EXHIBIT 2

DEVELOPER'S PROPOSAL COMMITMENTS, ATCS AND SCHEMATICS

Appendix 1:	**Proposal Commitments**
Appendix 2:	**ATCs**
Appendix 3:	**Schematics**
Appendix 4:	**Draft Schematic ROW Adjustments**
Appendix 5:	**Preliminary Maintenance Management Plan**

Appendix 1 to Exhibit 2

Proposal Commitments

Description	Substantial Completion Deadline
Proposal Commitment Date for Substantial Completion	NTP1 plus 1260 calendar days

Proposal Commitments

ID	Proposal Reference	Topic	Description
1.	P1, C.1.1; P7,10 & 12, C.1.1.2	Milestones	SH 114 Managed Lanes Completion: NTP1 plus 652 calendar days.
2.	P1, C.1.1	Safety	Stop work authority by all personnel for unsafe conditions.
3.	P2&4, C.1.1.1	Safety/ Training	Mandatory and comprehensive safety orientation for all project personnel and visitors. New employees must complete safety questionnaire.
4.	P2&4, C.1.1.1	Safety	Utilize Craft Voice in Safety (CVIS) program for safety that allows employees to make safety observations and provide interaction, recommendations, recognition and feedback.
5.	P2, C.1.1.1	Safety/ Communication	Use of web sites and electronic communication, daily craft, weekly task force meetings, and coordination with emergency responders to assure public safety.
6.	P3, C.1.1.1	Safety	All safety policies and procedures will be followed by SGMP staff and employees, visitors and vendors and subcontractor's performance and accountability are the same of those for SGMP.
7.	P3-4, C.1.1.1	Safety/ Training	Mandatory initial formal safety training for all personnel including First Aid/ CPR and specialized training on task-specific hazards for those assigned to such tasks. Ongoing training revisited annually at the start of each calendar year, or as deemed pertinent.

ID	Proposal Reference	Topic	Description
8.	P3, C.1.1.1	Safety	Quarterly site tours by executive officers demonstrating full support of safety to craft, management, TxDOT and Stakeholders.
9.	P3-4, C.1.1.1	Safety/ Management	Every task requires a work plan outlining specific hazards and required training necessary to complete the task and mitigate the hazards. Incorporate safety into every meeting (field or office).
10.	P4-5, C.1.1.1	Safety/ Management/ Communication	Meetings: • Daily coordination meetings led by discipline superintendents to discuss the next 24 hours of activity (safety, quality, traffic maintenance, site access and materials). • Daily "Play-of-the-Day" meetings before work begins to discuss the execution of planned operations, alternative plans for execution, and opportunity to discuss hazards • Weekly Foreman's Toolbox meetings led by the foreman for all craft each Monday or first work day of the week at the start of the shift • Weekly supervisor safety meetings led by the supervisor and the CVIS committee for foreman level and above to discuss safety • Monthly mass safety meetings (first Monday of each month) led by craft workers for all project personnel at the start of the shift. • Post-accident or near-miss mass meetings led by Safety Manager and held as soon as possible after the incident to cover incident facts and causes
11.	P5, C.1.1.1; P77, C.3.2.1, ExC.3-9	Safety	Invite emergency responders to safety coordination meetings
12.	P6, C.1.1.1	Safety	Activate a full-time equipment and truck walk-round program

ID	Proposal Reference	Topic	Description
			before any piece of machinery is used.
13.	P8, C.1.1.2	Schedule	Update baseline schedule daily, analyze weekly and report monthly
14.	P9, C.1.1.2	Schedule	Active subcontractors are contractually required to attend daily and weekly schedule meetings.
15.	P9, C.1.1.2	Schedule	Subcontractor and third-party activities will be incorporated into the project baseline schedule.
16.	P9, C.1.1.2	Schedule	Use of SAP (Systems, Applications and Products) software that will integrate estimating, quantity tracking and forecasting into one system that is synchronized with P6.
17.	P12, C.1.1.2	Schedule Management	Early design packages will include USACE 408 permit preparation and Trinity River foundations
18.	P12, C.1.1.2	Schedule	The O&M team will participate in the final inspections and punchlist development.
19.	P13, C.1.1.3; P26, C.1.2.2	Cost/ Document Control	Use of SharePoint 2010, or later version, during D&C and O&M Periods for electronic document management of project information including plans, permits, submittals, RFIs, quality documents, meeting minutes, drawings and correspondence. Provide TxDOT with access to SharePoint. Upload documents to TxDOT internet-based file sharing system as required.
20.	P13, C.1.1.3	Schedule Management	Use and maintenance of a project issues log to identify and resolve issues early. Weekly project control task force meetings to discuss the project issues log, document control performance and progress with document submittals.
21.	P14, C.1.1.4	Risk Management	Quarterly meeting with TxDOT to monitor and manage the project risk and mitigation strategies
22.	P16, C.1.1.4,	Schedule	Completion of Section 408 permit including Oncor transmission is accommodated within the Proposal baseline

ID	Proposal Reference	Topic	Description
	ExC.1-10, #16		schedule.
23.	P16, C.1.1.4, ExC.1-10, #19	Project Management	Co-locate design management team with SGMP and TxDOT staff.
24.	P16, C.1.1.4, ExC.1-10, #24; P22, C.1.2.1, ExC.1-18	Construction Equipment	SGMP will supply equipment that will be dedicated to the project.
25.	P19, C.1.2.1, ExC.1-13	Project Management	Development committee will be available at any time to respond to TxDOT's requests.
26.	P19, C.1.2.1, ExC.1-13	Project Management	The D&C Project Manager will be dedicated full-time and will serve as SGMP agent and TxDOT's primary point of contact for all project matters.
27.	P19, C.1.2.1, ExC.1-13; P29, C.1.3.1	Project Management	Environmental Compliance Manager will be independent of the production, operations and maintenance activities and has the authority to stop work for noncompliance.
28.	P19, C.1.2.1, ExC.1-13; P26, C.1.2.2; P66, C.3.1; P92, C.3.2.4	Project Management	Co-locate D&C project management team, including D&C Project Manager, Project Control Manager, CQAM, CQCM, Maintenance Manager, Superintendent, Equipment Manager, MOT Manager, Design-Build Coordinator, D&C/O&M Safety Manager and D&C/O&M Quality Manager, on site until Final Acceptance. Managers of all task disciplines will be co-located with TxDOT and subcontractor representatives. Managers of lead design and construction (D&C) and operations and maintenance (O&M), major subconsultants and TxDOT staff in the Irving project office. Co-locate ROW acquisition staff at the project office.
29.	P20, C.1.2.1, ExC.1-14	Project Management	The following individuals will be dedicated and available at all times to meet the Developer's project obligations: D&C Project Manager, D&C/O&M Quality Manager, O&M Project Manager, Superintendent, Environmental Compliance Manager,

ID	Proposal Reference	Topic	Description
			D&C/O&M Safety Manager, Maintenance Manager, Maintenance QC Manager, Professional Services Quality Control Manager, ROW Acquisition Manager, Utility Manager, Design Manager, Public Information Coordinator, Lead Roadway Design Engineer and Lead Bridge Design Engineer.
30.	P20, C.1.2.1, ExC.1-14	Project Management	Approval of Utility Manager for all financial and technical modifications.
31.	P22, C.1.2.1, ExC.1-18	Project Management	In addition to the required co-located office, provide secondary construction and satellite offices located along SH 183 and SH 114. Within each facility, offices and workstations will be grouped by discipline.
32.	P23, C.1.2.1; P76, C.3.2.1, ExC.3-6	Traffic Management	Coordinate with municipalities for detour and haul truck routes.
33.	P24, C.1.2.1	Project Management	Hold one-on-one meetings with • each regulatory agency to facilitate approvals • each property owner to facilitate and communicate activities • utility companies to discuss conflict and facilitate relocation
34.	P24, C.1.2.1	Quality Management	Hold weekly and monthly QA/QC inspections during construction
35.	P26, C.1.2.2; P66, C.3.1; P68, C.3.1; P91, C.3.2.4	Project Management	Weekly task force meetings through final design for task/discipline specific D&C and O&M personnel to discuss design and constructability issues. Stakeholders directly affected by upcoming activities are encouraged to attend. Include ITS optic during MOT meetings throughout design and construction.
36.	P26, C.1.2	Quality Management	Use an ISO-9001-2008 Certified Quality Management Plan.
37.	P28, C.1.2.2	Project	TxDOT is invited to attend all design task forces and design

ID	Proposal Reference	Topic	Description
		Management	coordination meetings.
38.	P30, C.1.3.1	Environmental Management	Conduct bi-annual environmental audits using a comprehensive 60-page checklist.
39.	P32, C.1.3.1	Environmental Commitments	Integrate the planning/environmental commitments during the O&M Period.
40.	P32, C.1.3.1	Environmental Management	Develop GIS-based maps showing environmentally sensitive areas.
41.	P33, C.1.3.1, ExC.1-28	Environmental Mitigation	Comply with local noise ordinances to reduce impacts. Implement no-idle policy for construction equipment.
42.	P33, C.1.3.2	Public Information/ Communication	Discipline managers will communicate daily with the PI Coordinator
43.	P33-34, C.1.3.2	Public Information/ Communication	Host information booths at local events. PI and project team will participate in and assist with large community events.
44.	P35, C.1.3.2, ExC.1-29	Public Information/ Partnership	Build upon existing partnership with the DFW International Airport. Partner with facility officials of institutions including Baylor Health Care System (Irving), University of Dallas and North Lake College.
45.	P35, C1.3.2, ExC.1-29	Public Information Strategies	Loyalty Program: Partner with chambers and large, local businesses to create an incentive program to promote adjacent businesses. Presentations: Provide project overview presentations per request of local organizations and allow time for Q&A. E-Alerts: Provide, via e-mail, weekly look-ahead closure alerts and daily notices (peak construction periods). Mobile Application: Utilize a mobile application that provides

