Postponements

The Disputes Board may postpone any hearing upon agreement of the Parties, upon request of a Party for good cause shown, or upon the Disputes Board's own initiative for good cause shown.

R-21. Proceedings in the Absence of a Party or Representative

The Dispute Board's proceedings may proceed in the absence of either Party or representative who, after due notice, fails to be present or fails to obtain a postponement. A Disputes Board Decision shall not be made solely on the default of a Party. The Disputes Board shall require the Party who is present to submit such evidence as the Disputes Board may require for the making of a Disputes Board Decision.

R-22. Conduct of Proceedings

(a) The claiming Party shall present evidence to support its claim. The responding Party shall then present evidence to support its defense. Witnesses for each Party shall also submit to questions from the Disputes Board and the adverse Party. The Disputes Board has the discretion to vary this procedure, provided that the Parties are treated with equality and that each Party has the right to be heard and is given a fair opportunity to present its case.

(b) The Disputes Board, exercising its discretion, shall conduct the proceedings with a view to expediting the resolution of the Dispute and may direct the order of proof, bifurcate proceedings and direct the Parties to focus their presentations on issues the decision of which could dispose of all or part of the case.

(c) The Parties may agree to waive oral hearings in any case.

R-23. Evidence

(a) The Parties may offer such evidence as is relevant and material to the Dispute and shall produce such evidence as they or the Disputes Board deems relevant and necessary to an understanding and determination of the Dispute. Conformity to the Texas Rules of Evidence shall be required, except where these Commercial Rules contain a contrary rule. All evidence shall be taken in the presence of all of the Disputes Board members and both of the Parties, except where a Party fails to attend the hearing or has waived the right to be present.

(b) Subject to the Texas Rules of Evidence, the Disputes Board shall determine the admissibility, relevance, and materiality of the evidence offered and may exclude evidence deemed by the Disputes Board to be cumulative or irrelevant.

(c) The Disputes Board shall take into account applicable principles of legal privilege, such as those involving the confidentiality of communications between a lawyer and client.

(d) Special discovery and evidentiary rules:

(i) The Disputes Board Chair shall, at the request of either Party, issue subpoenas for the attendance of witnesses or the production of books, records, documents or other evidence, whether for deposition or for hearing, in the manner provided by Law for issuance of a subpoena in a civil action pending in a State district court. All provisions of the Texas Rules of Civil Procedure for service and response to subpoenas in a civil action pending in State district court shall apply to subpoenas issued pursuant hereto.

(ii) Each Party shall be entitled to take depositions of witnesses and to propound written discovery in the manner, and to the extent, provided by Law for discovery in a civil action pending in a State district court, consistent with Rule 190.3 of the Texas Rules of Civil Procedure. The Disputes Board Chair shall, at the request of either Party, or may, on his or her own initiative, adopt a discovery control plan as contemplated by Rule 190.4 of the Texas Rules of Civil Procedure.

(iii) The disclosure of expert witness information and the depositions of designated expert witnesses shall be conducted as provided by the Texas Rules of Civil Procedure for cases in state district court.

(iv) At the hearing, each Party shall have the right to be heard, to present evidence, including expert witness testimony, and to cross-examine witnesses, including the Independent Engineer.

R-24. No Evidence by Affidavit; Post-hearing Filing of Documents or Other Evidence

(a) The Disputes Board may not receive and consider the evidence of witnesses by declaration or affidavit.

(b) If the Parties agree or the Disputes Board directs that documents or other evidence be submitted to the Disputes Board after the hearing, the documents or other evidence shall be transmitted to each Disputes Board member. Both Parties shall be afforded an opportunity to examine and respond to such documents or other evidence.

R-25. Inspection or Investigation

The Disputes Board may find it necessary to make an inspection or investigation in connection with its proceedings and, if so, shall so advise the Parties. The Disputes Board shall set the date and time of such inspection or investigation and notify the Parties thereof. Any Party who so desires may be present at such an inspection or investigation. In the event that one or both of the Parties are not present at the inspection or investigation, the Disputes Board shall make an oral or written report to the Parties on the result or findings from such inspection or investigation and afford them an opportunity to comment.

R-26. Interim Measures

(a) The Disputes Board may take whatever interim measures it deems necessary, including measures for the protection or conservation of property and disposition of perishable goods.

(b) Such interim measures may take the form of an interim Disputes Board Decision.

R-27. Closing of Hearing

The Disputes Board shall specifically inquire of both Parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies or if satisfied that the record is complete, the Disputes Board shall declare the hearing closed. If posthearing briefs are to be filed, the hearing shall be declared closed as of the final date set by the Disputes Board for the receipt of such briefs. If documents are to be filed as provided in R-24 and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the closing date of the hearing. The time limit within which the Disputes Board is required to make the Disputes Board Decision shall commence, in the absence of other agreements by the Parties, upon the closing of the hearing.

R-28. Reopening of Hearing

The hearing may be reopened only upon application of a Party for good cause shown, as determined in the discretion of the Disputes Board, at any time before the Disputes Board Decision is issued The Disputes Board may reopen the hearing and shall have 30 days from the closing of the reopened hearing within which to issue its decision.

R-29. Waiver of Rules

Any Party who proceeds with the Disputes Board proceedings after knowledge that any provision or requirement of these rules has not been complied with and who fails to state an objection in writing to the other Party and the Disputes Board shall be deemed to have waived the right to object.

R-30. Extensions of Time

The Parties may modify any period of time in these rules by mutual agreement. The Disputes Board may for good cause extend any period of time established by these rules, except the time for issuance of the Disputes Board Decision. The Disputes Board shall notify the Parties of any extension.

R-31. Serving of Notice

(a) Any papers, notices, or process necessary or proper for the initiation or continuation of Disputes Board proceedings under these rules, for any court action in connection therewith, or for the entry of Disputes Board Decision made under these rules shall be given in accordance with Section 24.12 of the Agreement.

(b) Unless otherwise instructed by the Disputes Board, any documents submitted by either Party to the Disputes Board shall simultaneously be provided to the other Party.

R-32. Majority Decision

When the panel consists of more than one Disputes Board, a majority of the Disputes Board members must make all decisions.

R-33. Time of Issuance of the Disputes Board Decision

The Disputes Board Decision shall be issued promptly by the Disputes Board and no later than 30 days from the date of closing the hearing, or, if oral hearings have been waived, from the date of the Parties' transmittal of the final statements and proofs to the Disputes Board.

R-34. Form of Disputes Board Decision

(a) Any Disputes Board Decision shall be in writing and signed by a majority of the Disputes Board members.

(b) The Disputes Board shall also issue written findings of fact and conclusions of Law as part of the Disputes Board Decision.

R-35. Scope of Disputes Board Decision

(a) The Disputes Board may determine the occurrence of any event that is a prerequisite to a Party's claim for any remedy or relief in the Dispute, and grant any remedy or relief to resolve the Dispute that the Disputes Board determines is available under the Agreement and applicable Law and within the scope of the agreement of the Parties under Section 17.8 of the Agreement.

(b) In the final Disputes Board Decision, the Disputes Board shall assess compensation and damage amounts, where applicable.

R-36. Disputes Board Decision upon Settlement

If the Parties settle the Dispute during the course of the Disputes Board proceedings and if the Parties so request, the Disputes Board may set forth the terms of the settlement in a consent Disputes Board Decision.

R-37. Acceptance of Delivery of Disputes Board Decision

The Disputes Board Chair shall give, and the Parties shall accept, notice of the written Disputes Board Decision, including the written findings of fact and conclusions of law, addressed and delivered to the Parties as provided in R-31.

R-38. Correction of Errors in Disputes Board Decision

Within five Business Days after the transmittal of a Disputes Board Decision, either Party, upon notice to the other Party, may request the Disputes Board, through the Disputes Board Chair, to correct any clerical, typographical, or computational errors in the Disputes Board Decision. The Disputes Board is not empowered under this R-38 to re-determine the merits of any Dispute already decided. The other Party shall be given five Business Days to object to the request on the ground that there is no clerical, typographical, or computational error in the Disputes Board Decision. The Disputes Board shall perform the requested correction of errors within ten Business Days after transmittal by the Disputes Board Chair of the request for correction of errors unless the other Party objects. Any unresolved disagreement between the Parties as to the existence of a clerical, typographical, or computational error in the Disputes Board Decision can be subsequently pursued, under R-28.

R-39. Release of Documents for Subsequent Proceedings

The Disputes Board shall, upon the written request of a Party, furnish to the Party, at the Party's expense, certified copies of any papers in the Disputes Board's possession that may be required in further administrative or judicial proceedings relating to resolution of the Dispute.

R-40. Applications to Court and Exclusion of Liability

(a) No judicial proceeding by a Party relating to a Dispute shall be deemed a waiver of the Party's right to have the Dispute resolved by Dispute Board proceedings.

(b) Neither any Disputes Board member nor the Disputes Board in a proceeding under these rules is a necessary or proper Party in judicial proceedings relating to a Dispute.

R-41. Interpretation and Application of Rules

The Disputes Board shall interpret and apply these rules insofar as they relate to the Disputes Board's powers and duties to resolve the particular Dispute for which such Disputes Board was empanelled.

R-42. No Suspension for Nonpayment

If a Disputes Board member's compensation or administrative charges have not been paid in full, such Disputes Board member may so inform the Parties in order that one of them may advance the required payment. If such payments are not made, and the non-paying Party does not within 30 days after its receipt of the unpaid Disputes Board member's invoice provide notice to such member and the other Party as to such Party's dispute of such member's invoice, the Disputes Board may order the suspension or termination of the proceedings. If a Party disputes a Disputes Board member's invoice and provides such notice, no suspension or termination of the proceedings shall occur. ***Ex parte*** conversations to resolve a fee dispute between the Dispute Board member whose invoice is disputed and the disputed Party are prohibited during the Dispute Board's resolution of the Dispute, and any such conversations shall be deferred until the Disputes Board Decision is final.

EXPEDITED PROCEDURES FOR FAST-TRACK DISPUTES

E-1. Serving of Notices

In addition to notice provided pursuant to Section 24.12 of the Agreement, the Parties can agree in writing to also accept notice by telephone. If the Parties so agree and thereafter a Party fails to confirm in writing any such oral notice, the proceeding shall nevertheless be valid if notice has, in fact, been given by telephone.

E-2. Exchange of Exhibits

At least two Business Days prior to the hearing, the Parties shall exchange copies of all exhibits they intend to submit at the hearing. The Disputes Board shall resolve disputes concerning the exchange of exhibits.

E-3. Proceedings on Documents

Where no Party's claim exceeds $10,000, exclusive of interest and dispute resolution costs, and other cases in which the Parties agree, the Dispute shall be resolved by submission of documents, unless either Party requests an oral hearing, or the Disputes Board determines that an oral hearing is necessary. The Disputes Board shall establish a fair and equitable procedure for the submission of documents.

E-4. Date, Time, and Place of Hearing

In cases in which a hearing is to be held, the Disputes Board shall set the date, time, and place of the hearing, to be scheduled to take place within ten days after appointment of the Disputes Board Chair. The Disputes Board will notify the Parties in advance of the hearing date.

E-5. The Hearing

(a) Each Party shall have equal opportunity to submit its proofs and complete its case.

(b) The Disputes Board shall determine the order of the hearing and schedule and control its duration consistent with the objective of expedited resolution of the Fast-Track Dispute, and may require further submission of documents within two days after the hearing.

For good cause shown, the Disputes Board may schedule additional hearings within seven Business Days after the initial hearing.

(c) Any Party desiring a stenographic record may arrange for one pursuant to the provisions of R-18.

E-6. Time of Award

Unless otherwise agreed by the Parties, the Disputes Board Decision shall be rendered not later than 14 days from the date of the closing of the hearing or, if oral hearings have been waived, from the date of the Parties' transmittal of the final statements and proofs to the Disputes Board.

PROCEDURES FOR LARGE, COMPLEX COMMERCIAL DISPUTES

L-1. Administrative Conference

Prior to commencing proceedings to resolve a Dispute, the Disputes Board shall, unless the Parties agree otherwise, conduct an administrative conference with the Parties and/or their attorneys or other representatives by conference call within seven days after the Disputes Board Chair is appointed. In the event the Parties are unable to agree on a mutually acceptable time for the administrative conference, the Dispute Board shall, upon three Business Days' advance notice, schedule the administrative conference for 9 a.m. (CST) on the fourth Business Day after the date of such notice and such administrative conference shall take place at such date and time. Such administrative conference shall be conducted for the purpose of obtaining additional information about the nature and magnitude of the Dispute, the anticipated length of hearing, and scheduling, and for such additional purposes as the Parties or the Disputes Board may deem appropriate.

L-2. Preliminary Hearing

As promptly as practicable after the appointment of the Disputes Board, a preliminary hearing shall be held among the Parties and/or their attorneys or other representatives and the Disputes Board. If the Parties agree, the preliminary hearing will be conducted by telephone conference call rather than in person. At the preliminary hearing the matters to be considered shall include, without limitation:

(a) Service of a detailed statement of the Dispute, including damages and defenses, a statement of the issues asserted by each Party and positions with respect thereto, and any legal authorities the Parties may wish to bring to the attention of the Disputes Board;

(b) Stipulations to uncontested facts;

(c) The extent to which discovery shall be conducted, in light of the special discovery and evidentiary rules set forth above in R-23(d);

(d) Exchange and pre-marking of those documents which each Party believes may be offered at the hearing;

(e) The identification and availability of witnesses, including experts, and such matters with respect to witnesses including their biographies and expected testimony as may be appropriate;

(f) Whether, and the extent to which, any sworn statements and/or depositions may be introduced;

(g) The extent to which hearings will proceed on consecutive days;

(h) Whether a stenographic or other official record of the proceedings shall be maintained;

(i) The possibility of utilizing mediation or other non-adjudicative methods of dispute resolution; and

(j) The procedure for the issuance of subpoenas.