ID	Proposal Reference	Topic	Description
			real-time communication about current travel conditions and links users to the project web site and social media. Business Task Force Meetings: Hold a monthly task force meeting, rotated through different areas of the project to enhance participation, to update local business owners and residents on project progress to include presentations from the various construction disciplines and allow time for a Q&A. Newsletters: Provide a monthly project newsletter to subscribers to include project information and major project milestones. Awareness Campaigns: Develop and implement project-specific campaigns such as safety/speed limit awareness, safety pledge, local student scholarship, banners and web page. Social Media: Utilize social media with interactive communication and photos to provide information about major lane closures, corridor events, project updates and community events. Web site: Update project web site daily. Customer Service: Provide communities including Euless, Bedford, Irving and Dallas with exemplary customer service by implementing one or more of the above mentioned strategies.
46.	P36, C.1.3.2	Public Information Effectiveness	Solicit feedback from Customer Groups and the public in the form of surveys.
47.	P37, C.1.3.3	Subcontracting	Designate a person who will monitor subcontractors, administer contracts and provide reporting.
48.	P37&40, C.1.3.3	Subcontracting/ Management/	Assign a Subcontractor Monitor for each subcontractor who will assist the subcontractor in understanding the project safety, technical, and quality requirements and plans and will track its

ID	Proposal Reference	Topic	Description
		Training	performance and offer guidance when needed. The Monitor will develop short-term and long-term plans to identify and hold workshops on a range of topics aimed at addressing the immediate needs and raising the knowledge level of registered DBE subcontractors.
49.	P38, C.1.3.3	Subcontracting/ Training	Hold workshops on submitting a compliant, cost-effective proposal and successfully executing a contract. All workshop documentation will be managed and archived on SharePoint.
50.	P40, C.1.3.3	Subcontracting/ Training	Offer bonding and insurance workshops to the DBE community throughout the life of the project.
51.	P43&44, C.2.1	O&M Safety/ Management	O&M safety plan is based on D&C safety plan and tailored specifically to meet the project's maintenance requirements. Safety personnel will remain available to O&M workers.
52.	P43, C.2.1	O&M Safety/ Management	Onsite Shift Safety Representative will complete 30-hour OSHA safety and health training.
53.	P44, C.2.1	O&M Safety/ Management/ Training	Prior to commencement of O&M services and annually thereafter, training will be conducted for employees, supervisors and managers. The training will include standard policies, emergency management, work zone safety, hazardous materials identification and mitigation, communication protocol, proper use of protective equipment and other topics.
54.	P44-47&50 , C.2.1, ExC.2-3	O&M / Management	Use of a web-based MMIS that will track and document project conditions and performance, general and special inspections and input from stakeholders and customers. MMIS data entry and reporting will be accomplished in real time using tablet technologies. MMIS provides an interface with TxDOT allowing the exchange of electronic notices regarding noncompliance events and accurately tracking unavailability events, O&M violations, instances of non-compliance and noncompliance point totals.

ID	Proposal Reference	Topic	Description
55.	P45,52-53, C.2.1, ExC.2-3	O&M / Management	During the D&C and O&M Periods, 24/7 emergency response and 24/7 availability of maintenance personnel to respond to traffic control issues.
56.	P45, C.2.1, ExC.2-3; P56, C.2.2.1	O&M / Management	Annual review of incidents and crashes to identify modifications and/or improvements.
57.	P47, C.2.1	O&M / Management	The O&M Project Manager will use the MMIS to track system conditions, inspection findings and corrective activities on a weekly and monthly basis.
58.	P48, C.2.1	O&M / Management	Specialized equipment onsite or on standby for mitigating severe weather, including front end and skid steer loaders, sand trucks, snow plows and all-terrain vehicles. Stockpile sand and salt on site during winter months.
59.	P49&51, C.2.1, ExC.2-4	O&M / Management	Performance requirements of planned maintenance activities will include TxDOT Snow and Ice Control Manual, TxDOT Sign Crew Field Report Manual, TxDOT Special Specification 8094, National Bridge Inspection Standards, and TxDOT Maintenance Management Manual as appropriate for maintained elements.
60.	P53-54, C.2.2.1	O&M / Management	Provide in-house resources for emergency structure repair services and oversight of emergency inspections.
61.	P45, C.2.1, ExC.2-3; P49, C.2.1; P52, C.2.2.1	O&M / Management	Conduct regular patrol to manage the maintenance of the O&M limits.
62.	P57, C.2.2.2	O&M / Technical Solutions	Use LED lighting to reduce electrical consumption and maintenance requirements and secure electric covers to prevent vandalism and theft.
63.	P58, C.2.2.2	O&M /	During the D&C Period, the O&M activities will be co-located

ID	Proposal Reference	Topic	Description
		Management/ Facilities	with the design-build team.
64.	P60, C.2.2.2	O&M / Management/ Training	Traffic control personnel will be trained by instructors certified with the American Traffic Safety Services Association (ATSSA).
65.	P63, C.2.2	O&M / Management	Record Drawings will be maintained in an electronic format compatible with TxDOT and updated as needed throughout the O&M Period.
66.	P64, C.2.2.3	O&M / Management	Provide a look-ahead rehabilitation strategy to TxDOT at the end of the Term.
67.	P66, C.3.1	Design-Build Management	Use ProjectWise as the design document control system with access to off-site staff.
68.	P73, C.3.2.1, ExC.3-3; P87, C.3.2.3; AppC-1	Technical Solutions/ Roadway	Added Value Concepts # 25 & Roadway Schematic: Construct the following sections as Ultimate Area • SH 183 EB GPL, ML and associated ramps (approximately 700-feet west of Main Street to approximately 900-feet east of Main Street) • SH 183 WB GPL, ML and associated ramps (approximately 700-feet west of Main Street to approximately 800-feet east of Main Street) • SH 183 EB GPL (approximately 500-feet east of Maryland Drive to approximately 300-feet west of Grauwyler Road) • SH 183 WB GPL (approximately 700-feet east of Maryland Drive to approximately 1700-feet west of Regency Drive) • SH 114 to SH 183 GPL DC (approximately 500-feet east of Regal Ridge Pkwy to approximately 300-feet west of Grauwyler Road)
69.	P76, C.3.2.1, ExC.3-5	Technical Solutions/	The traffic safety officer will be available to expedite the removal of disabled vehicles from active lanes.

ID	Proposal Reference	Topic	Description
		Incident Response	
70.	P76, C.3.2.1, ExC.3-7	Technical Solutions/ Traffic Operations	Designate temporary parking for craft workers, use acceleration/deceleration areas for construction haul trucks, use secondary haul routes for asphalt delivery, and keep construction activities, to the extent possible, behind concrete barrier.
71.	P780, C.3.2.1, ExC.3-11	Technical Solutions/ Property Impacts	Utilize property impact mitigation measures including the use of rubber-tired haul trucks on local roads and perform activities near residential areas during day shift periods.
72.	P80, C.3.2.2	Technical Solutions/ Structures	Incorporate TxDOT Fort Worth District Standards for Abutment Treatment Cement-Treated Flex Base for use behind abutment backwalls under approach slabs.
73.	P57, C.2.2.2; P80, C.3.2.2	Technical Solutions/ Structures	Use of pre-stressed concrete girders in lieu of steel girders.
74.	P80, C.3.2.2	Technical Solutions/ Structures	Design bridge decks using 8.5-inch thickness with increased clear cover to prevent corrosion of the reinforcing steel.
75.	P81, C.3.2.2	Technical Solutions/ Structures	Incorporate design to minimize the number of columns at the Elm Fork of the Trinity River bridges to preserve the environmental integrity of the floodplain during construction, where allowed by USACE.
76.	P73, C.3.2.1, ExC.3-3; P84, C.3.2.2	Technical Solutions/ Roadway & Structures	Added Value Concepts # 12: Incorporate a TxDOT approved design that eliminates the widening of the recently constructed LBJ Express DC, avoids construction over IH-35E, avoids future bridge construction of SB IH-35E, and accommodates the Ultimate Configuration.
77.	P85, C.3.2.3	Technical	Incorporate a design utilizing CIP bent caps with long

ID	Proposal Reference	Topic	Description
		Solutions/ Structures	overhangs, to avoid demolishing existing bridge substructure at the Elm Fork of the Trinity River.
78.	P86, C.3.2.3	Technical Solutions/ Roadway	Adopt the most advanced machine control technologies available to ensure the pavement surface is constructed to the intended line and grade.
79.	P89, C.3.2.4	Technical Solutions/ Drainage	Use of the existing RCP stockpile provided by TxDOT on the project.
80.	P66, C.3.1; P92, C.3.2.4	Technical Solutions/ ROW	Within two (2) weeks of issuance of NTP1, hold ROW kick-off workshop to convey TxDOT's goals for the project.
81.	P94, C.3.2.4	Technical Solutions/ ROW	Use of collaborative internet-based TrackVia system to monitor ROW activities on an individual parcel basis with tracking and alert notification of any potential delays or progress.
82.	P6, C.1.1.1; P96, C.3.2.4	Technical Solutions/ Utilities	Perform 25,000 potholes and map them to the 3D SUE model. Perform potholing for work within 25 feet of a utility. Create a complete project-wide quality Level B strip map with Level A potholes on every line in the work area. Perform Level B mapping for every service line connected to adjacent businesses near frontage road work. Provide a utility map to TxDOT once the initial SUE is complete.
83.	P96, C.3.2.4	Technical Solutions/ Utilities	Develop and maintain a 3D model of the work including utilities.
84.	P97, C.3.2.4	Technical Solutions/ Utilities	A utility tracking report will be used to identify and track the status of each individual utility agreement assembly, design, construction relocation and submittals.
85.	P99&100, C.4.2.1	Quality	All employees are empowered to identify and document potential non-compliance or non-conformance issues.