By agreement of the Parties and/or order of the Disputes Board Chair, the pre-hearing activities and the hearing procedures that will govern the Disputes Board's proceedings will be memorialized in a scheduling and procedure order. Nothing in any scheduling and procedure order shall conflict with the procedures established under Section 17.8.4 of the Agreement or Section 5 of the Disputes Board Agreement.

L-3. Management of Proceedings

(a) The Disputes Board shall take such steps as they may deem necessary or desirable to avoid delay and to achieve a just, speedy and cost-effective resolution of Large, Complex Commercial Cases, provided, however, that no action by the Disputes Board under this L-3 shall conflict with the procedures established under Section 17.8.4 of the Agreement or Section 5 of the Disputes Board Agreement.

(b) The Parties shall cooperate in the exchange of documents, exhibits and information within such Party's control.

(c) The Parties may conduct discovery, subject to any limitations deemed appropriate and set forth in the discovery control plan and/or the scheduling and procedure order. If the Parties cannot agree on production of documents and other information, the Disputes Board, consistent with the Parties' intent to resolve Disputes expeditiously, may establish the extent of the discovery.

(d) The Parties shall exchange copies of all exhibits they intend to submit at the hearing ten Business Days prior to the hearing unless the Disputes Board Chair determines otherwise.

(e) The exchange of information pursuant to this rule, as agreed by the Parties and/or directed by the Disputes Board Chair, shall be included within the scheduling and procedure order.

(f) The Disputes Board is authorized to resolve any disputes concerning the exchange of information.

(g) Generally hearings will be scheduled on consecutive days or in blocks of consecutive days in order to maximize efficiency and minimize costs.

EXHIBIT 20

TERMS FOR TERMINATION COMPENSATION

A. Definitions

For the purpose of this Exhibit 20, the following terms have the following meanings:

1. "Adjusted Equity IRR" means 23% calculated over the same period as Equity IRR.

2. "Borrowed Cash and Credit Balances" means proceeds of Facility Debt included in the Senior Debt Termination Amount that are held on the Early Termination Date as cash and credit balances in accounts held by or on behalf of Developer, including in Lender accounts and reserve accounts, but excluding the Handback Requirements Reserve (if any).

3. "Cash and Credit Balances" means proceeds of Facility Debt and Contributed Unreturned Equity, as well as Toll Revenues and interest earnings, that are held on the Early Termination Date as cash and credit balances in accounts held by or on behalf of Developer, including in Lender accounts and reserve accounts, but excluding the Handback Requirements Reserve (if any).

4. "Equity IRR" means a blended nominal Post-Tax rate of return on Contributed Unreturned Equity and Subordinate Debt over the full Term (excluding potential extensions of the Term) equal to that projected in the Base Case Financial Model, which rate of return is ___%.

5. "Net present value" means the aggregate of the discounted values, calculated as of the Valuation Date, of each of the relevant projected Distributions, in each case discounted using the Equity IRR.

B. Compensation on Termination for Convenience, for TxDOT Default or for TxDOT Suspension of Work

1. In the event of termination of the Agreement and Lease under Section 19.1 (Termination for Convenience) or Section 19.4 (Termination for TxDOT Default or Suspension of Work), the Termination Compensation shall equal the smaller of the amounts determined as set forth in Sections B.2 and B.3 below, and shall be payable by TxDOT as and when set forth in Section G.1(a) below.

2. The amount of the Termination Compensation under this Section B.2 shall equal the following:

(a) The greater of (i) the Fair Market Value, if any, of the Developer's Interest as of the Valuation Date determined according to the procedures set forth in Section B.4 below, or (ii) the Senior Debt Termination Amount; plus

(b) The amount necessary to reimburse reasonable and documented out-of-pocket costs of third party and Affiliate Contractors to demobilize and terminate under Contracts between Developer and third parties or Affiliates for performance of Work, excluding

Developer's non-contractual liabilities and indemnity liabilities (contractual or non-contractual) to third parties or Affiliates; plus

(c) If termination occurs prior to Substantial Completion of all Facility Segments, Developer's own reasonable and documented out-of-pocket costs to demobilize; plus

(d) The incremental increase, if any, in the costs Developer incurs under Section 19.5.11 of the Agreement over the present value of such costs under the Base Case Financial Model, but without double counting of the amounts under clauses (a), (b) and (c) above; minus

(e) Only where the Senior Debt Termination Amount is applicable, all Borrowed Cash and Credit Balances, except to the extent such balances are already deducted in determining the Senior Debt Termination Amount; minus

(f) Only where the Senior Debt Termination Amount is applicable, the cost of Renewal Work that Developer was required to but did not perform prior to the Early Termination Date, as well as the amount of funds that would have been required to be funded into the Handback Requirements Reserve and delivered to TxDOT at the end of the Term as if the Handback Requirements and Handback Requirements Reserve provisions had been in effect prior to the Early Termination Date; minus

(g) Only where the Senior Debt Termination Amount is applicable, the portion of any Compensation Amounts previously paid to Developer that (i) compensated Developer for cost and revenue impacts attributable to the period after the Early Termination Date and (ii) were not previously used to reduce Project Debt within the definition of Senior Debt Termination Amount; minus

(h) Only where Fair Market Value is applicable, the amount of all Distributions, and all payments to Affiliates in excess of reasonable compensation for necessary services or that are advance payments in violation of Section 10.5.3 of the Agreement, between the Valuation Date and the Early Termination Date; minus

(i) Only where Fair Market Value is applicable, all amounts received by the Lenders in relation to the Facility Debt (including all interest, capital and Breakage Costs) between the Valuation Date and the Early Termination Date; plus

(j) ***[For Option A under Section G.1 below -*** Only where Fair Market Value is applicable, (i) in the case of Termination for Convenience, a return on the outstanding balance of the Fair Market Value amount between the Valuation Date and the Early Termination Date equal to Developer's weighted average cost of capital as of the Valuation Date (determined according to the procedures set forth in Section B.4 below) or (ii) in the case of termination for TxDOT Default or TxDOT suspension of Work, a return on the outstanding balance of the Fair Market Value amount between the Valuation Date and the date the Fair Market Value is paid in full equal to Developer's weighted average cost of capital as of the Valuation Date (determined according to the procedures set forth in Section B.4 below); plus***] [For Option B under Section G.1 below –*** Only where Fair Market Value is applicable, a return on the outstanding balance of the Fair Market Value amount between the Valuation Date and the date the Fair Market Value is paid in full equal to Developer's weighted average cost of capital as of the Valuation Date (determined according to the procedures set forth in Section B.4 below); plus***]***

(k) Only where Fair Market Value is applicable, the incremental tax liability, if any, described in Section B.5 below; plus

(l) Only where Fair Market Value is applicable, Breakage Costs.

3. The amount of Termination Compensation under this Section B.3 shall equal the following:

(a) (i) If any Refinancing fully and specifically identified and taken into account in the Base Case Financial Model was scheduled therein to occur prior to the Valuation Date and such Refinancing has actually occurred, then the Senior Debt Termination Amount determined taking into account such Refinancing in the amount and on the terms assumed in the Base Case Financial Model, or (ii) if otherwise, then the Initial Senior Debt Termination Amount; plus

(b) The greater of zero or the amount computed using the formula A+B, where:

(i) A is the Net present value of the Distributions to be made between the Valuation Date and the date the original Term expires (but without taking into account the effect of the termination) as projected under the Base Case Financial Model; and

(ii) B is an incremental adjustment in the form of one or more special Distributions that, when added to A, would be required to increase the Equity IRR to a blended, nominal Post-Tax rate of return on equity equal to the Adjusted Equity IRR. For these purposes, B is capped at a maximum equal to the present value of three times the Toll Revenues between the Valuation Date and the date the original Term expires (but without taking into account the effect of the termination) as projected under the Base Case Financial Model. The present value of future Toll Revenues shall be determined using the Equity IRR as the discount factor; plus

(c) The amount that will put Developer in the same Post-Tax position as it would have been had the payment under clause (b) above not been subject to federal income tax liability of Developer (or, if it is a pass-through entity for federal income tax purposes, its members or partners) and State margin tax liability of Developer as a lump sum payment; plus

(d) The amount necessary to reimburse reasonable and documented out-of-pocket costs of third party and Affiliate Contractors to demobilize and terminate under Contracts between Developer and third parties or Affiliates for performance of Work, excluding Developer's non-contractual liabilities and indemnity liabilities (contractual or non-contractual) to third parties or Affiliates; plus

(e) If termination occurs prior to Substantial Completion for all Facility Segments, Developer's own reasonable and documented out-of-pocket costs to demobilize; plus

(f) The incremental increase, if any, in the costs Developer incurs under Section 19.5.11 of the Agreement over the present value of such costs under the Base Case Financial Model, but without double counting of the amounts under clauses (a), (b) and (c) above; minus

(g) All Cash and Credit Balances, except to the extent such balances are already deducted in determining amounts under clauses (a), (b) and (c) above; minus

(h) The portion of any Compensation Amounts previously paid to Developer that (i) compensated Developer for cost and revenue impacts attributable to the period after the Early Termination Date and (ii) were not previously used to reduce Project Debt within the definition of Senior Debt Termination Amount.

4. Fair Market Value of the Developer's Interest as of the Valuation Date shall be determined according to the following procedures.

(a) Within 30 Days after a Party requests the appointment thereof, TxDOT and Developer shall confer in good faith to mutually appoint an independent third-party appraiser to determine the Fair Market Value by written appraisal. This appraiser must be nationally recognized and experienced in appraising similar assets.

(b) If for any reason the Parties are unable or fail to agree upon such a single appraiser within such 30-Day period, then within ten Days thereafter TxDOT and Developer shall each appoint an independent third-party appraiser and both such appraisers shall be instructed jointly to select, within 15 Days after they are appointed, a third independent third-party appraiser who is nationally recognized and experienced in appraising similar assets to make the appraisal referred to above.

(c) If for any reason the Parties are unable or fail to appoint an independent third party appraiser under subsection (b) above within 30 Days after the time period under subsection (a) above expires, then either Party may petition the Travis County District Court to appoint an independent third party appraiser having such reputation and experience to make the appraisal referred to above.

(d) Each Party shall pay the costs of its own appraiser. TxDOT and Developer shall pay in equal shares the reasonable costs and expenses of the independent appraiser.

(e) Once appointed, the independent appraiser shall conduct an appraisal of the Fair Market Value of the Developer's Interest as of the Valuation Date, as well as determine Developer's weighted average cost of capital as of the Valuation Date, and deliver to both Parties a draft appraisal report and draft valuation. The appraiser shall appraise Fair Market Value on the basis of the assumptions contained in the definition of Fair Market Value and by taking into account (i) the terms of the CDA Documents, including the terms of Exhibit 4 to the Agreement, (ii) the condition of the Elements of the Facility, (iii) prior financial performance of the Facility, (iv) Developer's record regarding the Targets in the Performance and Measurement Table Baseline and of compliance with the CDA Documents, including record of compliance with Renewal Work requirements, but only for the purpose of evaluating and taking into account the effect of such record on the condition and viability of the Facility, (v) projected revenues and costs of the Facility (excluding costs that reduce the Fair Market Value pursuant to clause (c) of the definition of Fair Market Value, which shall be determined separately by the appraiser) for the remainder of the Term had the Agreement not be terminated, as determined by the appraiser, and (vi) such other factors as the appraiser considers relevant. In determining Developer's weighted average cost of capital as of the Valuation Date, no consideration shall be given to any default rate of interest on Facility Debt.

(f) For the purpose of the appraiser's valuation using a projected net cash flow methodology, the appraiser shall use the Financial Model Formulas most recently approved by TxDOT and Developer; provided that if there are known mathematical errors in the Financial

Model Formulas the Parties shall provide corrected Financial Model Formulas to the appraiser. The appraiser will determine the data inputs and data values.

(g) The appraiser also shall evaluate and include in the appraisal a calculation of the Base Tax Liability that would be incurred over the remaining Term absent early termination. The appraiser shall make such evaluation in accordance with the definition of Base Tax Liability.

(h) Developer shall promptly deliver to TxDOT and the appraiser all information, documents and data that either may reasonably request relevant to the determination of Developer's weighted average cost of capital as of the Valuation Date, and the Base Tax Liability. In conducting the appraisal, and before issuing a draft appraisal report, the independent appraiser shall afford reasonable and comparable opportunity to each Party to provide the appraiser with information, data, analysis and reasons supporting each Party's view on the Fair Market Value, Developer's weighted average cost of capital as of the Valuation Date, and the Base Tax Liability. The Parties shall have 15 days after receipt of the draft appraisal report to comment thereon.

(i) Not later than 15 days after the opportunity to comment has expired, the independent appraiser shall consider and evaluate all comments, prepare a final appraisal report stating the Fair Market Value, Developer's weighted average cost of capital as of the Valuation Date, and the Base Tax Liability, and deliver the final appraisal report to both Parties.

(j) The independent appraiser's determination of Fair Market Value, Developer's weighted average cost of capital as of the Valuation Date and the Base Tax Liability shall be subject to challenge by either Party by initiating a Dispute within 30 days after receipt of such determination and such Dispute shall be resolved according to the Dispute Resolution Procedures. Failure of a Party to initiate such a challenge by delivering written notice thereof to the other Party within such 30-day period shall be deemed to be an acceptance of the appraiser's determinations for all purposes by the Party who failed to timely challenge such determinations. In any dispute resolution the independent appraiser's determination shall be given substantial weight in the evidence, absent failure to properly apply the terms of the CDA Documents or applicable Laws.

5. If the Termination Compensation is based on Fair Market Value, TxDOT also shall be liable for the amount necessary to cover the incremental increase, if any, in the federal income tax liability of Developer (or, if it is a pass-through entity for federal income tax purposes, its members or partners) and in the State margin tax liability of Developer due to payment of the Termination Compensation (other than this element of the Termination Compensation) over the Base Tax Liability. TxDOT shall pay such amount within 30 days after Developer delivers to TxDOT proof of the actual tax liability incurred and the amount by which it exceeds the Base Tax Liability.

C. Compensation on Termination for Force Majeure Event or Extended Relief Event

1. In the event of termination of the Agreement and Lease under Section 19.2 (Termination for Force Majeure Event or Extended Relief Event), the Termination Compensation, determined as set forth in Section C.2 below, shall be payable by TxDOT as and when set forth in Section G.2 below.

2. The Termination Compensation for Force Majeure Event or Extended Relief Event shall be an amount equal to the following:

(a) The Senior Debt Termination Amount; plus

(b) The amount necessary to reimburse reasonable and documented out-of-pocket costs of third party and Affiliate Contractors to demobilize and terminate under Contracts between Developer and third parties or Affiliates for performance of Work, excluding Developer's non-contractual liabilities and indemnity liabilities (contractual or non-contractual) to third parties or Affiliates; plus

(c) The incremental increase, if any, in the costs Developer incurs under Section 19.5.11 of the Agreement over the present value of such costs under the Base Case Financial Model, but without double counting of the amounts under clauses (a) and (b) above; minus

(d) All Borrowed Cash and Credit Balances (if any); minus

(e) The sum of (i) the greater of (A) the proceeds of insurance (including casualty insurance and business interruption insurance) that is required to be carried pursuant to Section 16.1 of the Agreement and provides coverage to pay, reimburse or provide for any of the costs and losses attributable to the Force Majeure Event or Extended Relief Event, and (B) the proceeds of insurance (including casualty insurance and business interruption insurance) that is actually carried by or insuring Developer under policies solely with respect to the Facility and the Work, regardless of whether required to be carried pursuant to Section 16.1 of the Agreement, and that provides coverage to pay, reimburse or provide for any of the costs and losses attributable to the Force Majeure Event or Extended Relief Event, plus (ii) the foregoing costs and losses that Developer is deemed to have self-insured pursuant to Section 16.1.4.3 of the Agreement; minus

(f) The amount of all Distributions, and all payments to Affiliates in excess of reasonable compensation for necessary services or that are advance payments in violation of Section 10.5.3 of the Agreement, between the date notice of conditional election to terminate is delivered and the Early Termination Date, but without double counting of the amounts under clauses (d) and (e) above; minus

(g) The portion of any Compensation Amounts previously paid to Developer that (i) compensated Developer for cost and revenue impacts attributable to the period after the Early Termination Date and (ii) were not previously used to reduce Project Debt within the definition of Senior Debt Termination Amount.

3. If TxDOT elected to terminate under Section 19.2 of the Agreement, the Termination Compensation for the Force Majeure Event or Extended Relief Event shall be the amount determined under clause 2 above plus the Contributed Unreturned Equity.

D. Compensation on Termination for Developer Default

1. Developer shall not be entitled to receive any compensation in each of the following circumstances:

(a) Developer's termination of the Agreement and Lease on grounds or in circumstances beyond Developer's termination rights specifically set forth in the Agreement;

(b) A Default Termination Event where the Developer Default that is the basis thereof is under Section 17.1.1.14 or 17.1.1.15 of the Agreement;

(c) A Default Termination Event under Section 19.3.4 of the Agreement; or

(d) The Collateral Agent has requested and entered into New Agreements pursuant to Section 20.4.8 of the Agreement due to its inability to obtain possession of the Facility within the 180-day period set forth in Section 20.4.6 of the Agreement.

2. Upon a Default Termination Event other than one described in Section D.1 above where the Developer Default that is the basis thereof occurs, and is the subject of a Warning Notice delivered, prior to the last Service Commencement Date, subject to Section D.6 below, Developer shall be entitled to receive Termination Compensation in an amount equal to the lowest of:

(a) 80% of the Senior Debt Termination Amount minus (i) 80% of all Borrowed Cash and Credit Balances (if any), minus (ii) 80% of the portion of any Compensation Amounts previously paid to Developer that (A) compensated Developer for cost and revenue impacts attributable to the period after the Early Termination Date and (B) were not previously used to reduce Project Debt within the definition of Senior Debt Termination Amount;

(b) 80% of the Initial Senior Debt Termination Amount, plus (i) 80% of any increase in the Initial Senior Debt Termination Amount directly attributable to a Refinancing of the senior Facility Debt that (A) was fully and specifically identified and taken into account in the Base Case Financial Model and (B) occurs prior to the date notice of termination is delivered, plus (ii) 80% of the lesser of (A) any increase in the Initial Senior Debt Termination Amount directly attributable to a Refinancing of the senior Facility Debt and any first tier subordinate Facility Debt directly attributable to issuance of one or more NTP Capacity Improvements or (B) the price for any Capacity Improvements for which an NTP is issued prior to the date notice of termination is delivered (calculated pursuant to Section 7 of Exhibit 7), minus (iii) 80% of all Borrowed Cash and Credit Balances (if any), minus (iv) 80% of the portion of any Compensation Amounts previously paid to Developer that (A) compensated Developer for cost and revenue impacts attributable to the period after the Early Termination Date and (B) were not previously used to reduce Project Debt within the definition of Senior Debt Termination Amount; or

(c) Total Project D-B Costs (Proposal Form P-BSP, Box A plus, if TxDOT issues NTP GP, [Proposal Form P-GP, Box A]; plus, if TxDOT issues NTP IC, [Proposal Form P-IC, Box A]; plus, if TxDOT issues NTP ML, [Proposal Form P-ML, Box A]) minus TxDOT's estimated cost to complete the Facility minus the amount of the Public Funds Amount paid.

3. Upon a Default Termination Event other than one described in Section D.1 and D-2 above, subject to Sections D.4, D.5 and D.6 below, Developer shall be entitled to receive Termination Compensation in an amount equal to the lowest of:

(a) 80% of the Senior Debt Termination Amount minus (i) 80% of all Borrowed Cash and Credit Balances (if any), minus (ii) 80% of the portion of any Compensation Amounts previously paid to Developer that (A) compensated Developer for cost and revenue impacts attributable to the period after the Early Termination Date and (B) were not previously used to reduce Project Debt within the definition of Senior Debt Termination Amount;

(b) 80% of the Initial Senior Debt Termination Amount, plus (i) 80% of any increase in the Initial Senior Debt Termination Amount directly attributable to a Refinancing of the senior Facility Debt and any first tier subordinate Facility Debt within the definition of Senior Debt Termination Amount that (A) was fully and specifically identified and taken into account in the Base Case Financial Model and (B) occurs prior to the date notice of termination is delivered, plus (ii) 80% of the lesser of (A) any increase in the Initial Senior Debt Termination Amount directly attributable to a Refinancing of the senior Initial Facility Debt and any first tier subordinate Initial Facility Debt directly attributable to issuance of one or more NTP Capacity Improvements or (B) the price for any Capacity Improvements for which an NTP is issued prior to the date notice of termination is delivered (calculated pursuant to Section 7 of Exhibit 7), minus (iii) 80% of all Borrowed Cash and Credit Balances (if any), minus (iv) 80% of the portion of any Compensation Amounts previously paid to Developer that (A) compensated Developer for cost and revenue impacts attributable to the period after the Early Termination Date and (B) were not previously used to reduce Project Debt within the definition of Senior Debt Termination Amount; or

(c) The Fair Market Value, if any, of the Developer's Interest as of the Valuation Date; minus (i) the amount of any damages due to TxDOT resulting from the Developer Default, including TxDOT's reasonable costs to terminate and take over the Facility, but without double counting where such costs are part of the determination of Fair Market Value (if applicable), minus (ii) the amount of all Distributions, and all payments to Affiliates in excess of reasonable compensation for necessary services or that are advance payments in violation of Section 10.5.3 of the Agreement, between the Valuation Date and the Early Termination Date, minus (iii) all amounts received by the Lenders in relation to the Facility Debt (including all interest, capital and Breakage Costs) between the Valuation Date and the Early Termination Date, plus (iv) a return on the outstanding balance of the Fair Market Value amount between the Valuation Date and the Early Termination Date equal to Developer's weighted average cost of capital as of the Valuation Date (determined according to the procedures set forth in Section B.4 above).

4. The amounts set forth in Sections D.3(a) and (b) above are subject to the condition that each Funding Agreement for senior Facility Debt, and any intercreditor agreement between the Lenders of senior Facility Debt and the Lenders of any first tier subordinate Facility Debt within the definition of Senior Debt Termination Amount, shall expressly provide that upon termination of this Agreement for Developer Default the senior Lenders shall have no right to claim, receive or retain from the Termination Compensation (whether determined based on Fair Market Value, the Initial Senior Debt Termination Amount or the Senior Debt Termination Amount) an amount in excess of 80% of the Senior Debt Termination Amount minus 80% of all Borrowed Cash and Credit Balances (if any), such result multiplied by a fraction the numerator of which is the then outstanding principal balance of the senior Facility Debt (including Breakage Costs) and the denominator of which is the then outstanding principal balance of the senior Facility Debt (including Breakage Costs) plus first tier subordinate Facility Debt (including Breakage Costs). If the foregoing condition is not satisfied, then the amounts under Sections D.2(a) and (b) above shall not include any amounts for first tier subordinate Facility Debt described in clause (a)(ii)(B) of the definition of Senior Debt Termination Amount or any Breakage Costs related to such first tier subordinate Facility Debt, and shall not be reduced by amounts described in clause (c) of such definition related to such first tier subordinate Facility Debt.

5. Fair Market Value of the Developer's Interest as of the Valuation Date shall be determined as set forth in Section B.4 above, except those provisions pertaining to Base Tax Liability.

6. The amount of the Termination Compensation determined under this Section D is subject to damages and offset in accordance with Section 17.3.5 of the Agreement.

7. TxDOT shall pay the Termination Compensation as and when set forth in Section G.4 below.

E. Compensation Upon Termination by Court Ruling, Due to Delayed Notice to Proceed or Due to Lack of NEPA Finality

1. In the event of Termination by Court Ruling, due to TxDOT's delay in issuing NTP1 or NTP2 as provided in Section 19.4.3 of the Agreement, or due to lack of occurrence of the NEPA Finality Date as provided in Section 19.13 of the Agreement, the Termination Compensation determined shall be an amount equal to the following:

(a) The lesser of (i) the sum of (A) Initial Senior Debt Termination Amount plus (B) any increase in the Initial Senior Debt Termination Amount directly attributable to a Refinancing of the senior Facility Debt and any first tier subordinate Facility Debt within the definition of Senior Debt Termination Amount that (I) was fully and specifically identified and taken into account in the Base Case Financial Model and (II) occurs prior to the date notice of termination is delivered, plus (C) the portion of all Refinancing Gain previously paid to TxDOT, if any, or (ii) the Senior Debt Termination Amount; plus

(b) An amount which, when taken together with interest payments on Subordinate Debt, Distributions made prior to the Early Termination Date, and the cash and credit balances derived from Toll Revenues or interest earnings in accounts held by or on behalf of Developer on the Early Termination Date, including in Lender accounts and reserve accounts, will yield a nominal post-tax blended internal rate of return, on Subordinate Debt and Contributed Unreturned Equity equal to LIBOR in effect from time to time between the date of funding of such Subordinate Debt and Contributed Unreturned Equity and the Early Termination. The blended internal rate of return shall be calculated for the period between the date of funding of such Subordinate Debt and Contributed Unreturned Equity and the Early Termination Date; plus

(c) The incremental increase, if any, in the costs Developer incurs under Section 19.5.11 of the Agreement over the present value of such costs under the Base Case Financial Model, but without double counting of the foregoing debt and equity amounts; minus

(d) All payments to Affiliates in excess of reasonable compensation for necessary services prior to the Early Termination Date or that are advance payments in violation of Section 10.5.3 of the Agreement; minus

(e) All Cash and Credit Balances, except to the extent such balances are already deducted in determining amounts under clauses (a) and (b) above; minus

(f) The portion of any Compensation Amounts previously paid to Developer that (i) compensated Developer for cost and revenue impacts attributable to the period after the

Early Termination Date and (ii) were not previously used to reduce Project Debt within the definition of Senior Debt Termination Amount.