Appendix 2 to Exhibit 2

Developer's ATCs

The following table lists Developer's alternative technical concepts (ATCs), which are described in further detail in the ATC submittals and clarifications, which Developer may incorporate into the Project. The Deviations set forth in the ATC submittals are approved by TxDOT subject to satisfaction of any conditions set forth in the letters from TxDOT to Developer. Such Deviations, subject to satisfaction of any listed "conditions," expressly supersede any conflicting provisions in the Technical Provisions, as provided in Section 1.3 of the Development Agreement. The ATCs, to the extent utilized by Developer, shall otherwise meet all requirements of the Technical Provisions.

APPROVED ALTERNATIVE TECHNICAL CONCEPTS (ATCs)

ATC#	Proposal Reference	Topic	Description	Conditions
3	P74	ITS	Use of modified illumination poles in lieu of CCTV standard poles.	None.
6	P74	Pavement	Use of high quality prime coat for as underseal for hot-mix asphalt pavement	Yes, see ATC response letter.
8	P73	Structures	Use of statnamic soil testing for deep drilled shafts.	Yes, see ATC response letter.
11	P74	Pavement	Use of high performance ultra-thin bonded hot-mix surface course.	Yes, see ATC response letter.
15	P74	Drainage	Use of alternative depth of cover for storm drains under pavement.	Yes, see ATC response letter.
19	P73	Structures/ Utilities	Use of modified loading requirements on bridges for utilities.	Yes, see ATC response letter.
20	P73	Structures	Use of varying girder depth for concrete beams.	Yes, see ATC response letter.
22	P73	Structures	Use of uncoated rebar in bridge decks and rails.	Yes, see ATC response letter.

ATC#	Proposal Reference	Topic	Description	Conditions
26	P74	Traffic Operations	Eliminate the use of traffic management center.	None.
27	P74	ITS	Use of exposed ITS conduit near Diamond Interchange	Yes, see ATC response letter.
29	P74	Lighting	Use of extended electrical conduit runs	Yes, see ATC response letter.
31	P74	Structures	Use of AASHTO LFRD design methodology for bridge decks	Yes, see ATC response letter.
34	P74	Structures	Use of modified bridge abutment design	None.

Appendix 3 to Exhibit 2

Schematics

[See attached.]

Appendix 4 to Exhibit 2

Draft Schematic ROW Adjustments

Not used.

Appendix 5 to Exhibit 2

Preliminary Maintenance Management Plan

The Parties agree and understand that this Preliminary Maintenance Management Plan will be superseded by the Maintenance Management Plan submitted and approved in accordance with this Agreement.

(See Attached.)

C.2 OPERATIONS AND MAINTENANCE (O&M) MANAGEMENT AND TECHNICAL SOLUTIONS

ACCOUNTABLE AND COMPREHENSIVE SERVICE | SouthGate's plans for Operations and Maintenance (O&M) Management and Technical Solutions throughout Design and Construction (D&C) and O&M of the SH 183 Project (Project) will provide best-in-class O&M services to ensure project safety, maximize mobility, preserve transportation assets and provide value to TxDOT, system users and the community. Our approach to accountable and comprehensive service has been formulated around our commitment to incorporate the experiences and lessons learned from seasoned personnel representing hundreds of years of combined DOT experience.

SouthGate's O&M team members will leverage their extensive knowledge and experience, shown below in Exhibit C.2-1, to ensure the Project's success.

SouthGate team member Infrastructure Corporation of America (ICA) is a pioneer in the delivery of performance-driven transportation maintenance and currently manages and maintains 3,700 lane miles, 3,187 structures and 164 facilities on behalf of state departments of transportation (DOTs), toll authorities and local governments using a systematic approach to transportation asset management, maintenance and renewal. ICA has demonstrated success in delivering high-quality asset maintenance services involving highly urbanized high traffic environments within the State of Texas.

Exhibit C.2-1 | *O&M Experience*

SouthGate O&M Experience		
President George Bush Turnpike (PGBT)	TxDOT Dallas County 230 highway centerline miles	Harris County Toll Road Authority involving the Sam Houston Tollway, Hardy Toll Road, Westpark, and Fort Bend Tollway
DFW Connector, Grapevine, TX – Maintenance during construction and Capital Maintenance Agreement	Port Mann Highway 1, Vancouver, BC - DBFOM	I-95 Widening and Rehabilitation, Cocoa Beach, FL – 8-year maintenance contract
US 77, Austin, TX – Maintenance during construction, Capital Maintenance Agreement	Sea-to-Sky Highway, Vancouver to Whistler, BC - DBFOM	I-4 Reconstruction, Tampa, FL – 5-year maintenance contract
MoDOT Safe & Sound, 554 Bridges Improvement Program, MO – Design-Build Capital Maintenance	I-25/I-225 Transportation Expansion (T-REX), Denver, CO - Maintenance during construction	San Joaquin Hills Transportation Corridor, Orange County, CA – Maintenance during construction
Goethals Bridge, New York, NY - DBFOM	I-15 Corridor Reconstruction, Salt Lake City, UT – Maintenance during construction	I-229 Corridor Reconstruction, Sioux Falls, SD - Maintenance during construction, 5-year CMA

The following O&M Management Plans and Technical Solutions have been developed to incorporate the experience and lessons learned of seasoned personnel representing hundreds of years of combined DOT experience. SouthGate is committed to meeting TxDOT's project requirements with dedication to public safety, congestion mitigation, commitment to performance, and integration of quality management principles as described throughout the remainder of this section.

C.2.1 O&M MANAGEMENT

SouthGate's efficient and cost-effective management structure includes providing both D&C and O&M services. SouthGate has committed resources and developed processes and procedures to meet or exceed the Project's performance requirements. In addition, we have partnered with O&M subcontractors through the Project's procurement phase to devise an economical Life-Cycle Cost Analysis (LCCA) tailored to meet TxDOT's goals and objectives during D&C as well as during O&M.

SouthGate's experienced management team understands the Project's scope and desired outcomes. We developed two independent O&M estimates, schedules and risk review analyses during the proposal phase, to enhance accuracy and completeness. These two estimates, schedules and risk analyses were then combined, providing TxDOT confidence in our O&M planning.

Our O&M management organization including Key Personnel and other O&M positions is illustrated in Exhibit C.2-2 on the following page.

C.2.1(a) Approach to Providing Safe and Efficient Responses to Maintenance Needs

SouthGate's O&M Safety Plan is based on our D&C Safety Plan and tailored specifically to meet the Project's maintenance requirements.

Safety and Mobility

SouthGate's LCCA process will help meet TxDOT's goals of a safe, reliable transportation system with improved mobility.

The primary goals of the O&M Safety Plan are to preserve and restore the safety of the traveling public, adjacent communities, transportation workers and emergency response personnel throughout the O&M Period. The O&M Safety Plan will be specifically tailored to meet the unique needs of the Project, including:

- Urban environment
- Heavy traffic conditions
- Size and scope
- Coordination with DalTrans and TransVision Traffic Management Centers (TMCs)

The O&M Safety Plan will be consistent with the project-level Safety and Health Plan and will comply with the Technical Provisions (TP) and all applicable regulations and laws. The O&M Safety Plan will provide clear goals and procedures for: Security, Health, Strategies to meet goals, Evaluation of effectiveness, Incorporating lessons learned, O&M safety updates, Incident & emergency response, Incident notification, Employee reporting, Statistical reporting, Hazard prevention, Training, Drug free work zone, and railroad safety.

"Safety: Mission Zero"

SouthGate's safety program has evolved through co-development with TxDOT on the DFW Connector. This partnership has led to development of TxDOT's "Safety: Mission Zero" initiative.

SAFETY PERSONNEL

Our D&C Safety Manager, Larry Parks, transitions to O&M Safety Manager following Substantial Completion. This transition provides continuity and lessons learned to our O&M safety program. What has been working well – such as the Craft Voice in Safety – will continue to be emphasized, and procedures needing correction will be revised and improved.