2. There shall not be included any increase in the Senior Debt Termination Amount, Subordinate Debt or Contributed Unreturned Equity as a consequence of any Refinancing:

(a) With respect to Termination by Court Ruling, that occurs on or after the date Developer knows, or reasonably should know, about the filing of any legal action seeking a remedy that would be a Termination by Court Ruling or challenging a NEPA Approval within the definition of NEPA Finality Date;

(b) With respect to termination due to TxDOT delay in issuing NTP1 or NTP2, that occurs at any time; or

(c) With respect to termination due to lack of occurrence of the NEPA Finality Date, that occurs at any time after the court in any litigation challenging a NEPA Approval within the definition of NEPA Finality Date issues any temporary injunction prohibiting or restricting performance of any material portion of the Work.

3. If (a) it is established pursuant to the Dispute Resolution Procedures that TxDOT requested or caused the filing, or by collusion with any other Person caused or abetted the filing, of the action that resulted in the issuance of the final court order that led to Termination by Court Ruling, or of an action challenging a NEPA Approval within the definition of NEPA Finality Date or (b) a Termination by Court Ruling results from or entails a breach by TxDOT of its warranties under Section 15.2 but not a corresponding breach by Developer of its warranties under Section 15.1, then Developer shall be compensated in the same manner as if TxDOT had effected a Termination for Convenience and Sections B and G.1 of this Exhibit 20 shall apply instead of Sections E.1 and G.5. This provision shall not apply to legal proceedings initiated by TxDOT challenging applicability of a Change in Law where the final outcome applies the Change in Law to TxDOT or Developer and leads to Termination by Court Ruling.

4. If (a) it is established pursuant to the Dispute Resolution Procedures that Developer requested or caused the filing, or by collusion with any other Person, caused or abetted the filing of the action that resulted in the issuance of the final court order that led to Termination by Court Ruling, or of an action challenging a NEPA Approval within the definition of NEPA Finality Date or (b) a Termination by Court Ruling results from or entails a breach by Developer of its warranties under Section 15.1 but not a corresponding breach by TxDOT of its warranties under Section 15.2, then the compensation shall be addressed in the same manner as if a Termination for Developer Default had occurred and Sections D and G.4 of this Exhibit 20 shall apply instead of Sections E.1 and G.5. This provision shall not apply to legal proceedings initiated by Developer challenging applicability of a Change in Law where the final outcome applies the Change in Law to TxDOT or Developer and leads to Termination by Court Ruling.

5. Subject to Sections E.3 and E.4 above, TxDOT shall pay the Termination Compensation as and when set forth in Section G.5 below.

F. Claims; Handback Requirements Reserve

1. If any outstanding Claim that is independent of the event of termination and determination of Termination Compensation is resolved prior to payment of the Termination

Compensation, the Parties shall adjust the Termination Compensation by the amount of the unpaid award, if any, on the Claim.

2. At TxDOT's sole election, it may hold back from payment of the Termination Compensation and transfer to the trustee under the Facility Trust Agreement for deposit into the TxDOT Claims Account the amount of any Claim of TxDOT against Developer not resolved prior to payment. TxDOT shall provide written notice to Developer of any such election, the subject Claim and the amount deposited or to be deposited, prior to or concurrently with tendering payment of the Termination Compensation.

3. Refer to Section 8.11.4 of the Agreement for disposition of any funds actually in or required to be added to the Handback Requirements Reserve on the Early Termination Date.

G. Timing of Payment

[Note: Proposers will elect in their Proposals which optional Section G.1 below to use. The option chosen will be included in the executed document, and the option not chosen will be deleted.]

Option A

1. For Termination for Convenience

(a) For Termination for Convenience to be valid and effective, TxDOT must first pay, in immediately available funds, the full amount of the Termination Compensation set forth in Section B.1 above; provided that TxDOT may withhold an amount equal to TxDOT's reasonable estimate of the costs Developer will thereafter incur to perform and complete its post-termination obligations under Section 19.5 of the Agreement by depositing such amount with the trustee under the Facility Trust Agreement for disbursement pursuant to Section G.1(b) below. In order for the Termination for Convenience to take effect, TxDOT must make such payment within one year after TxDOT receives the information required to calculate the amount owing. Such information shall consist of the written report from the independent appraiser of Fair Market Value as determined pursuant to Section B.4 above, the Collateral Agent's written statement of the Senior Debt Termination Amount, and Developer's written documentation and other evidence of the amounts of all Cash and Credit Balances, Borrowed Cash and Credit Balances and all other amounts that are part of the calculation of the Termination Compensation, together with Developer's written certification that the amounts shown are true, correct and complete. Developer shall provide its information and the Collateral Agent's written statement as expeditiously as possible and in any event within 90 days after TxDOT delivers the Notice of Termination for Convenience. If for any reason TxDOT does not receive any portion of such information within such 90-day period, then TxDOT shall have the right to make payment based on the appraiser's determination of Fair Market Value and TxDOT's good faith estimate of the other amounts that are components of the Termination Compensation. Upon such payment within such one-year period, termination shall automatically take effect, notwithstanding, and without prejudice to, any Claim or Dispute regarding whether the Termination Compensation as determined using such appraisal is correct.

(b) TxDOT shall instruct the trustee under the Facility Trust Agreement to pay the withheld amount to Developer within ten days after Developer completes all its post-termination obligations under Section 19.5 of the Agreement.

(c) If TxDOT for any reason does not pay the amount under clause (a) above within such one-year period, TxDOT's Notice of Termination for Convenience shall automatically expire; and the Parties' respective rights and obligations under the CDA Documents shall continue without alteration, as if no Notice of Termination for Convenience had been given.

(d) If Developer timely challenges the independent appraiser's determination of Fair Market Value pursuant to Section B.4(i) above, then until the disputed portion of the Termination Compensation is finally determined and paid, the provisions of Section 19.10 of the Agreement shall apply and Developer shall continue to have a pledge of and security interest in and to the Post-Termination Revenue Account under the Facility Trust Agreement.

(e) If it is determined by settlement or final judgment that the Termination Compensation due from TxDOT is less than the payment previously made by TxDOT, then within 30 Days after the date of settlement or final judgment Developer shall reimburse the excess payment, together with interest thereon, at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, from the date of overpayment until the date of reimbursement.

(f) If it is determined by settlement or final judgment that the Termination Compensation due from TxDOT is more than the payment previously made by TxDOT, then within 30 Days after the date of settlement or final judgment TxDOT shall pay Developer the additional amount, together with interest thereon, at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, from the date of underpayment until the date of payment of the additional amount.

Option B

1. For Termination for Convenience

(a) Termination for Convenience shall be valid and effective on the date set forth in the Notice of Termination for Convenience, which date shall not be more than three months after the date the notice is delivered.

(b) TxDOT shall deliver to Developer, in immediately available funds, within 60 Days after the Early Termination Date, the Termination Compensation that TxDOT determines in good faith is due, less a holdback amount equal to TxDOT's reasonable estimate of the costs Developer will thereafter incur to perform and complete its post-termination obligations under Section 19.5 of the Agreement by depositing such amount with the trustee under the Facility Trust Agreement for disbursement pursuant to Section G.3(b) below.

(c) All provisions of Section G.3(b) through (e) below shall apply.

2. For Termination Due to Force Majeure Event or Extended Relief Event

(a) If the Agreement and Lease are terminated due to Developer's or TxDOT's valid exercise of its right to terminate under Section 19.2 of the Agreement and the other Party does not timely elect (or, if Section 19.2.3.4 of the Agreement applies, lacks the right) to continue the Agreement and Lease in effect pursuant to Section 19.2, then TxDOT shall pay the Termination Compensation within 60 days after all the following occur: (i) if applicable, the other Party's period of time to elect expires; (ii) TxDOT receives from the Collateral Agent a written statement of the Senior Debt Termination Amount; and (iii) TxDOT receives from Developer

written documentation and other evidence of all Borrowed Cash and Credit Balances, together with Developer's written certification that the amount shown is true, correct and complete. TxDOT may withhold, however, an amount equal to TxDOT's reasonable estimate of the costs Developer will thereafter incur to perform and complete its post-termination obligations under Section 19.5 of the Agreement by depositing such amount with the trustee under the Facility Trust Agreement for disbursement pursuant to Section G.2(b) below. If for any reason TxDOT does not receive such statement from the Collateral Agent or such written documentation, evidence and certification of all Borrowed Cash and Credit Balances within 30 days after the other Party's period of time to elect expires (or, if Developer exercises its right to terminate under Section 19.2.3.4 of the Agreement, within 30 days after such exercise), then TxDOT shall have the right to pay Termination Compensation based on its own good faith calculation of the Termination Compensation.

(b) TxDOT shall instruct the trustee under the Facility Trust Agreement to pay the withheld amount to Developer within ten days after Developer completes all its post-termination obligations under Section 19.5 of the Agreement.

(c) If TxDOT exercises the right to terminate, then termination shall be valid and effective on the date TxDOT pays, in immediately available funds, the full amount determined pursuant to Section G.2(a) above. If Developer exercises the right to terminate, then termination shall be valid and effective on the date Developer delivers its notice of termination to TxDOT.

(d) If as of the date termination is valid and effective any portion of the Termination Compensation is not yet paid, then such portion shall bear interest from such date until paid at the blended non-default rate for the Facility Debt that is the basis for the calculation of the Termination Compensation.

(e) In the event of any dispute over the Termination Compensation, TxDOT shall pay the disputed portion to Developer in immediately available funds within 30 Days after it is determined by settlement, final order or final judgment, together with interest thereon as stated above.

(f) From and after the Early Termination Date until the Termination Compensation is finally determined and paid, the provisions of Section 19.10 of the Agreement shall apply and Developer shall continue to have a pledge of and security interest in and to the Post-Termination Revenue Account under the Facility Trust and Security Instruments.

3. For Termination Due to TxDOT Default or TxDOT Suspension of Work

(a) If the Agreement and Lease are terminated due to Developer's exercise of its right to terminate under Section 19.4 of the Agreement, termination shall be valid and effective on the date notice of termination is delivered; and, subject to Sections 19.3.2 and 19.4.4, TxDOT shall deliver to Developer, in immediately available funds, within 60 Days after the Early Termination Date, the Termination Compensation that TxDOT determines in good faith is due, less a holdback amount equal to TxDOT's reasonable estimate of the costs Developer will thereafter incur to perform and complete its post-termination obligations under Section 19.5 of the Agreement by depositing such amount with the trustee under the Facility Trust Agreement for disbursement pursuant to Section G.3(b) below.

(b) TxDOT shall instruct the trustee under the Facility Trust Agreement to pay the holdback amount to Developer within ten days after Developer completes all its post-termination obligations under Section 19.5 of the Agreement.

(c) If as of the date TxDOT tenders payment under clause (a) above the Parties have not agreed upon the amount of Termination Compensation due, then:

(i) TxDOT shall proceed with such payment to Developer;

(ii) Within 30 days after receiving such payment Developer shall deliver to TxDOT written notice of the additional amount of Termination Compensation that Developer in good faith determines is still owing (the "disputed portion");

(iii) TxDOT shall pay the disputed portion of the Termination Compensation to Developer in immediately available funds within 30 Days after the disputed portion is determined by settlement, final order or final judgment, and also shall pay interest thereon, at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, commencing 30 Days after the Early Termination Date until paid; and

(iv) Failure by TxDOT to effect payment by such date shall not entitle Developer to reinstatement of the Developer's Interest or to rescission of the termination.

(d) From and after the Early Termination Date until the Termination Compensation is finally determined and paid, the provisions of Section 19.10 of the Agreement shall apply and Developer shall continue to have a pledge of and security interest in and to the Post-Termination Revenue Account under the Facility Trust and Security Instruments.

(e) If it is determined by settlement or final judgment that the Termination Compensation due from TxDOT is less than the payment previously made by TxDOT, then within 30 Days after the date of settlement or final judgment Developer shall reimburse the excess payment, together with interest thereon at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, from the date of overpayment until the date of reimbursement.

4. For Developer Default

(a) If the Agreement and Lease are terminated due to TxDOT's exercise of its right to terminate due to Developer Default, termination shall be valid and effective as and when set forth in Section 19.3.1 of the Agreement; and, subject to Sections 19.1.4 and 19.3.3, TxDOT shall deliver to Developer, within the later of (i) 30 Days after Developer completes its post-termination obligations under Section 19.5 of the Agreement or (ii) 60 Days after the Early Termination Date, immediately available funds equal to the Termination Compensation that TxDOT determines in good faith is due. If TxDOT does not pay such amount by the later of such dates, such amount shall bear interest at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, commencing on the later of such dates until paid.

(b) If as of the date TxDOT tenders payment under clause (a) above the Parties have not agreed upon the amount of Termination Compensation due, then:

(i) TxDOT shall proceed with such payment to Developer;

(ii) Within 30 days after receiving such payment Developer shall deliver to TxDOT written notice of the additional amount of Termination Compensation that Developer in good faith determines is still owing (the "disputed portion");

(iii) TxDOT shall pay the disputed portion of the Termination Compensation to Developer in immediately available funds within 30 Days after the disputed portion is determined by settlement, final order or final judgment, together with interest thereon at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, commencing on the later of the two dates set forth in clause (a) above until paid; and

(iv) Failure by TxDOT to effect payment by such date shall not entitle Developer to reinstatement of the Developer's Interest or to rescission of the termination.