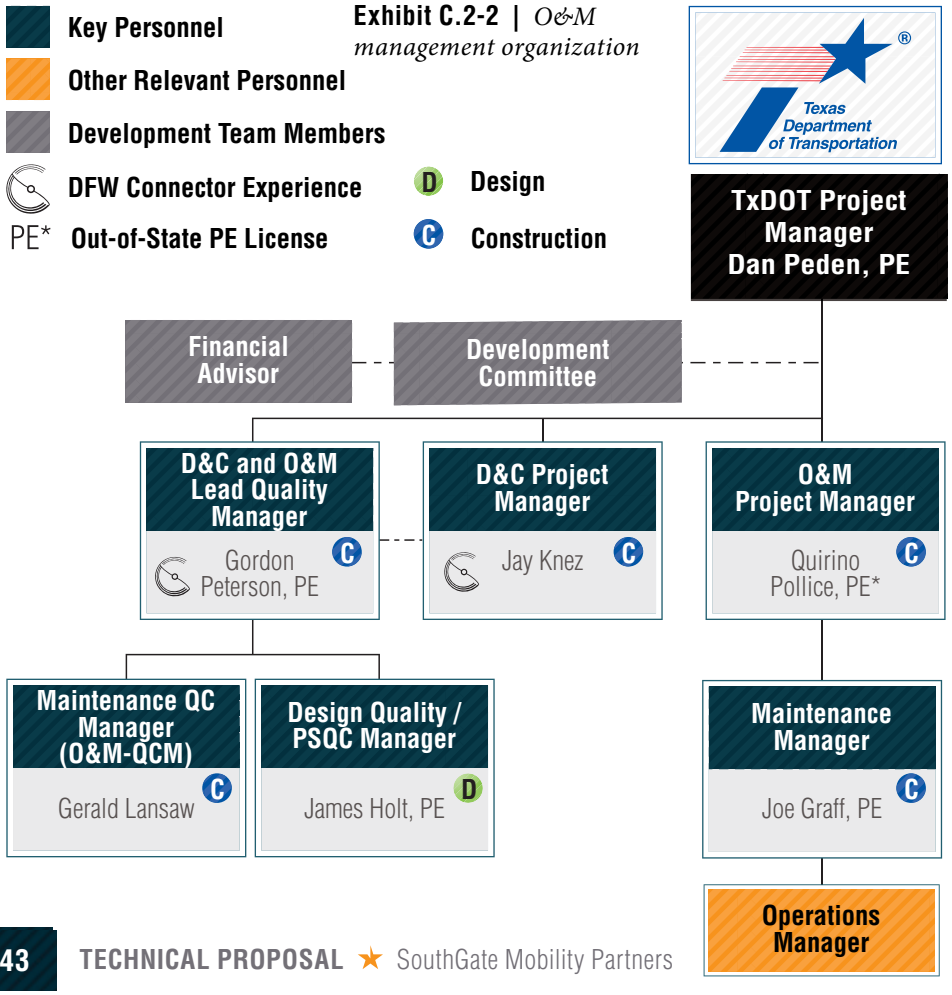

Exhibit C.2-2 | *O&M management organization*

Larry will administer the O&M Safety Plan, reporting directly to and working in close coordination with Quirino Pollice, the O&M Project Manager, to maximize the effectiveness of the safety program. Larry Parks has been previously approved as the D&C/O&M Safety Manager and will maintain all necessary safety credentials, training and time commitments.

SouthGate will assign an Onsite Shift Safety Representative to each shift to assist the O&M Safety Manager in administering the program. The Onsite Shift Safety Representative will have the following credentials:

- 3 years of safety experience
- General competency in O&M safety disciplines
- OSHA 30 hour safety and health training completion
- Current training and certification for CPR and First Aid

The Onsite Shift Safety Representative will work closely with the O&M Safety Manager to ensure that traffic control, incident response, maintenance procedures, communication and reporting of incidents remain in full compliance with the O&M Safety Plan throughout the O&M Period. All personnel including the Onsite Shift Safety representative and O&M Safety Manager are empowered to stop work if needed to preserve project safety, and will be proactive in discussing safety plans, best practices and hazard mitigation strategies with O&M personnel at all levels within the organization. Safety personnel will remain available to O&M workers and will discuss safety concerns, training needs and innovative solutions to improving project safety.

SAFETY TRAINING

Prior to the commencement of O&M services and annually thereafter, training will be conducted for employees, supervisors and managers to ensure the safe and proper execution of our plans for O&M, incident response and emergency operations. Training will include: Project standards policies, Emergency Management Plan; Work Zone Safety and Traffic Control; Maintenance of Traffic, including flaggers; Hazardous materials identification and mitigation; Project-specific traffic control plans; O&M emergency roles and responsibilities; Communications protocol and backup plans; Proper use of personal protective equipment; Emergency contact information for SouthGate personnel, TxDOT, TMC, DPS, CEQ; Site command decisions and National Incident Management System (NIMS); and railroad grade crossing training (only required for select employees working in the immediate vicinity of RR grade crossings).

The effectiveness of the O&M Safety Plan will be evaluated on an annual basis and will be updated as needed to incorporate best practices, lessons learned and additional training programs to maximize the positive impact of SouthGate's Safety Program throughout the term.

Achieving TxDOT's "Safety Mission Zero" initiative on the SH 183 Project

- All incidents are preventable
- Everyone is responsible to stop unsafe work
- Be proactive
- Safety is a team effort

C.2.1(b) Preliminary Operations Management Plan

SouthGate has developed its operations management structure considering the scope of the O&M Work for all components described in the TP. An Operations Management Plan (OMP) for the D&C Period will be developed and submitted to TxDOT 60 days prior to NTP2. The OMP will be continuously updated during the D&C Period as needed to meet requirements. The OMP will be updated to include the operations to be performed after Substantial Completion, and resubmitted as the OMP for the O&M Period at least 60 days prior to service commencement.

OMP IMPLEMENTATION

During the D&C Period, operations management will be the responsibility of the Maintenance Manager, Joe Graff, PE, who will work closely with Jay Knez, D&C Project Manager, to ensure safety and quality and resource requirements are met during construction. The D&C Project Manager will be responsible for overall management of project activities related to design, construction, maintenance and contract administration, including safety and environmental compliance on behalf of SouthGate, following NTP2 until Final Acceptance. The Maintenance Manager will interface with TxDOT, on behalf of SouthGate, in compliance with the Agreement and TP. Both individuals will have direct access to the Development Committee. During the D&C Period, Bill Compton, the independent Construction Quality Assurance Manager (CQAM), will have QA oversight responsibilities and will collaborate and coordinate with the Maintenance Manager, Maintenance QC Manager and D&C Project Manager to ensure quality transition into the O&M Period.

MONITORING PROJECT CONDITIONS AND OPERATIONAL PERFORMANCE

To ensure O&M services comply with expected condition and performance requirements, a rigorous self-monitoring process will be employed to assess the effectiveness of O&M services and compliance with performance criteria, and to identify any Noncompliance Events. Our Maintenance Management Information System (MMIS) will track and document project conditions and performance, using an integrated system of data reporting and analysis, general and specialist inspections, and input from stakeholders and customers.

OMP OBLIGATIONS

SouthGate's approach to meeting OMP Obligations is shown in Exhibit C.2-3 on the following pages.

Exhibit C.2-3 | *OMP Obligations*

Operations Obligations	OMP Procedures and Approach
Staffing and training of O&M personnel	SouthGate will provide sufficient and qualified resources to the Project. The O&M Project Manager will be responsible for the assignment of personnel to meet project requirements. Training will be provided prior to project start to review the preliminary OMP with all staff. Training for personnel will be suited to the Project's needs and regional specifications. Project staff will be trained in project performance requirements, traffic management, incident management procedures and TMUTCD requirements, including the proper installation, maintenance, and removal of traffic control devices. See Section C.2.1(c) and (d) for additional details.
Monitoring the Project's condition and operational performance	O&M services will be tracked and documented using our MMIS, which will include an integrated system of data reporting and analysis, general and specialist inspections, and input from stakeholders and customers. Quarterly audit condition assessments will be performed in compliance with the TP. The O&M Project Manager will be responsible for overall project performance. See Section C.2.1(f) and (g) for additional details, including a list of procedures for monitoring condition and operational performance.
Incident response management and reporting	24/7 emergency response will be provided by our team of emergency response personnel including supervisors, maintenance technicians and specialized personnel including certified bridge inspectors and Texas-registered professional engineers who will work together to restore project safety and mitigate defects immediately. Maintenance personnel will remain available 24 hours per day, 7 days per week, to respond to traffic control issues.
Traffic management and lane closure restrictions	SouthGate will coordinate its traffic management and control, planned maintenance and other O&M work with TxDOT to ensure the optimal effectiveness of traffic management efforts for travelers across the Project. Traffic management activities will be conducted in compliance with the Traffic Management Plan (TMP) and the OMP during the O&M Period. We will minimize lane closures associated with planned maintenance and emergency response operations, and planned lane closures will be performed during non-peak hours in compliance with TP Section 18 Restrictions on Traffic Management, including holiday and time-of-day restrictions.
Emergency preparation, response and recovery, including extreme weather	Emergency services for extreme weather, incidents, and structural issues will emphasize safety for travelers and emergency response workers, and roadway operations will be restored as soon as possible in support of TxDOT's goals for traffic incident management. To provide the highest levels of traffic control support and coordination, maintenance personnel will remain available 24 hours per day, 7 days per week, to respond to traffic control issues. Debriefing sessions will be conducted after major incidents involving the traffic incident response team to identify best practices and opportunities for improvement.
Planning and coordination with affected governmental entities including Emergency Services	SouthGate will deliver proactive and highly effective coordination of pre-event planning and response activities with other entities having safety and operational responsibility for SH 183 and in the immediate vicinity of the Project. This will include coordination with emergency response agencies during planned lane closures to ensure efficient access and to meet response times.
Analysis of vehicular accident patterns to identify and mitigate safety issues	To maximize safety, the O&M Project Manager will conduct an annual review, in coordination with TxDOT, of incidents and crashes associated with the Project corridor to determine the need for modifications and/or improvements to address safety issues.
Corridor management including coordination with TxDOT Toll Operations Division (TOD) and the North Texas Tollway Authority during toll integration and operations	SouthGate will coordinate its traffic management and control, planned maintenance and other O&M work with TxDOT to ensure the optimal effectiveness of traffic management efforts for travelers across the Project. We will actively manage traffic control activities during times of simultaneous maintenance and ongoing construction and will establish traffic control plans to maintain access, mobility with frontage roads and cross streets, and the safe movement of vehicles.
Coordination with TxDOT, DalTrans and TransVision on ITS and hazardous materials spills	SouthGate will coordinate the planning and implementation of Intelligent Transportation Systems (ITS) during the D&C Period with TxDOT and other governmental entities that have roadways within or intersecting the Project. SouthGate will coordinate with TxDOT, DalTrans and TransVision during ITS integration and operations, and will liaison with recognized TMCs during the O&M Period as needed to preserve project safety and traveler mobility.
Project patrolling	The O&M Project Manager will be responsible for the monitoring and detection of Work needs within the O&M limits. Regularly scheduled ROW patrolling will be conducted to proactively maintain the O&M limits. The O&M Manager will assign resources to conduct regular patrols of the O&M limits to detect maintenance items needing corrective action.
Policing	SouthGate will coordinate project policing requirements with the appropriate law enforcement agencies including the Texas Department of Public Safety (DPS) and the Irving, Euless, Dallas and Fort Worth Police.