(c) From and after the Early Termination Date until the Termination Compensation is finally determined and paid, the provisions of Section 19.10 of the Agreement shall apply and Developer shall continue to have a pledge of and security interest in and to the Post-Termination Revenue Account under the Facility Trust Agreement.

(d) If it is determined by settlement or final judgment that the Termination Compensation due from TxDOT is less than the payment previously made by TxDOT, then within 30 Days after the date of settlement or final judgment Developer shall reimburse the excess payment, together with interest thereon at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, from the date of overpayment until the date of reimbursement.

5. For Termination by Court Ruling, Delayed Notice to Proceed or Lack of NEPA Finality

(a) In the event of Termination by Court Ruling, termination shall be valid and effective on the entry of final judgment. If the Agreement and Lease are terminated due to TxDOT's delay in issuing NTP1 or NTP2 as provided in Section 19.4.3 of the Agreement, or due to lack of occurrence of the NEPA Finality Date as provided in Section 19.13 of the Agreement, termination shall be valid and effective on the date notice of termination is delivered. TxDOT shall deliver to Developer, within 60 days after the later of (i) the Early Termination Date or (ii) the date TxDOT receives from the Collateral Agent a written statement of the Initial Senior Debt Termination Amount, increases in the Initial Senior Debt Termination Amount due to each Refinancing described in Section E.1(a) above, and the Senior Debt Termination Amount and from Developer written documentation and other evidence of the amounts of the Subordinate Debt, Contributed Unreturned Equity, and all Borrowed Cash and Credit Balances, together with Developer's written certification that the amounts shown are true, correct and complete, immediately available funds equal to the Termination Compensation that TxDOT determines in good faith is due, less a holdback amount equal to TxDOT's reasonable estimate of the costs Developer will thereafter incur to perform and complete its post-termination obligations under Section 19.5 of the Agreement. TxDOT shall deposit such holdback amount with the trustee under the Facility Trust Agreement for disbursement pursuant to Section G.5(b) below. If TxDOT does not pay such amount of Termination Compensation by the later of such dates, such amount shall bear interest at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, commencing on the later of such dates until paid.

(b) TxDOT shall instruct the trustee under the Facility Trust Agreement to pay the holdback amount to Developer within ten days after Developer completes all its post-termination obligations under Section 19.5 of the Agreement.

(c) If as of the date TxDOT tenders payment under clause (a) above the Parties have not agreed upon the amount of Termination Compensation due, then:

(i) TxDOT shall proceed with such payment to Developer;

(ii) Within 30 days after receiving such payment Developer shall deliver to TxDOT written notice of the additional amount of Termination Compensation that Developer in good faith determines is still owing (the "disputed portion");

(iii) TxDOT shall pay the disputed portion of the Termination Compensation to Developer in immediately available funds within 30 Days after the disputed portion is determined by settlement, final order or final judgment, together with interest thereon at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, commencing on the later of the two dates set forth in clause (a) above until paid; and

(iv) Failure by TxDOT to effect payment by such date shall not entitle Developer to reinstatement of the Developer's Interest or to rescission of the termination.

(d) From and after the Early Termination Date until the Termination Compensation is finally determined and paid, the provisions of Section 19.10 of the Agreement shall apply and Developer shall continue to have a pledge of and security interest in and to the Post-Termination Revenue Account under the Facility Trust and Security Instruments.

(e) If it is determined by settlement or final judgment that the Termination Compensation due from TxDOT is less than the payment previously made by TxDOT, then within 30 Days after the date of settlement or final judgment Developer shall reimburse the excess payment, together with interest thereon at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, from the date of overpayment until the date of reimbursement.

EXHIBIT 21

OPTION CONSIDERATION FOR EXTENSION OF LONG STOP DATE

The consideration for each of the Collateral Agent's options to extend the Long Stop Date as set forth in Section 20.4.9 of the Agreement shall equal $4,500,000.

EXHIBIT 22

INITIAL DESIGNATION OF AUTHORIZED REPRESENTATIVES

[TO BE PROVIDED]

EXHIBIT 23

FORM OF TXDOT TOLLING SERVICES AGREEMENT

[TO BE PROVIDED]

EXHIBIT 24

FORM OF JOINDER AGREEMENT

This JOINDER AGREEMENT (this "Joinder Agreement") is made and entered into effective as of _____, 20___ by and among the Texas Department of Transportation, a public agency of the State of Texas ("TxDOT"), _____ _____, a _____ ("Developer"), and The Bank of New York Trust Company, N.A. (the "Custodian").

WHEREAS, TxDOT and Developer have entered into the certain Comprehensive Development Agreement dated _____, 200_ (the "CDA") pursuant to which Developer has agreed to construct and operate the North Tarrant Express Facility described therein (the "Facility");

WHEREAS, TxDOT and the Custodian have entered into the certain Master Lockbox and Custodial Account Agreement dated as of November 9, 2007 (the "Master Lockbox and Custodial Account Agreement");

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, TxDOT, Developer and the Custodian agree as follows:

1. Defined Terms. Capitalized terms not otherwise defined in this Joinder Agreement shall have the same meaning assigned to such terms in the Master Lockbox and Custodial Account Agreement. The following terms have the meaning set forth below:

"Facility Trust Agreement" means the Facility Trust Agreement dated as of _____, 200__, by and between Developer and the Facility Trustee, as it may be amended or modified from time to time and any replacement thereof that constitutes a Facility Trust Agreement under the CDA.

"Facility Trustee" means _____, as trustee under the Facility Trust Agreement or any successor thereto in such capacity.

2. Designation of Developer as "Beneficiary". TxDOT hereby designates Developer as a "Beneficiary" under the Master Lockbox and Custodial Account Agreement with respect to the Facility and toll revenues arising from the Facility which are at any time held by the Custodian under the Master Lockbox and Custodial Account Agreement and which under the terms of Section 19.10.4 of the CDA TxDOT is obligated to direct to be paid to the Facility Trustee, and the Custodian hereby acknowledges said designation, with the full rights, powers and benefits granted to a "Beneficiary" thereunder. On the date described in Section 19.10.11 of the CDA, Developer's rights as a Beneficiary shall cease and Developer shall deliver to the Custodian written notice of confirmation of termination of Developer's rights as a Beneficiary.

3. Agreements of TxDOT. TxDOT hereby covenants and agrees as follows:

(a) TxDOT will comply with the terms of the Master Lockbox and Custodial Account Agreement and perform the obligations of TxDOT specified in the Master Lockbox and Custodial Account Agreement, including but not limited to, the obligation of TxDOT to direct the Custodian to pay directly to the Facility Trustee any amount that is in respect of toll transactions on the Facility after the Termination Date under the CDA. TxDOT agrees that all funds that it instructs the Custodian to pay to the Facility Trustee shall be designated by the Custodian in its transmittal to the Facility Trustee as "Toll Revenues from Transponder Transactions or Video Transactions".

(b) TxDOT will enforce the Master Lockbox and Custodial Account Agreement in accordance with its terms and provisions and will not amend, modify or waive any of the terms and provisions thereof which would materially adversely affect the rights of Developer as a “Beneficiary” thereunder.

(c) TxDOT will not terminate or allow to expire in accordance with its terms the Master Lockbox and Custodial Account Agreement unless (i) TxDOT has executed a new Master Lockbox and Custodial Account Agreement with a replacement custodian on terms and conditions substantially similar to the Master Lockbox and Custodial Account Agreement, or (ii) the date described in Section 19.10.11 of the CDA has occurred.

(d) TxDOT shall deliver to Developer and the Collateral Agent a copy of all notices, certificates, and instructions delivered by or on behalf of TxDOT to the Custodian as and when delivered to the Custodian.

4. Agreements of Developer. Developer hereby covenants and agrees that it shall have no greater right or interest in and to the funds and accounts created pursuant to the Master Custodial Account Agreement than is provided in the CDA.

5. Agreements of Custodian. The Custodian hereby covenants and agrees as follows:

(a) The Custodian acknowledges that Developer is a “Beneficiary”, as that term is used in the Master Lockbox and Custodial Account Agreement, entitled to the rights of a Beneficiary as provided thereunder, including Article VII thereof, and this Joinder Agreement constitutes a Joinder Agreement under the Master Lockbox and Custodial Account Agreement.

(b) The Custodian hereby acknowledges that Developer may from time to time enter into certain Financing Documents pursuant to which Developer has pledged its rights as a “Beneficiary” to secure its various obligations under or related to such Financing Documents. The Custodian acknowledges that the Secured Party acts as agent for various Persons in connection with the exercise of such Person's rights under the Financing Documents.

(c) The Custodian will transfer amounts required to be transferred to Developer as a Beneficiary under Section 2.03 of the Master Lockbox and Custodial Account Agreement to the Facility Trustee as follows or as otherwise from time to time instructed by the

Facility Trustee and shall designate such amounts at the time of each transfer as "Toll Revenues from Transponder Transactions or Video Transactions":

Name of Facility Trustee: _____
ABA: _____
Account: _____
BNF: _____
F/F/C: _____
Attn: _____
Telephone: _____

6. Agreements as to Toll Revenues. Each of TxDOT, the Custodian and Developer hereby acknowledges and agrees as follows.

(a) The Master Lockbox and Custodial Account Agreement and arrangements thereunder are intended to ensure that (i) toll revenues from operation of the Facility do not come into the possession of, or under the control of, TxDOT, the State of Texas, or any other governmental entity of the State of Texas, or become the assets or property of TxDOT, the State of Texas or any such other governmental entity that is subject to constraints imposed by principles of legislative or administrative appropriation, or to treatment as public funds, unless and until the portion of such toll revenues that TxDOT is entitled to receive pursuant to the terms of the CDA is actually distributed to TxDOT from funds deposited into the Master Custodial Accounts, and (ii) toll revenues from the operation of the Facility do not become payments, project savings, refinancing dividends or any other revenue under a comprehensive development agreement received by TxDOT or the Texas Transportation Commission for any purposes by virtue of their deposit into any Master Lockbox Account or Master Custody Account or the custodial arrangements evidenced by the Master Lockbox and Custodial Account Agreement.

(b) All toll revenue that accrues from the use of the Facility during the period this Joinder Agreement is in effect shall be subject to the respective rights and interests of TxDOT and Developer as set forth in the Facility Trust Agreement.

(c) To the extent provided in the Master Lockbox and Custodial Account Agreement, the Custodian will have dominion and control of all toll revenues from operation of the Facility for purposes of crediting and transferring such toll revenues from use of the Facility to the Facility Trustee for deposit as contemplated by the Facility Trust Agreement.

(d) If for any reason TxDOT receives any payment for any use of the Facility during the period this Joinder Agreement is in effect, all toll revenues that are part of such payment shall be deemed received by TxDOT merely as a bailee or agent for the Custodian and shall not constitute funds of TxDOT or the State of Texas or funds received by TxDOT or the Texas Transportation Commission as payments, project savings, refinancing dividends or any other revenue under a comprehensive development agreement, and TxDOT agrees to promptly remit such payments to the Custodian for handling in accordance with the terms of the Master Lockbox and Custodial Account Agreement.

(e) None of the Master Lockbox Accounts or Master Custody Accounts are accounts or subaccounts established pursuant to Section 228.012 of the Texas Transportation Code.

7. Governing Law. This Joinder Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

8. DRP Governed Agreement. TxDOT and Developer agree that all disputes between them arising under this Joinder Agreement shall be subject to the Dispute Resolution Procedures under the CDA.

IN WITNESS WHEREOF, the parties hereto have executed this Joinder Agreement by their officers thereunto duly authorized as of the day and year first written above.

TxDOT

TEXAS DEPARTMENT OF TRANSPORTATION

By: _____

Name: _____

Title: _____

Developer

_____

By: _____

Name: _____

Title: _____

Custodian

THE BANK OF NEW YORK TRUST COMPANY, N.A.

By: _____

Name: _____

Title: _____

EXHIBIT 25

FORM OF LENDER'S DIRECT AGREEMENT

THIS AGREEMENT ("Agreement") is made by and between the State of Texas acting by and through the Texas Department of Transportation, ("TxDOT") and _____, ("Lender") for the purpose of facilitating the Lender's refinancing of the North Tarrant Express Facility.

RECITALS

WHEREAS, TxDOT and _____ ("Developer") have entered into a Concession Comprehensive Development Agreement ("CDA") for the North Tarrant Express Facility (the "Facility"), which CDA contemplates the Developer obtaining financing or Refinancing from third parties; and

WHEREAS, TxDOT desires to facilitate the Lender's provision of financing or Refinancing to the Developer; and

WHEREAS, in order to induce the Lender to provide the financing or Refinancing necessary for the Facility, the Lender requires certain assurances from TxDOT regarding the Lender's rights in the event of a default by the Developer; and

WHEREAS, TxDOT and the Developer have previously set forth such assurances in the CDA for the benefit of the Lender as an express third party beneficiary; and

WHEREAS, TxDOT and the Lender have agreed to separately contract for such assurances, provided that such contract shall be consistent in all respects with, and not provide the Lender with any rights beyond those set forth in, Article 20 of the CDA; and

WHEREAS, the Lender acknowledges that any rights under this Agreement and the CDA are solely derivative of the rights of the Developer; and

WHEREAS, the Lender is ***[use applicable language]*** [making a direct, secured loan to the Developer to finance or refinance the Facility without participating Lenders] [acting as the Collateral Agent for and on behalf of participating Lenders providing a secured loan to the Developer to finance or refinance the Facility (in which case "Collateral Agent" as used in this Agreement refers to the Lender)]; and

NOW, THEREFORE, TxDOT and the Lender, in consideration of the mutual covenants and agreements herein contained, including within these recitals, do hereby mutually agree as follows.

AGREEMENT

I. ARTICLE 1. DEFINITIONS, CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE

1.1 Definitions

Capitalized terms used but not otherwise defined in this Agreement have the respective meanings set forth in Exhibit 1 to the CDA.

1.2 Recitals Incorporated

The Recitals in this Agreement are part of the terms of this Agreement.

1.3 Contract Documents and Order of Precedence

The following documents comprise the contract documents for this Agreement. In the event of any conflict, ambiguity or inconsistency among the contract documents, the order of precedence shall be as follows:

1.3.1 Supplemental agreements or amendments or other modifications to this Agreement;

1.3.2 This Agreement, including Recitals; and

1.3.3 Those provisions of the CDA that are explicitly referenced in this Agreement.

1.4 No Duplication; No Effect on CDA

1.4.1 The sole purpose of this Agreement is to provide the Lender privity of contract with TxDOT regarding the matters set forth in Article 20 of the CDA. The rights of Lender under Article 2 of this Agreement and Article 20 of the CDA are one and the same. Nothing in Article 2 of this Agreement confers on the Lender any rights beyond or in duplication of the rights the Lender has under Article 20 of the CDA.

1.4.2 Nothing in this Agreement amends or modifies any of the Developer's obligations to TxDOT under the CDA.

ARTICLE 2. TERMS

2.1 Conditions and Limitations Respecting Lenders' Rights

2.1.1 No Security Document (including those respecting a Refinancing) shall be valid or effective, and the Lender shall not be entitled to the rights, benefits and protections of this Agreement and Article 20 of the CDA, unless the Security Document, other related Security Documents and related Funding Agreements strictly comply with Section 4.3 of the CDA.

2.1.2 No Security Document relating to any Refinancing (except Exempt Refinancings) shall be valid or effective, and the Lender shall not be entitled to the rights, benefits and protections of this Agreement and Article 20 of the CDA, unless the Refinancing is in compliance with Section 4.4 of the CDA.

2.1.3 No Funding Agreement or Security Document shall be binding upon TxDOT in the enforcement of its rights and remedies as provided herein and by Law, and the Lender shall not be entitled to the rights, benefits and protections of this Agreement or Article 20 of the CDA, unless and until (a) a copy (certified as true and correct by the Collateral Agent) of the original thereof bearing, if applicable, the date and instrument number or book and page of recordation or filing thereof, including a copy of a specimen bond, note or other obligation (certified as true and correct by the Collateral Agent) secured by such Security Document, has been deposited into an Intellectual Property Escrow and (b) TxDOT has received written notice of the address of the Collateral Agent to which notices may be sent. In the event of an assignment of any such Funding Agreement or Security Document, such assignment shall not be binding upon TxDOT unless and until TxDOT has received a certified copy thereof, which copy shall, if required to be recorded, bear the date and instrument number or book and page of recordation thereof, has been deposited into an Intellectual Property Escrow and TxDOT has received written notice of the assignee thereof to which notices may be sent. In the event of any change in the identity of the Collateral Agent, such change shall not be binding upon TxDOT unless and until TxDOT has received a written notice thereof signed by the replaced and substitute Collateral Agent and setting forth the address of the substitute Collateral Agent to which notices may be sent.

2.1.4 The Lender shall not be entitled to the rights, benefits and protections of this Agreement or Article 20 of the CDA unless the Funding Agreements in favor of the Lender are secured by senior or first tier subordinate Security Documents. For avoidance of doubt, if the Lender holds Facility Debt secured by a Subordinated Security Document it shall not have any rights, benefits or protections under this Agreement or Article 20 of the CDA.

2.1.5 The Lender shall not, by virtue of its Funding Agreement or Security Document, acquire any greater rights to or interest in the Facility, the Lease or Toll Revenues than Developer has at any applicable time under the CDA, other than the provisions in this Agreement and in Article 20 of the CDA for the specific protection of the Lender.

2.1.6 All rights acquired by the Lender under any Funding Agreement or Security Document shall be subject to the provisions of the CDA and the Lease and to the rights of TxDOT hereunder and thereunder.

2.1.7 The following provisions of this Agreement shall apply only to Security Documents, and the Lender thereunder, that comply with Sections 2.1.1, 2.1.2, 2.1.3 and 2.1.4 of this Agreement and Sections 20.1.1, 20.1.2, 20.1.3 and 20.1.4 of the CDA. None of the following provisions of this Agreement shall be construed inconsistently with the provisions of this Section 2.1 or Section 20.1 of the CDA. The provisions of this Agreement that are binding on TxDOT shall inure only to the benefit of the Lender, and create no rights in favor of Developer.

2.2 Effect of Amendments

While any Security Document is in effect, no agreement between TxDOT and Developer for the modification or amendment of the CDA or the Lease shall be binding without the Collateral Agent's consent, except to the extent expressly provided otherwise in the CDA (e.g. Sections 14.1, 14.2, 14.3).

2.3 Notices to Collateral Agent

As long as any Security Document shall remain unsatisfied of record, TxDOT shall promptly provide the Collateral Agent with a copy of any notice it sends to Developer concerning an actual or potential breach of the CDA or the Lease or an actual or potential Developer Default, including any Warning Notice, and any notice it sends to Developer, the Design-Build Contractor or any O&M Contractor of default by the Design-Build Contractor or any O&M Contractor under the Design-Build Contract or O&M Contract.

2.4 Opportunity to Cure and Step-In

As long as any Security Document shall remain unsatisfied of record, the following provisions shall apply with respect to any such Security Document and the related Lender and Funding Agreements.

2.4.1 Should any Developer Default occur which would either immediately or, following the applicable cure period or the giving of notice or both, constitute a Default Termination Event enabling TxDOT to terminate the CDA, TxDOT shall not terminate the CDA or the Lease until it first delivers to the Collateral Agent a copy of the Warning Notice given to Developer and provides the Collateral Agent a reasonable opportunity to cure such Developer Default, as provided below, provided that no opportunity to cure beyond that afforded Developer shall be required for failure of Developer to timely deliver or perform any remedial plan required under Section 17.3.6 of the CDA, and neither a Warning Notice nor opportunity to cure shall be required for a Developer Default under Section 17.1.1.14 or 17.1.1.15 of the CDA. Commencing on the date the applicable cure period available to Developer expires, the Lender shall have the right (but not the obligation) to remedy such Developer Default or cause the same to be remedied by its Substituted Entity; and from and after such date TxDOT shall accept such performance by or at the instigation of the Lender or Substituted Entity as if Developer had done the same. TxDOT shall have no obligation to accept any Lender's tender of a cure prior to such date

2.4.2 If such Developer Default consists of Developer's failure to pay a monetary obligation, the Collateral Agent may cure such Developer Default by paying all amounts due within 60 days after TxDOT delivers a copy of the Warning Notice to the Collateral Agent. If cure is not effected within such 60-day period, TxDOT may proceed to terminate the CDA and the Lease without further notice to, or opportunity to cure by, the Lender.

2.4.3 If Developer fails to achieve Service Commencement of either Facility Segment by the Service Commencement Deadline, as the same may be extended pursuant to the CDA, then the Collateral Agent shall have until the latter of (a) the end of the 90-day Warning Notice period set forth in Section 17.2.1.2 of the CDA and (b) the Long Stop Date, as the same may be extended pursuant to the CDA (including extension pursuant to Section 20.4.9 of the CDA), to achieve or cause Developer to achieve Service Commencement of the Facility Segment. If Service Commencement for the Facility Segments is not achieved by such date, then it shall constitute a material Developer Default and TxDOT may proceed to terminate the CDA and the Lease without further notice to, or opportunity to cure by, the Lender.

2.4.4 As to such Developer Default, other than (a) the failure to pay a monetary obligation, (b) the failure to achieve Service Commencement for either Facility Segment by the deadline set forth in Section 20.4.3 to the CDA and (c) Developer Defaults governed by Section 2.4.7 of this Agreement and Section 20.4.7 of the CDA, the Collateral Agent shall have a cure

period ending 30 days after the later of (a) the date Developer's cure period expires and (b) the date of delivery of a copy of the Warning Notice to the Collateral Agent. If no cure period is available to Developer, then the Collateral Agent's cure period shall be 60 days, commencing with the date of delivery of a copy of the Warning Notice to the Collateral Agent. However, such period to cure shall be extended if the default is capable of being corrected without having possession of the Facility (e.g. cure of Developer Defaults under Sections 17.1.1.9 and 17.1.1.16 of the CDA) but cannot reasonably be corrected within such cure period and the Collateral Agent or the Substituted Entity begins meaningful steps to correct such matter within 60 days after TxDOT delivers a copy of the Warning Notice and thereafter prosecutes the cure to completion with good faith, diligence and continuity, in any event not to exceed a cure period ending 180 days after the date Developer's cure period expires, unless extended pursuant to Section 2.4.10 of this Agreement or Section 20.4.10 of the CDA.

2.4.5 The Collateral Agent shall have the right to postpone and extend the time to cure any Developer Default governed by Section 2.4.4 of this Agreement and Section 20.4.4 of the CDA capable of being cured only through possession of the Facility if the Collateral Agent shall:

2.4.5.1 Within the cure period available therefor under Section 2.4.2 of this Agreement and Section 20.4.2 of the CDA, cure all Developer Defaults which may be cured by the payment of a sum of money, and within the cure period available therefor under Section 2.4.4 of this Agreement and Section 20.4.4 of the CDA, undertake to cure any other Developer Default governed by Section 2.4.4 of this Agreement and Section 20.4.4 of the CDA then existing or thereafter occurring and capable of being cured without possession;

2.4.5.2 Continue to pay or cause to be paid when due all fees, rent and other amounts due from Developer under the CDA or the Lease;

2.4.5.3 Not later than 30 days after receiving a copy of the Warning Notice, initiate and thereafter pursue with good faith, diligence and continuity lawful processes and steps to obtain possession, custody and control of the Facility; and

2.4.5.4 Promptly execute all documents reasonably requested by TxDOT affecting the transactions contemplated by this Agreement and the CDA.

2.4.6 The Collateral Agent shall exercise the right provided in Section 2.4.5 of this Agreement and Section 20.4.5 of the CDA by giving TxDOT written notice of the exercise of the same 30 days after TxDOT delivers to the Collateral Agent a copy of the Warning Notice. If the Collateral Agent or its Substituted Entity shall have succeeded to the Developer's Interest and obtained possession diligently and with continuity, and in any event within 210 days after TxDOT delivers to the Collateral Agent a copy of the Warning Notice, shall have delivered to TxDOT within 15 days after obtaining possession an assumption in writing of all duties, obligations and liabilities of Developer under the CDA and the Lease, and shall have thereafter diligently and with continuity cured all Developer Defaults which are capable of being cured through possession, then the Developer Default shall be removed and the CDA and the Lease shall not be terminated. In connection with any Developer Default or any condition imposed upon Developer to exercise any rights contained in the CDA which cannot be cured or performed until the Collateral Agent or its Substituted Entity obtains possession, the Collateral Agent or its Substituted Entity shall have a time after it obtains possession as may be necessary with exercise of good faith, diligence and continuity to cure such Developer Default or perform such condition, in any event not to exceed 180 days after the date it obtains possession, unless extended pursuant to Section 2.4.10 of this Agreement and Section 20.4.10 of the CDA.

2.4.7 If the Developer Default is peculiar to Developer and is not curable by the Collateral Agent regardless of whether it obtains possession or control of the Facility, such as a Developer Default under Section 17.1.10, 17.1.1.14 or 17.1.1.15 of the CDA, or if the Developer Default is a failure to timely deliver and perform a remedial plan required under Section 17.3.6 of the CDA, then TxDOT may terminate the CDA and the Lease without providing a cure period to any Lender.