C.2.1 (c) Preliminary Maintenance Management Plan

The Maintenance Management Plan (MMP) will be implemented by SouthGate's Maintenance Manager. SouthGate has access to an approved MMP from the DFW Connector Capital Maintenance Agreement, which will be expanded to include the SH 183 Project's expanded requirements.

SouthGate's maintenance management approach provides TxDOT a proven maintenance program that:

- Maximizes the effective life cycle of the assets comprising the Project with a preventive maintenance approach
- Provides cost-savings through economies of scale and use of subcontractors
- Reduces risk by meeting predetermined performance standards
- Stimulates local economic development by engaging local subcontractors, including Disadvantaged Business Enterprises (DBEs)
- Provides consistent communication with the client and community stakeholders through a robust and proven customer service program

The MMP delineates a comprehensive approach to routine maintenance to ensure the consistent delivery of performance of all assets in TP Tables 19-4 and 19-5, throughout the Project's Term. Per the TP, SouthGate will submit the MMP to TxDOT for review and approval at least 60 days prior to NTP2. Per the Agreement, the MMP will be resubmitted to TxDOT on or before 60 days after Substantial Completion.

A list of our MMP's relevant activities (including (i) a description of the Work to be performed, (ii) a schedule of the Work to be performed, (iii) the quantity of Work to be performed, and (iv) the value of the Work to be performed), are included as part of our O&M Work Schedule in Appendix D.3 Preliminary Project Baseline Schedule and Preliminary Renewal Work Schedule.

ROUTINE MAINTENANCE

The MMP will include the timing and approach for O&M Work, and the anticipated schedule for planned maintenance during the year. The Maintenance Manager will be responsible for monitoring maintenance conditions and inspection findings throughout the Term, and will make adjustments in the schedule to maintain and repair assets as needed to meet performance requirements. The routine maintenance schedule will include the timing, frequency, scope and nature of routine maintenance activities to be performed annually. The MMP will prescribe the processes and procedures to be followed for each Maintained Element within TP Tables 19-4 and 19-5, including:

- Performance requirements
- Asset condition thresholds triggering action
- Inspection procedures and frequencies
- Routine maintenance procedures for each project asset
- Response times to mitigate hazards and permanently repair defects

See Appendix D.3 Preliminary Project Baseline Schedule and Preliminary Renewal Work Schedule for a comprehensive list of scheduled maintenance activities.

MAINTENANCE MANAGEMENT INFORMATION SYSTEM (MMIS)

SouthGate will use a web-based Maintenance Management Information System (MMIS) to assist in planning and managing maintenance operations. O&M personnel will record inventory, failures, repairs, maintenance activities, Maintained Element condition reports and inspections performed using the MMIS. Information will be reported consistent with MMIS requirements, including the following:

- Maintained Element location using the Texas Reference Marker System (TRMS)
- Geographic Information System (GIS) data accurate to within 1 ft. in 100 ft.
- Control number for bridge class structures and National Bridge Inventory (NBI) sheets
- Asset description
- Date of installation
- Type of failure
- Date and time of failure
- Date and time of response to the site and when returned to service
- Preventive maintenance work
- Scheduled work repair code
- Statistical data on mean time between failure and mean time to repair
- TxDOT function codes for work reported
- Unit of measurement

The MMIS will be fully populated and operational prior to Substantial Completion and will be kept updated and operational for the duration of the Agreement. The Maintenance Manager will be responsible for updating the MMIS. The MMIS will duplicate the success and efficiency of our "real time" field data collection tools used for safety, quality, environmental and equipment maintenance reporting. MMIS data entry and reporting will be accomplished in real time using tablet technologies to improve on the three-day reporting requirement from when a Maintained Element is constructed, installed, maintained, inspected, modified, replaced or removed.

TRACKING DEFICIENCIES AND CORRECTIVE ACTION

Trained inspection teams will categorize deficiencies discovered during inspection through use of a project-specific written deficiency classification matrix. Corrective action work orders will be generated through the MMIS. A backlog of corrective maintenance and repair activities will be populated and monitored in the MMIS. Maintenance crew production will be reported in the MMIS. The O&M Project Manager will verify the satisfactory completion of Work and restoration of asset condition, and will report the satisfactory completion of Work within MMIS. The O&M Project Manager will review MMIS production rates on a weekly and monthly basis to assess the effectiveness of maintenance activities. These reports will be used to discover maintenance trends to determine the need for adjustments in the weekly, monthly and annual maintenance plan to address changing project conditions. They enable us to be proactive in our approach to Routine Maintenance and to minimize defects.

PERFORMANCE REQUIREMENTS AND COMPLIANCE WITH STANDARDS

The O&M Project Manager will use the MMIS to track system conditions, inspection findings and corrective activities on a weekly and monthly basis to ensure that maintenance and repairs are scheduled and successfully completed within the performance timeframes for each Maintained Element. Our MMP will detail inspection and maintenance procedures required to be in compliance with all relevant TxDOT standards and performance requirements. A library of these standards for each Maintained Element will be easily accessible by project personnel and TxDOT via a SharePoint website.

HIGHWAY CONDITION REPORT (HCR) SYSTEM

SouthGate will report highway and weather conditions to TxDOT every morning by 8:15 a.m., and will update the information as needed to TxDOT and to the pertinent web page. Information on highway and weather conditions including the closure of travel in one direction for more than 4 hours, or conditions of hazardous travel and weather-related events such as ice, sleet, snow, floods or high winds that may cause unsafe driving conditions, will be reported.

BRIDGES AND STRUCTURES MAINTENANCE AND INSPECTION

The Project includes a combination of fracture critical and non-fracture critical structures and bridges, and bridge class culverts. Inspections for these will be performed using procedures approved in our MMP, and in TxDOT and National Bridge Inspection Standards (NBIS) requirements.

SouthGate will use a TxDOT-certified bridge inspection firm to provide engineering support required by TP Section 19, including bridge and structures inspection oversight, load ratings and emergency engineering damage assessment and repair design. Our bridge inspection team leaders will be approved by TxDOT, inspectors will be TxDOT certified to conduct inspections, and the approving Professional Engineer will be licensed in Texas and approved by TxDOT. Signed and sealed bridge inspection reports and color copies will be provided within 60 days following completion of each inspection. Bridge inventory, maintenance activity and inspection information will be recorded within the MMIS and the Bridge Management System, and the O&M Project Manager will use the MMIS to track and schedule the inspection of bridges and other structures to maintain compliance with NBIS and TxDOT requirements.

SEVERE WEATHER EVENTS

The O&M Manager will implement a tactical approach to severe weather events that includes monitoring and observation of weather and weather forecasts, proactive deployment of resources and severe weather response methods to minimize delays and hazards resulting from severe weather, including tornados, heavy winds, snow and ice, rain, flooding, fog and wildfires. The MMP will include details on the technical plans, performance standards and response and clearance times associated with severe weather to comply with the TP.

We will have specialized equipment available on site or on standby for mitigating severe weather, including front

end and skid steer loaders, sand trucks, snow plows and all-terrain vehicles. In addition, we will stockpile sand and salt on site during winter months to ensure availability. SouthGate O&M personnel will remain available 24/7 to respond to severe weather events.

RECORD KEEPING AND REPORTING

The MMP establishes procedures for managing records of inspection and maintenance activities, and contains measures to protect sensitive documents and to protect and control the duplication of sensitive records. We will meet early in the process with TxDOT maintenance personnel to verify our methods of tracking and documenting information are compatible with TxDOT's systems for ease of transition following the O&M Period.

Inspection and maintenance records will be retained for the duration of the Term, and will be transferred to TxDOT at the expiration or earlier termination of the Agreement. Inventory and condition assessment records will be capable of integration from our MMIS into TxDOT's system.