2.4.8 If TxDOT terminates the CDA and the Lease under Section 20.4.6 of the CDA for inability of the Collateral Agent, despite diligent, continuous efforts, to obtain possession within 210 days after TxDOT delivers to the Collateral Agent a copy of the Warning Notice, or under Section 20.4.7 of the CDA, then TxDOT shall promptly deliver to the Collateral Agent pursuant to the notice provisions of the CDA written notice of the termination and a statement of any and all sums which would at that time be due under the CDA and the Lease then known to TxDOT. Thereafter the Collateral Agent or its Substituted Entity, to the extent then permitted by Law, shall have the option to obtain a new comprehensive development agreement, new Facility lease, other new CDA Documents, new Facility trust agreement and, to the extent necessary new ancillary agreements (e.g. lease escrow agreement, Intellectual Property escrow agreements) (together the "New Agreements") in accordance with and upon the following terms and conditions:

2.4.8.1 In order to exercise such option, the Collateral Agent must deliver to TxDOT, within 60 days after TxDOT delivers its written notice of termination, (a) a request for New Agreements, (b) a written commitment that the Collateral Agent (or its Substituted Entity) will enter into the New Agreements and pay all the amounts described in Section 2.4.8.4 of this Agreement and Section 20.4.8.4 of the CDA, and (c) originals of such New Agreements, duly executed and acknowledged by the Collateral Agent (or its Substituted Entity). If any of the foregoing is not delivered within such 60-day period, the option in favor of the Collateral Agent (and all related Lenders) shall automatically expire;

2.4.8.2 Within 30 days after timely receipt of the written notice, written commitment and New Agreements duly executed, TxDOT shall enter into the New Agreements to which TxDOT is a party with the Collateral Agent or its Substituted Entity, subject to any extension of such 30-day period as TxDOT deems necessary to clear any claims of Developer to continued rights and possession;

2.4.8.3 The New Agreements shall be effective as of the date of termination of the CDA and the Lease and shall be for the remainder of the term of the CDA and the Lease, at the rent and upon the terms, covenants, and conditions contained in the CDA and the Lease; and

2.4.8.4 Upon the execution by all parties and as conditions to the effectiveness of the New Agreements, the Collateral Agent or its Substituted Entity shall perform all of the following:

(a) Pay to TxDOT any and all sums which would, at the time of the execution of the New Agreements, be due under the CDA or the Lease but for such termination;

(b) Otherwise fully remedy any existing Developer Defaults under the CDA or the Lease(provided, however, that with respect to any Developer Default which cannot be cured until the Collateral Agent or its Substituted Entity obtains possession, it shall have such time, after it obtains possession, as is necessary with the exercise of good faith, diligence

and continuity to cure such default, in any event not to exceed 180 days after the date it obtains possession, unless extended pursuant to Section 2.4.10 of this Agreement and Section 20.4.10 of the CDA); and

(c) Without duplication of amounts previously paid by Developer, pay to TxDOT all reasonable costs and expenses, including TxDOT's Recoverable Costs, incurred by TxDOT in connection with (i) such default and termination, (ii) the assertion of rights, interests and defenses in any bankruptcy proceeding, (iii) the recovery of possession of the Facility, (iv) all TxDOT activities during its period of possession of, and respecting, the Facility, including permitting, design, acquisition, construction, equipping, maintenance, operation and management activities, and (v) the preparation, execution, and delivery of such New Agreements. Upon request of the Collateral Agent or Substituted Entity, TxDOT will provide a written, documented statement of such costs and expenses.

2.4.8.5 Upon execution of the New Agreements and payment of all sums due TxDOT, TxDOT shall (a) assign and deliver to the Collateral Agent or its Substituted Entity, without warranty or representation, all the property, contracts, documents and information that Developer may have assigned and delivered to TxDOT upon termination of the CDA pursuant to Section 19.5 of the CDA, and (b) if applicable, transfer into a new Handback Requirements Reserve established by the Collateral Agent or Substituted Entity in accordance with the CDA, all funds TxDOT received from the Handback Requirements Reserve pursuant to Section 8.11.4.1 of the CDA (or from draw on a Handback Requirements Letter of Credit) less so much thereof that TxDOT spent or is entitled to as reimbursement for costs of Renewal Work TxDOT performed prior to the effectiveness of the New Agreements.

2.4.8.6 The New Agreements shall run for the remainder of the term of the CDA and the Lease. The New Agreements shall otherwise contain the same covenants, terms and conditions and limitations as the CDA, the Lease and other corresponding CDA Documents and ancillary agreements and documents that were binding on TxDOT and Developer (except for any requirements which have been fulfilled by Developer prior to termination and except that Section 15.1 of the CDA (and any equivalent provisions of the Lease) shall be revised to be particular to the Collateral Agent or its Substituted Entity).

2.4.8.7 If the holders of more than one Security Document make written requests upon TxDOT for New Agreements in accordance with this Section 2.4.8 or Section 20.4.8 of the CDA, TxDOT shall grant the New Agreements to, as applicable, the holder whose leasehold mortgage has the most senior priority of record. Priority shall be established as follows.

(a) TxDOT shall submit a written request to the Collateral Agent to designate the leasehold mortgage having the most senior priority of record. TxDOT shall have the right to conclusively rely on the Collateral Agent's written designation, without duty of further inquiry by TxDOT and without liability to Lender; and thereupon the written requests of each holder of any other leasehold mortgage shall be deemed to be void.

(b) If TxDOT does not receive the Collateral Agent's written designation within ten days after delivering written request, then TxDOT may conclusively rely, without further inquiry and without liability to Lender, on the seniority indicated by a then-current title report that TxDOT obtains from one of the four largest title insurance companies doing business in Texas (unless otherwise agreed in writing by the most senior holder so indicated); and thereupon the written requests of each holder of any other leasehold mortgage shall be

deemed to be void.

(c) In the event the holders of more than one leasehold mortgage share ***pari passu*** senior lien priority as indicated pursuant to clause (a) or (b) above and make written requests upon TxDOT for New Agreements in accordance with this Section 2.4.8 and Section 20.4.8 of the CDA, TxDOT shall grant the New Agreements to such holders jointly (unless otherwise agreed in writing by such holders); and thereupon the written requests of each holder of any other leasehold mortgage shall be deemed to be void.

2.4.8.8 The provisions of this Section 2.4.8 and Section 20.4.8 of the CDA shall survive the termination of the CDA and shall continue in full force and effect thereafter.

2.4.9 The Collateral Agent shall have the option to extend a Long Stop Date by two additional 90-day periods, provided all the following terms and conditions have been satisfied by not later than 15 days before the Long Stop Date to be extended:

2.4.9.1 The Collateral Agent has delivered to TxDOT (a) written notice identifying the Long Stop Date that is the subject of the notice and stating the election to exercise the option to extend and (b) concurrently with such written notice a payment in good funds in the amount set forth in Exhibit A to this Agreement and Exhibit 21 to the CDA. Such payment is due for each 90-day extension of each Long Stop Date. Such payment shall be fully earned and non-refundable when paid, as consideration for the option to extend;

2.4.9.2 The Collateral Agent or its Substituted Entity has obtained ownership of the Developer's Interest and full possession, custody and control of the Facility to the exclusion of Developer; and

2.4.9.3 If any other Warning Notices are then outstanding, the Collateral Agent has demonstrated to TxDOT that it or its Substituted Entity has undertaken and continues and will continue to undertake meaningful steps to prosecute cure to completion with good faith, diligence and continuity.

2.4.10 The Collateral Agent shall have the option to extend the 180-day deadline set forth in Section 2.4.4 of this Agreement and Section 20.4.4 of the CDA or, if applicable, the 180-day deadline after obtaining possession set forth in Section 2.4.6 of this Agreement or Section 20.4.6 of the CDA or the 180-day deadline set forth in Section 2.4.8.4(b) of this Agreement and Section 20.4.8.4(b) of the CDA, by up to but not exceeding an additional 180 days, provided that all the following conditions precedent have been satisfied by not later than 15 days before the deadline to be extended:

2.4.10.1 The Collateral Agent has delivered to TxDOT written notice requesting extension and setting forth a reasonable time period needed to effect cure, in any event not exceeding such 180 days;

2.4.10.2 The Collateral Agent has met all the requirements set forth in (a) Section 2.4.4 of this Agreement and Section 20.4.4 of the CDA, (b) Sections 2.4.5 and 2.4.6 of this Agreement and Sections 20.4.5 and 20.4.6 of the CDA or (c) Section 2.4.8.4 of this Agreement and Section 20.4.8.4 of the CDA, as applicable;

2.4.10.3 The Collateral Agent has delivered evidence to TxDOT demonstrating, and TxDOT is reasonably satisfied, that full and complete cure by the Collateral Agent is highly likely within the period of extension; and

2.4.10.4 The Collateral Agent has prepared and submitted to TxDOT, and TxDOT has approved, a remedial plan for effecting full and complete cure. The remedial plan shall set forth a schedule and specific actions to be taken by the Collateral Agent to fully and completely cure, with the schedule to be consistent with the period of extension. TxDOT may require that such actions include new and improved quality management practices, plans and procedures, revised and restated Management Plans, changes in organizational and management structure, increased monitoring and inspections, changes in Key Personnel and other important personnel, replacement of Contractors, and delivery of security to TxDOT.

Time is of the essence in the exercise of such option. If for any reason any of the foregoing conditions is not satisfied by 15 days before the deadline that is eligible to be extended, the option shall automatically expire and cease to have effect with respect to such deadline.

2.4.11 Notwithstanding any contrary provisions of the CDA Documents, in the event the Lender or its Substituted Entity obtains ownership of the Developer's Interest and full possession, custody and control of the Facility to the exclusion of Developer, all Noncompliance Points accumulated prior to the date the Lender or Substituted Entity obtains ownership and possession shall be reduced to zero. The foregoing shall not, however, excuse the Lender or its Substituted Entity from any obligation to cure prior uncured breaches or failures to perform under the CDA Documents, and except for determination of Persistent Developer Default shall not affect any rights and remedies available to TxDOT respecting uncured breaches or failures to perform.

2.4.12 Any curing of any Default Termination Event by the Collateral Agent shall not be construed as an assumption by the Collateral Agent of any obligations, covenants or agreements of Developer under the CDA Documents or any Principal Facility Documents, except with respect to the work, services or actions taken or performed by or on behalf of the Collateral Agent.

2.4.13 Nothing in this Section 2.4 or Section 20.4 of the CDA shall preclude or delay TxDOT from exercising any remedies other than termination of the CDA and the Lease due to Developer Default, including, subject to TxDOT's express covenants to forebear, TxDOT's rights to cure the Developer Default at Developer's expense and to remove and replace Developer.

2.5 Forbearance

To the extent TxDOT has rights to enforce the Design-Build Contract or any O&M Contract, whether as assignee of Developer's rights or otherwise, so long as the CDA remains in effect TxDOT shall forbear from exercising remedies against the Design-Build Contractor or any O&M Contractor if (a) Developer or the Collateral Agent commences the good faith, diligent exercise of remedies available to Developer under the Design-Build Contract or O&M Contract within 15 days after TxDOT delivers written notice to Developer and the Collateral Agent of default by the Design-Build Contractor or any O&M Contractor, and (b) thereafter continues such good faith, diligent exercise of remedies until the default is cured.

2.6 Substituted Entities

2.6.1 Any payment to be made or action to be taken by the Collateral Agent as a prerequisite to keeping the CDA in effect shall be deemed properly to have been made or taken by the Collateral Agent if a Substituted Entity proposed by the Collateral Agent and approved by TxDOT makes such payment or takes such action. TxDOT shall have no obligation to recognize any claim to the Developer's Interest by any person or entity that has acquired the Developer's Interest by, through, or under any Security Document or whose acquisition shall have been derived immediately from any holder thereof, unless such person or entity is a Substituted Entity.

2.6.2 Notwithstanding the foregoing, any entity that is wholly owned by the Lender or group of Lenders shall be deemed a Substituted Entity, without necessity for TxDOT approval, upon delivery to TxDOT of documentation proving that the entity is duly formed, validly existing and wholly owned by such Lender or group of Lenders, including a certificate signed by a duly authorized officer of each such Lender in favor of TxDOT certifying, representing and warranting such ownership.

2.6.3 TxDOT shall have no obligation to approve a person or entity as a Substituted Entity unless the Lender demonstrates that (a) the proposed Substituted Entity and its contractors collectively have the financial resources, qualifications and experience to timely perform Developer's obligations under the CDA Documents and Principal Facility Documents and (b) the proposed Substituted Entity and its contractors are in compliance with TxDOT's rules, regulations and adopted written policies regarding organizational conflicts of interest. TxDOT will approve or disapprove a proposed Substituted Entity within 30 days after it receives from the Lender a request for approval together with (a) such information, evidence and supporting documentation concerning the identity, financial resources, qualifications, experience and potential conflicts of interest of the proposed Substituted Entity and its contractors as TxDOT may request, and (b) such evidence of organization, authority, incumbency certificates, certificates regarding debarment or suspension, child support statements, and other certificates, representations and warranties as TxDOT may reasonably request. TxDOT will request information on, and evaluate, the financial resources, qualifications, experience and potential conflicts of interest of the proposed Substituted Entity and its contractors using the same standards and criteria that it is then currently applying, or if there is no current application, then the same standards and criteria it most recently applied, to the evaluation of Persons responding to TxDOT requests for qualifications for concession or similar agreements for comparable projects and facilities. If for any reason TxDOT does not act within such 30-day period, or any extension thereof by mutual agreement of TxDOT and the Lender, TxDOT shall be deemed to disapprove.

2.6.4 The Lender may request approval of more than one Substituted Entity. The Lender may request approval at any time or times. Any approval by TxDOT of a Substituted Entity shall expire one year after the approval is issued, unless TxDOT approves an extension in its sole discretion or unless within such one-year period (or any approved extension thereof) the Substituted Entity has succeeded to the Developer's Interest. TxDOT may revoke an approval if at any time prior to succeeding to the Developer's Interest (a) the Substituted Entity ceases to be in compliance with TxDOT's rules and regulations regarding organizational conflicts of interest or (b) there occurs, after exhaustion of all rights of appeal, any suspension or debarment of the Substituted Entity or any managing member, general partner or controlling investor of the Substituted Entity from bidding, proposing or contracting with any federal or State department or agency.