MMP QUALITY MANAGEMENT

SouthGate's Maintenance Quality Control Plan (MQCP) in the MMP will include procedures for self-monitoring and reporting incidents, similar to the Construction Quality Control Plan (CQCP) implemented during the D&C Period. TxDOT will perform quarterly audits of the Project's Auditable Sections to verify compliance.

To ensure the highest levels of quality and program effectiveness, the Maintenance QC Manager will conduct an independent review of O&M performance annually, including a comparison of the MMP actual versus planned O&M goals. The findings of this review will be used to identify and adopt process improvements and best maintenance and management practices within an updated MMP.

C.2.1 (d) Approach to O&M Prior to and Following Substantial Completion and During Transition from Beginning of O&M

SouthGate will operate and maintain the Project in a manner that achieves all performance requirements, according to TP Tables 19-3, 19-4 and 19-5, throughout the D&C and O&M Periods.

Team members have already been collaborating on O&M issues to incorporate ease of maintenance and operations proactively within project D&C planning and during prebid LCCA. This high level of collaboration will continue throughout the D&C Period, and will help to ensure the timely and consistent delivery of project performance, and the seamless transition of maintenance activities from the D&C to the O&M Period.

SouthGate's organizational and management structure also simplifies the transition process, because one integrated team is responsible for development, D&C and O&M, with many of the same Key Personnel transitioning from one phase to the next.

To provide the highest levels of coordination and efficiency during the D&C Period, the D&C Project Manager will direct and oversee all O&M functions. O&M activities will be performed by the design-build team members as a part of their daily duties. The Maintenance Manager will provide support to the D&C Project Manager and the design-build team when needed to assist with maintenance planning, inspection and reporting during the D&C Period.

As construction activities come to a close, the O&M Project Manager, Maintenance Manager, D&C Project Manager and TxDOT will continue work together to:

- Conduct a complete inspection of all project assets
- Identify punchlist items and follow up actions prior to Substantial Completion
- Perform initial NBIS inspections to establish a database for structures information
- Verify the accuracy of Record Drawings
- Identify pertinent warranty items
- Establish O&M facilities, procure materials and implement training
- Provide stakeholder outreach to coordinate contact information, traffic management plans and incident response procedures
- Establish local subcontracts including DBE providers

O&M during construction will begin at NTP2 under direction of the D&C Project Manager. The O&M Period will begin following Substantial Completion, under the direction of the O&M Project Manager. All O&M activities will be conducted in accordance with the Safety Plan, MMP and Operations Plans, as reviewed and approved by TxDOT in advance. O&M activities will be planned and executed according to the maintenance schedule beginning on Day 1 of the O&M Period, along with programs for incident response, self-monitoring, customer service and reporting.

C.2.1 (e) Maintenance of Existing Assets During Construction

SouthGate undertook extensive efforts to develop efficiencies and ways to perform operations and routine maintenance during construction. During the construction phase, we will maintain assets within the project right-of-way (ROW), respond to incidents, and operate the Interim Traffic Management System (ITMS). This approach provides a clear delineation between the different responsibilities during the construction phase and will ensure an effective interaction between the parties performing Work.

SouthGate developed an OMP for the construction phase based on a thorough understanding of the project roadway, in-depth knowledge of the proposed design Elements and construction phasing, and awareness of the performance requirements. Element categories will be maintained to the standards as set forth in TP Table 19-4. Our MMP for the construction phase will address maintenance work planning activities for existing assets to be rehabilitated or removed and newly constructed assets. Existing assets will be maintained utilizing short-term maintenance solutions to allow efforts to be focused on generating preventive maintenance schedules and planned long-term maintenance activities to maximize the functional life of new assets. Throughout the construction phase, SouthGate's D&C and O&M Managers will meet weekly to gather and share information pertinent to the O&M Period and to assist with refining work planning.

C.2.1 (f) Self-Monitoring Processes

The O&M Project Manager will implement SouthGate's self-monitoring program to assess compliance with performance criteria. The results of the self-monitoring program will be reported and used in two ways:

- Manage O&M resources and activities to ensure the delivery of project performance
- Document frequencies, procedures and results for regular and specialty inspections, and proactively tracking maintenance trends to minimize deficiencies and corrections in MMIS

The O&M Project Manager is responsible for compliance with the performance criteria and maintenance procedures, manuals, guides and handbooks that are part of the Governing Regulations.

The following self-monitoring activities are used:

- Routine monitoring through regular patrols
- Periodic condition surveys
- Audit inspections
- Specialist inspections (such as pavement condition, NBIS, Annual Mobile Retroreflectivitity Data Collection)
- Customer Service Requests
- Reporting of Compliance

The O&M Project Manager will perform project monitoring to ensure that assets comply with the performance requirements and to detect and correct any noncompliance items within the allotted cure period. Monitoring will be conducted through physical monitoring of the roadway assets.

Routine monitoring of the roadway and associated assets will be conducted on a daily basis by O&M work crews, maintenance supervisors and technicians. SouthGate's O&M team will actively monitor system conditions, including critical safety items such as roadway debris, potholes, guardrail and crash cushion damage, sign damage and drainage function, to detect and correct observed deficiencies on a daily basis. Work needs will be identified, confirmed by maintenance personnel and work orders issued to perform Work.

We will also review, coordinate and approve utility installation requests from utility owners and monitor this work to verify it complies with the applicable permit.

Periodic condition surveys will be conducted for individual assets during day and night as needed to ensure performance, while also meeting all TxDOT requirements for inspection. Assets will be inspected on the frequency needed to meet specific performance requirements and in consideration of the anticipated service life. For example, highway lighting will be inspected at night on a monthly basis, or more frequently when warranted, to maintain a minimum operational level of 90% for highway lighting including overhead, underdeck and sign lighting.

Yearly pavement analyses will be completed per contract requirements. The evaluation of pavement condition will provide insight regarding the pavement condition over time, indicate the effectiveness of maintenance, and help to monitor pavement condition and rehabilitation timing. Asset conditions will be monitored by type to assist in the development of future plans for maintenance and renewal. Please refer to Exhibit C.2-4 for more information on planned maintenance activities.

Quarterly audit condition assessments will be performed in compliance with the TP, and the results of the evaluations will be reported to TxDOT. Putting the condition assessment results to work will be an essential element of our plans to achieve and maintain the desired overall performance. Condition assessment and inspection

results will be used by supervisors and managers in two distinct ways: to assess the effectiveness of maintenance work needs planning, resource management and routine maintenance activities; and to proactively address changes in field conditions while maintaining all performance requirements.

Our MMIS has the ability to assign condition scores by color-coded Elements, so we can easily spot performance threshold indicators. By proactively monitoring these maintenance inspection result trends and indicators, we can then correct issues before they trigger an Element deficiency.

When a deficiency or other non-compliance issue is detected or reported, a work request will be generated within the MMIS. Work requests will be validated by maintenance personnel and then a work order will be generated.

Details on work orders, including date and time information, will be tracked within the MMIS and used to calculate compliance with the performance requirements for timeliness. As work orders are completed, this information will be recorded within the MMIS and will remain available to determine compliance with the performance requirements. SouthGate will comply with TxDOT's required reporting for all maintained elements as prescribed within the Technical Provisions.

Applying Lessons Learned: Proactive Maintenance

On the DFW Connector, project personnel monitored drainage pipes to prevent clogging from sediment. Solutions included adding silt fence at drainage inlets. Another example involved sweeping bridge decks following winter months to prevent sand from clogging deck drains and damaging expansion joints.

QUALITY MANAGEMENT OF SELF-MONITORING PROCESS

The framework and procedures for self-monitoring will be contained within the O&M Quality Management Plan (O&M-QMP), which will be used to evaluate SouthGate's level of performance with respect to TP Tables 19-3, 19-4, and 19-5.

The O&M-QMP will be administered by the Maintenance QC Manager and will include procedures to assess and validate the information that will serve as the basis of O&M performance measurement:

- Data
- Times
- Dates
- Lane closures
- Calculations for Liquidated Damages
- Defect Hazard Event
- Construction Violation Events
- O&M Noncompliance Events
- Noncompliance Points

C.2.1(g) Method of Tracking and Reporting Noncompliance Points During O&M Period

SouthGate will provide an MMIS that (a) interfaces with TxDOT to exchange electronic notices regarding Noncompliance Events; and (b) accurately tracks unavailability events, O&M violations and instances of noncompliance, and Noncompliance Point totals.

SouthGate's self-monitoring processes will be used to determine compliance with the performance criteria and to record details on deviations from the performance criteria, including the time and nature of the noncompliance, that will be used to calculate adjustments to the Monthly Disbursement. Noncompliance Points may be assessed for failures to meet the minimum performance requirements and/or cure periods contained within the following:

- TP Table 19-3 Defect Hazard Category
- TP Table 19-4 Construction Violation Events
- TP Table 19-5 O&M Noncompliance Events

SouthGate will track and notify TxDOT of any lane availability faults, construction O&M violations and construction closures. A summary of these notifications will be included within the O&M Report.

The detection of a Noncompliance Event will generate a work request within the MMIS. Each cure period shall be deemed to start for purposes of assessing Noncompliance Points for Noncompliance Events. After the Noncompliance Event has been satisfactorily addressed/corrected, this will be reported to the MMIS. If the event is not cured within the allotted cure period, TxDOT will be notified in writing as soon as possible, and no later than 7 days, and the O&M Project Manager will continue efforts to address/correct the event.

Once the cure has been addressed/corrected, the MMIS will be updated, and the Maintenance Manager will provide written notice to TxDOT with the following information: identification of the noncompliance, statement indicating that the cure has been completed, brief description of the cure, time taken to cure, along with a description of any

Exhibit C.2-4 | *Performance Requirements and Procedures for Typical Planned Maintenance Activities*

Procedure	Table 19-3 Tech. Provisions	Table 19-4 Tech. Provisions	Table 19-5 Tech. Provisions	TxDOT Maintenance Mgmt. Manual	TxDOT Maintenance Ops. Manual	TxDOT Roadside Vegetation Mgmt. Manual	TxDOT Herbicide Ops. Manual	National Bridge Inspection Standards	TxDOT Special Spec 8094 Mobile Retroreflectivity	TxDOT Sign Crew Field Report Manual	TxDOT Material Producers List	TEX-1001-S	ASTM E274M-11	TxDOT Snow and Ice Control Manual	TxDOT Highway Condition Report (HCR)	TMUTCD	FHWA Emergency Relief Manual	FEMA Public Assistance Guide
Pavement	●	●	●	●	●	●					●	●	●			●		
Debris patrolling	●	●	●	●	●						●					●		
Graffiti removal		●	●	●	●						●					●		
Mowing		●	●	●	●	●					●					●		
Litter Removal		●	●	●	●	●					●					●		
Herbicide		●	●	●	●	●	●				●					●		
Sweeping		●	●	●	●						●					●		
Highway Lighting Inspection & Maintenance	●	●	●	●	●						●					●		
Drainage	●	●	●	●	●						●					●		
Structures	●	●	●	●	●			●			●					●		
Pavement Markings, Object Markers & Delineators		●	●	●	●				●		●					●		
Guardrail, Safety Barriers & Impact Attenuators	●	●	●	●	●						●					●		
Traffic Signs	●	●	●	●	●					●	●					●		
Gates		●	●	●	●						●					●		
Fences, Walls and Sound Abatement		●	●	●	●						●					●		
Concrete Sidewalk & Pedestrian curb ramps		●	●	●	●						●					●		
Snow & Ice		●	●	●	●						●			●	●	●		
Incident Response and Emergency Management	●	●	●	●	●			●			●			●	●	●	●	●

modifications to the PMP and QA/QC Plans to protect against future similar noncompliance.

Noncompliance Points will be calculated based on whether or not SouthGate or TxDOT initiated notification of the Noncompliance Event, time taken to cure the event and other information referenced within the TP and the Agreement. The assessment of Noncompliance Points will be recorded within the MMIS for compliance reporting purposes.

SouthGate will provide TXDOT with the data needed to update its system in electronic and hard copy format on a monthly basis. The information will be obtained from the project MMIS where we will plan, manage and report on the completion of maintenance activities and other Work. Information reported includes reporting of the quantities of completed work by MMIS-designated activity numbers, units of work and maintenance area.

We have been collecting, managing and reporting a wide variety of information to DOTs since 2000, including MMIS data, structures inspection and inventory, asset condition and inventory, and customer service data. We understand TxDOT's data needs and the importance of data accuracy and completeness. SouthGate will work with TXDOT to provide a seamless transfer of information, and is committed to working with TXDOT to provide project MMIS data in a convenient and useful form.

EXHIBIT 3

FEDERAL REQUIREMENTS

Exhibit Description	No. of Pages
Attachment 1 – Federal Requirements for Federal-Aid Construction Projects	2
Attachment 2 – FHWA Form 1273	24
Attachment 3 – Federal Prevailing Wage Rate	4
Attachment 4 − Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)	6
Attachment 5 – Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)	5
Attachment 6 – Certification Regarding Use of Contract Funds for Lobbying	1
Attachment 7 – Compliance with Buy America Requirements	2
Attachment 8 – Certification of Nondiscrimination in Employment	1
Attachment 9 – On-the-Job Training Program for Design-Build and Comprehensive Development Agreement Projects	4
Attachment 10 – Important Notice to Contractors	1
Attachment 11 – Nondiscrimination	2

ATTACHMENT 1 TO EXHIBIT 3

FEDERAL REQUIREMENTS FOR FEDERAL-AID CONSTRUCTION PROJECTS

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

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

(b) "contractor", "prime contractor", "bidder" "Federal-aid construction contractor", "prospective first tier participant" or First Tier Participant such references shall be construed to mean Developer or its authorized representative;

(c) "contract", "prime contract", Federal-aid construction contract" or "design-build contract" such references shall be construed to mean the Development Agreement between Developer and TxDOT for the Project;

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

(e) "department", "agency", "department or agency with which this transaction originated" or "contracting agency" such references shall be construed to mean TxDOT, except where a different department or agency or officer is specified.

PERFORMANCE OF PREVIOUS CONTRACT. — In addition to the provisions in Section II, "Nondiscrimination," and Section VI, "Subletting or Assigning the Contract," of the Form 1273 required contract provisions, Developer shall 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 VI of the required contract provisions unless such request is accompanied by the CERTIFICATION referred to above, executed by the proposed subcontractor.

NON-COLLUSION PROVISION. — The provisions in this section are applicable to all contracts except contracts for Federal Aid Secondary Projects. Title 23, United States Code, Section 112, requires as a condition precedent to approval by the Federal Highway Administrator

of the contract for this work that each bidder file a sworn statement executed by, or on behalf of, the person, firm, association, or corporation to whom such contract is to be awarded, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted bid. A form to make the non-collusion affidavit statement required by Section 112 as a certification under penalty of perjury rather than as a sworn statement as permitted by 28 U.S.C., Sec. 1746, is included in the Proposal.

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

CONVICT PRODUCED MATERIALS

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

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

ACCESS TO RECORDS

a. As required by 49 CFR 18.36(i)(10), Developer and its subcontractors shall allow FHWA and the Comptroller General of the United States, or their duly authorized representatives, access to all books, documents, papers, and records of Developer and subcontractors which are directly pertinent to any grantee or subgrantee contract, for the purpose of making audit, examination, excerpts, and transcriptions thereof. In addition, as required by 49 CFR 18.36(i)(11), Developer and its subcontractors 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 Subcontract at each tier, without modification except as appropriate to identify the subcontractor who will be subject to its provisions.

ATTACHMENT 2 TO EXHIBIT 3

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

FHWA Form 1273

[See attached.]

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

I. General
II. Nondiscrimination
III. Nonsegregated Facilities
IV. Davis-Bacon and Related Act Provisions
V. Contract Work Hours and Safety Standards Act Provisions
VI. Subletting or Assigning the Contract
VII. Safety: Accident Prevention
VIII. False Statements Concerning Highway Projects
IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
X. Compliance with Government wide Suspension and Debarment Requirements
XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, 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.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of $10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding $10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633. The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

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, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) 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 provisions of the Americans with 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 contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its 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, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program 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 minorities and women.

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 minorities and women 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 minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women 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, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such 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 its 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 their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

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. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

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 employees who are minorities and women 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 good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. 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 good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith 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 contracting agency 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 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 minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. 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 contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities

unless to do so would cause an undue hardship.

9. 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. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. 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 contracting agency deems appropriate.

11. 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 the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

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

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

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

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency 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. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of $10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding $2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.
The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics 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 issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, 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 29 CFR 5.5(a)(4). 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. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH–1321) 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.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

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

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), 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 Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The 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.

(3) In the event the contractor, the laborers or mechanics to be employed in the 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. The Wage and Hour 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.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. 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 shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as 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.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor 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, so 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 contracting agency 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.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of 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. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) 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 shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full

social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or 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 provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each 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 Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) 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 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, 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 FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action 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.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

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 U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or 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 Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen 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 worker 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 on 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 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's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

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 journeymen 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 determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

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 U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman 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 wage rate on the wage determination which provides for less than full fringe benefits for apprentices. 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.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor 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. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. 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.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower

tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 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 U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the 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 or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum

of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys 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 (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

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 contracting agency. 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 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased 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 or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
(2) the prime contractor remains responsible for the quality of the work of the leased employees;
(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of

compliance and all other Federal regulatory requirements.

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 or propose 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 VI 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 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 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 contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

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 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. 3704).

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.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

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, Form FHWA-1022 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:

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 under this title or imprisoned not more than 5 years or both."

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

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor,

as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

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

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost $25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1**. Instructions for Certification – First Tier Participants:**

a. By signing and submitting this proposal, the prospective first tier 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 first tier 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 first tier 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 contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier 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," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction

with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first 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 entering into this transaction.

g. The prospective first tier 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 Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold.

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 is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (https://www.epls.gov/), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective 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.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-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;

(3) 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 (a)(2) of this certification; and

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

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

2. **Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost $25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier 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,” “participant,” “person,” “principal,” and “voluntarily excluded,” as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. “First Tier Covered Transactions” refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). “Lower Tier Covered Transactions” refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). “First Tier Participant” refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). “Lower Tier Participant” refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

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 exceeding the $25,000 threshold.

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 is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (https://www.epls.gov/), which is compiled by the General Services Administration.

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.

* * * * *

XI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION--LOWER TIER PARTICIPANTS:

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 participating in covered transactions 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.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is 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 its bid or proposal that the participant 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 A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

ATTACHMENT 3 TO EXHIBIT 3

FEDERAL PREVAILING WAGE RATE

[See attached.]