2.7 Receivers

2.7.1 The appointment of a receiver at the behest of Developer shall be subject to TxDOT's prior written approval in its sole discretion. The appointment of a receiver at the behest of the Lender if the Lender is not in compliance with Sections 2.1.1, 2.1.2, 2.1.3 and 2.1.4 of this Agreement or Sections 20.1.1, 20.1.2, 20.1.3 and 20.1.4 of the CDA shall be void and may be challenged by TxDOT in any proceeding. The appointment of a receiver at the behest of the Lender if the Lender is in compliance with Sections 2.1.1, 2.1.2, 2.1.3 and 2.1.4 of this Agreement or Sections 20.1.1, 20.1.2, 20.1.3 and 20.1.4 of the CDA shall be subject to the following terms and conditions:

2.7.1.1 TxDOT's prior approval shall not be required for the appointment of the receiver or the selection of the person or entity to serve as receiver;

2.7.1.2 Whenever the Lender commences any proceeding for the appointment of a receiver, it shall serve on TxDOT not less than five days' prior written notice of the hearing for appointment and of the Lender's pleadings and briefs in the proceeding;

2.7.1.3 TxDOT may appear in any such proceeding to challenge the selection of the person or entity to serve as receiver, but waives any other right to oppose the appointment of the receiver; and

2.7.1.4 TxDOT may at any time seek an order for replacement of the receiver by a different receiver.

2.7.2 No receiver appointed at the behest of Developer or the Lender shall have any power or authority to replace the Design-Build Contractor or any O&M Contractor except by reason of default or unless the replacement is a Substituted Entity approved by TxDOT.

2.8 Other Lender Rights

2.8.1 In addition to all other rights herein granted, the Lender shall have the right to be subrogated to any and all rights of Developer under the CDA and the Lease with respect to curing any Developer Default. TxDOT shall permit the Collateral Agent and its Substituted Entity the same access to the Facility and Facility Right of Way as is permitted to Developer hereunder. TxDOT hereby consents to Developer constituting and appointing any Collateral Agent as Developer's authorized agent and attorney-in-fact with full power, in Developer's name, place and stead, and at Developer's sole cost and expense, to enter upon the Facility and Facility Right of Way and to perform all acts required to be performed herein, in the Lease, and in any Principal Facility Document, but only in the event of a Developer Default or a default under the Lender's Funding Agreement or Security Document. TxDOT shall accept any such performance by the Collateral Agent as though the same had been done or performed by Developer.

2.8.2 The creating or granting of a Security Document shall not be deemed to constitute an assignment or transfer of the CDA, the leasehold estate under the Lease or the Developer's Interest, nor shall the Lender, as such, be deemed to be an assignee or transferee of the CDA, the leasehold estate under the Lease or the Developer's Interest so as to require the Lender, as such, to assume the performance of any of the terms, covenants or conditions on the part of Developer to be performed hereunder or thereunder. Neither the Lender, nor any owner of the leasehold estate under the Lease or the Developer's Interest whose ownership

shall have been acquired by, through, or under any Security Document or whose ownership shall have been derived immediately from any holder thereof, shall become personally liable under the provisions of the CDA or the Lease unless and until such time as the Lender or such owner becomes the owner of the Developer's Interest. Upon any permitted assignment of the CDA, the Lease and the Developer's Interest by a Lender or any owner of the Developer's Interest whose ownership shall have been acquired by, through, or under any Security Document or whose ownership shall have been derived immediately from any holder thereof, the assignor shall be relieved of any further liability which may accrue hereunder or thereunder from and after the date of such assignment, provided that the assignee is a Substituted Entity and executes and delivers to TxDOT a recordable instrument of assumption as required under Section 21.5 of the CDA.

2.8.3 The Lender or the Collateral Agent may exercise its rights and remedies under its Security Document with respect to all, but not less than all, of the Developer's Interest.

2.8.4 The exercise by the Lender of its rights with respect to the Developer's Interest under its Security Documents, this Agreement, Article 20 of the CDA, or otherwise, whether by judicial proceedings or by virtue of any power contained in the Security Documents, or by any conveyance from Developer to the Lender in lieu of foreclosure thereunder, or any subsequent transfer from the Lender to a Substituted Entity, shall not require the consent of TxDOT or constitute a breach of any provision of or a default under the CDA Documents. The foregoing does not affect the obligation to obtain approval of persons or entities as Substituted Entities pursuant to Section 2.6 of this Agreement and Section 20.6 of the CDA (and the definition of Substituted Entity).

2.8.5 Whenever TxDOT obtains knowledge of any condemnation proceedings by a third party affecting the Facility or Facility Right of Way, it shall promptly give notice thereof to the Lender. The Lender shall have the right to intervene and be made a party to any such condemnation proceedings, and TxDOT hereby consents that the Lender may be made such a party or an intervener.

2.9 Consents and Estoppel Certificates

2.9.1 At any time and from time to time, within 15 days after written request of the Lender, TxDOT, without charge, shall (a) consent to (i) the exercise by the Lender of its rights under and in accordance with this Agreement and Article 20 of the CDA in the event of a Developer Default and (ii) a pledge or hypothecation by Developer of the Developer's Interest under the CDA to the Lender and (b) certify to its best knowledge by written instrument duly executed and acknowledged, to the Lender as follows:

2.9.1.1 As to whether the CDA has been supplemented or amended, and if so, the substance and manner of such supplement or amendment, attaching a copy thereof to such certificate;

2.9.1.2 As to the validity and force and effect of the CDA, in accordance with its terms;

2.9.1.3 As to the existence of any Developer Default;

2.9.1.4 As to the existence of events which, by the passage of time or notice or both, would constitute a Developer Default;

2.9.1.5 As to the then accumulated amount of Noncompliance Points;

2.9.1.6 As to the existence of any claims by TxDOT regarding the CDA;

2.9.1.7 As to the Effective Date and the commencement and expiration dates of the Term;

2.9.1.8 As to whether a specified acceptance, approval or consent of TxDOT called for under the CDA has been granted;

2.9.1.9 Whether the Lender and its Funding Agreements and Security Documents meet the conditions and limitations set forth in Sections 4.3 and 20.1 of the CDA and Section 2.1 of this Agreement; and

2.9.1.10 As to any other matters of fact within TxDOT's knowledge about the CDA Documents, the Principal Facility Documents, Developer, the Facility or the Work as may be reasonably requested.

2.9.2 TxDOT shall deliver the same certified, written instrument to a Substituted Entity or proposed Substituted Entity within 15 days after receiving its written request, provided that the request is delivered to TxDOT either before the Substituted Entity or proposed Substituted Entity succeeds to the Developer's Interest or within 60 days after the Substituted Entity has succeeded to the Developer's Interest.

2.9.3 Any such certificate may be relied upon by, and only by, the Lender, Substituted Entity or proposed Substituted Entity to whom the same may be delivered, and the contents of such certificate shall be binding on TxDOT.

2.10 No Surrender

No mutual agreement to cancel or surrender the CDA or the Lease shall be effective unless consented to in writing by the Collateral Agent, which consent Developer shall be solely responsible to obtain.

ARTICLE 3. CONTRACT PERIOD

This Agreement shall become effective when executed by all parties. The Agreement shall terminate upon the occurrence of any of the following:

(a) If the CDA is terminated and the Lender does not have a right to a New Agreement, upon termination of the CDA;

(b) If the CDA is terminated and the Lender does have a right to a New Agreement, upon lapse without proper exercise of the right to obtain a New Agreement;

(c) Upon the Lender or a Substituted Entity that is affiliated with the Lender (or any other participating Lenders) succeeding to the Developer's Interest;

(d) Upon release and reconveyance by the Lender of all or any portion of its security interest in the Developer's Interest;

(e) Upon any change in circumstances rendering the Lender ineligible under the terms of this Agreement (i.e., those corresponding to Section 2.1 of this Agreement and Section 20.1 of the CDA) for the rights and protections set forth in this Agreement;

(f) Upon termination by TxDOT pursuant to Sections 5.3 or 5.4 of this Agreement; or

(g) Upon the natural expiration of the Term of the CDA.

ARTICLE 4. SIGNATORY WARRANTY

4.1 The undersigned signatory for the Lender hereby represents and warrants that he or she is an officer of the Lender organization for which he or she has executed this Agreement and that he or she has full and complete authority to enter into this Agreement on behalf of the Lender organization. These representations and warranties are made for the purpose of inducing TxDOT to enter into this Agreement.

4.2 The undersigned signatory for TxDOT hereby represents and warrants that he or she is an officer of TxDOT and has full and complete authority to enter into this Agreement on behalf of TxDOT. These representations and warranties are made for the purpose of inducing the Lender to enter into this Agreement.

ARTICLE 5. GENERAL PROVISIONS

5.1 Public Information and Confidentiality

TxDOT will comply with Government Code, Chapter 552, the Public Information Act, and 43 Texas Administrative Code §3.10 et seq. in the release of information related to this Agreement.

5.2 Amendments and Waivers

5.2.1 No amendment of this Agreement, and no waiver of any term, covenant or condition of this Agreement, shall be effective unless in writing and signed by the parties to this Agreement.

5.2.2 The exercise by a Party of any right or remedy provided under this Agreement or applicable law shall not waive or preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver by either party of any right or remedy under this Agreement or applicable law shall be deemed to be a waiver of any other or subsequent right or remedy under this Agreement or applicable law. 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.

5.3 Noncollusion

5.3.1 The Lender warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Lender, to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from making of this Agreement.

5.3.2 For breach or violation of this warranty, TxDOT shall have the right to terminate this Agreement without liability. No such termination shall affect the Lender's rights under Article 20 of the CDA.

5.4 Gratuities

5.4.1 Texas Transportation Commission policy mandates that employees of the Texas Department of Transportation shall not accept any benefit, gift or favor from any person doing business with or who reasonably speaking may do business with the State under this Agreement. The only exceptions allowed are ordinary business lunches and items that have received the advance written approval of the Executive Director of the Texas Department of Transportation.

5.4.2 Any person doing business with or who reasonably speaking may do business with TxDOT under this Agreement may not make any offer of benefits, gifts or favors to department employees, except as stated above. Failure on the part of the Lender to adhere to this policy may result in the termination of this Agreement. No such termination shall affect the Lender's rights under Article 20 of the CDA.

5.5 Disputes

5.5.1 In the event of any dispute between TxDOT and the Lender under this Agreement, the parties shall resolve the dispute according to the Dispute Resolution Procedures set forth in the CDA, with the Lender having the same rights and obligations of Developer under the Disputes Resolution Procedures and having the obligation to enter into an identical Disputes Board Agreement (other than substitution of the Lender for Developer). If, however, any such dispute arises out of the same set of facts and circumstances that gives rise to a Dispute or Claim by Developer, then TxDOT shall have the right, without consent from members of any Disputes Board, to consolidate the disputes, claims and proceedings into one proceeding under the Disputes Board Agreement between Developer and TxDOT.

5.5.2 Nothing in Section 5.5.1 of this Agreement affects Lender rights and remedies against Developer and the Developer's Interest under the Lender's Funding Agreements and Security Documents or the procedures available to the Lender under applicable Law to exercise its security interests thereunder. Nothing in Section 5.5.1 of this Agreement changes or affects the Lender's rights of joinder of TxDOT as a necessary party to the extent provided in Section 4.3.10 of the CDA.

5.6 Successors and Assigns

This Agreement shall bind and inure to the benefit of TxDOT and the Lender and their respective successors and assigns. The Lender shall not assign, subcontract or transfer its interest in this Agreement separately from its interests in the Funding Agreements and Security Documents relating to the loan it has made available to Developer for the Facility; and any attempt at such assignment, subcontracting or transfer shall be null and void.

5.7 Severability

In the event any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be

construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

5.8 Prior Contracts Superseded

Except for the Lender's third party beneficiary rights under the CDA, this Agreement constitutes the sole agreement of the parties hereto with respect to the subject matter set forth herein and supersedes any prior understandings or written or oral contracts between the parties respecting such subject matter.

5.9 Notices and Communications

5.9.1 All notices, correspondence, and other communications under this Agreement 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 or email communication followed by a hard copy and with receipt confirmed by telephone, to the following addresses (or to such other address as may from time to time be specified in writing by such Person):

5.9.2 All notices, correspondence and other communications to Lender shall be delivered to the following address:

[Lender address]

Telephone: _____
Facsimile: _____
E-mail: _____

5.9.3 All notices, correspondence and other communications to TxDOT shall be marked as regarding the North Tarrant Express Project and shall be delivered to the following address:

Texas Department of Transportation
125 E. 11th Street, Fifth Floor
Austin, TX 78701
Attn: Mr. Mohammad Al Hweil, P.E.
Telephone: (512) 936-0980
Facsimile: (512) 936-0970
E-mail: mhweil@dot.state.tx.us

In addition, copies of all notices regarding disputes shall be delivered to the following person:

Texas Department of Transportation
Office of General Counsel
125 East 11th Street
Austin, Texas 78701
Telephone: (512) 463-8630
Facsimile: (512) 475-3070

5.9.4 Notices, correspondence, and communications 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 facsimile 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 (that is, 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.).

5.10 Governing Law

This Agreement shall be governed by the laws of the State of Texas.

5.11 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.

IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Agreement as of the date first written above.

Lender	**TxDOT** **TEXAS DEPARTMENT OF TRANSPORTATION**
By: _____	
Name: _____	By: _____
Title: _____	Name: Amadeo Saenz Jr., P.E._____
	Title: Executive Director