The wage rates listed are those predetermined by the Secretary of Labor and State Statue to be the minimum wages paid. To determine the applicable wage rate zone, a list entitled "TEXAS COUNTIES IDENTIFIED BY WAGE RATE ZONES" is provided in the contract. Any wage rate that is not listed must be submitted to the Engineer for approval. IMPORTANT NOTICE FOR STATE PROJECTS; only the controlling wage rate zone applies to the contract. Effective 1-4-2013

CLASS. #	CLASSIFICATION DESCRIPTION	ZONE TX07 1/4/13	ZONE TX08 1/4/13	ZONE TX11 1/4/13	ZONE TX12 1/4/13	ZONE TX14 1/4/13	ZONE TX16 1/4/13	ZONE TX18 1/4/13	ZONE TX34 1/4/13	ZONE TX35 1/4/13	ZONE TX37 1/4/13	ZONE TX38 1/4/13	ZONE TX40 1/4/13	ZONE TX41 1/4/13	ZONE TX54 1/4/13	ZONE TX56 1/4/13	ZONE TX63 1/4/13
1428	Agricultural Tractor Operator						$12.69					$12.35			$11.75		
1300	Asphalt Distributor Operator	$14.87	$13.48	$13.88			$15.55	$15.72	$13.28	$15.32	$15.62	$14.36	$14.25	$14.03	$13.75	$14.06	$14.40
1303	Asphalt Paving Machine Operator	$13.40	$12.25	$12.35	$13.87		$14.36	$14.20	$13.26	$13.99	$14.68	$12.92	$13.44	$12.53	$14.00	$14.32	$12.99
1106	Asphalt Raker	$12.28	$10.61	$12.02	$14.21		$12.12	$11.64	$11.44	$12.69	$12.05	$11.34	$11.67	$11.40	$12.59	$12.36	
1112	Batching Plant Operator, Asphalt																
1115	Batching Plant Operator, Concrete																
1214	Blaster																
1615	Boom Truck Operator						$18.36										
1444	Boring Machine Operator																
1305	Broom or Sweeper Operator	$11.21	$10.33	$10.08			$11.04	$11.62		$11.74	$11.41	$10.30		$10.23	$10.60	$12.68	$11.05
1144	Communications Cable Installer																
1124	Concrete Finisher, Paving and Structures	$13.55	$12.46	$13.16	$12.85		$12.56	$12.77	$12.44	$14.12	$13.04	$13.38		$12.80	$12.79	$12.98	$13.32
1318	Concrete Pavement Finishing Machine Operator						$15.48			$16.05		$19.31				$13.07	
1315	Concrete Paving, Curing, Float, Texturing Machine Operator											$16.34				$11.71	
1333	Concrete Saw Operator									$14.48	$17.33					$13.99	
1399	Concrete/Gunite Pump Operator																
1344	Crane Operator, Hydraulic 80 tons or less						$18.36			$18.12	$18.04	$20.21			$18.63	$13.86	
1345	Crane Operator, Hydraulic Over 80 Tons																
1342	Crane Operator, Lattice Boom 80 Tons or Less	$16.82	$14.39	$13.85			$15.87			$17.27		$14.67			$16.42	$14.97	
1343	Crane Operator, Lattice Boom Over 80 Tons						$19.38			$20.52		$17.49			$25.13	$15.80	
1306	Crawler Tractor Operator	$13.96	$16.63	$13.62			$15.67			$14.07	$13.15	$13.38			$14.60	$13.68	$13.50
1351	Crusher or Screen Plant Operator																
1446	Directional Drilling Locator						$11.67										
1445	Directional Drilling Operator						$17.24										
1139	Electrician	$20.96		$19.87			$26.35		$20.27	$19.80		$20.92				$27.11	
1347	Excavator Operator, 50,000 pounds or less	$13.46	$12.56	$13.67			$12.88	$14.38	$13.49	$17.19		$13.88			$14.09	$12.71	$14.42
1348	Excavator Operator, Over 50,000 pounds		$15.23	$13.52			$17.71			$16.99	$18.80	$16.22				$14.53	
1150	Flagger	$9.30	$9.10	$8.50		$8.81	$9.45	$8.70		$10.06	$9.71	$9.03		$9.08	$9.90	$10.33	$8.10
1151	Form Builder/Setter, Structures	$13.52	$12.30	$13.38	$12.91	$12.71	$12.87	$12.38	$12.26	$13.84	$12.98	$13.07	$13.61	$12.82	$14.73	$12.23	$12.25
1160	Form Setter, Paving & Curb	$12.36	$12.16	$13.93	$11.83	$10.71	$12.94			$13.16	$12.54	$11.33	$10.69		$13.33	$12.34	
1360	Foundation Drill Operator, Crawler Mounted									$17.99						$17.43	
1363	Foundation Drill Operator, Truck Mounted		$16.86	$22.05			$16.93			$21.07	$20.20	$20.76		$17.54	$21.39	$15.89	
1369	Front End Loader Operator, 3 CY or Less	$12.28	$13.49	$13.40			$13.04	$13.15	$13.29	$13.69	$12.64	$12.89			$13.51	$13.32	$12.17
1372	Front End Loader Operator, Over 3 CY	$12.77	$13.69	$12.33			$13.21	$12.86	$13.57	$14.72	$13.75	$12.32			$13.19	$13.17	
1329	Joint Sealer																
1172	Laborer, Common	$10.30	$9.86	$10.08	$10.51	$10.71	$10.50	$10.24	$10.58	$10.72	$10.45	$10.30	$10.25	$10.03	$10.54	$11.02	$10.15
1175	Laborer, Utility	$11.80	$11.53	$12.70	$12.17	$11.81	$12.27	$12.11	$11.33	$12.32	$11.80	$11.53	$11.23	$11.50	$11.95	$11.73	$12.37
1346	Loader/Backhoe Operator	$14.18	$12.77	$12.97	$15.68		$14.12			$15.18	$13.58	$12.87		$13.21	$14.13	$14.29	

CLASS. #	CLASSIFICATION DESCRIPTION	ZONE TX07 1/4/13	ZONE TX08 1/4/13	ZONE TX11 1/4/13	ZONE TX12 1/4/13	ZONE TX14 1/4/13	ZONE TX16 1/4/13	ZONE TX18 1/4/13	ZONE TX34 1/4/13	ZONE TX35 1/4/13	ZONE TX37 1/4/13	ZONE TX38 1/4/13	ZONE TX40 1/4/13	ZONE TX41 1/4/13	ZONE TX54 1/4/13	ZONE TX56 1/4/13	ZONE TX63 1/4/13
1187	Mechanic	$20.14	$15.47	$17.47			$17.10			$17.68	$18.94	$18.58		$16.61	$18.46	$16.96	
1380	Milling Machine Operator	$15.54	$14.64	$12.22			$14.18			$14.32	$14.35	$12.86			$14.75	$13.53	
1390	Motor Grader Operator, Fine Grade	$17.49	$16.52	$16.88			$18.51	$16.69	$16.13	$17.19	$18.35	$17.07	$17.74	$17.47	$17.08	$15.69	$20.01
1393	Motor Grader Operator, Rough	$16.15	$14.62	$15.83		$17.07	$14.63	$18.50		$16.02	$16.44	$15.12		$14.47	$17.39	$14.23	$15.53
1413	Off Road Hauler			$10.08			$11.88			$12.25		$12.23			$13.00	$14.60	
1196	Painter, Structures						$18.34						$21.29			$18.62	
1396	Pavement Marking Machine Operator	$16.42		$13.10			$19.17	$12.01		$13.63	$14.60	$13.17		$16.65	$10.54	$11.18	
1443	Percussion or Rotary Drill Operator																
1202	Piledriver															$14.95	
1205	Pipelayer		$11.87	$14.64			$12.79		$11.37	$13.24	$12.66	$13.24	$11.17	$11.67		$12.12	
1384	Reclaimer/Pulverizer Operator	$12.85					$12.88			$11.01		$10.46					
1500	Reinforcing Steel Worker	$13.50	$14.07	$17.53			$14.00			$16.18	$12.74	$15.83		$17.10		$15.15	
1402	Roller Operator, Asphalt	$10.95		$11.96			$12.78	$11.61		$13.08	$12.36	$11.68			$11.71	$11.95	$11.50
1405	Roller Operator, Other	$10.36		$10.44			$10.50	$11.64		$11.51	$10.59	$10.30		$12.04	$12.85	$11.57	
1411	Scraper Operator	$10.61	$11.07	$10.85			$12.27		$11.12	$12.96	$11.88	$12.43		$11.22	$13.95	$13.47	
1417	Self-Propelled Hammer Operator																
1194	Servicer	$13.98	$12.34	$14.11			$14.51	$15.56	$13.44	$14.58	$14.31	$13.83		$12.43	$13.72	$13.97	
1513	Sign Erector																
1708	Slurry Seal or Micro-Surfacing Machine Operator																
1341	Small Slipform Machine Operator									$15.96							
1515	Spreader Box Operator	$12.60		$13.12			$14.04			$14.73	$13.84	$13.68		$13.45	$11.83	$13.58	
1705	Structural Steel Welder															$12.85	
1509	Structural Steel Worker						$19.29									$14.39	
1339	Subgrade Trimmer																
1143	Telecommunication Technician																
1145	Traffic Signal/Light Pole Worker						$16.00										
1440	Trenching Machine Operator, Heavy						$18.48										
1437	Trenching Machine Operator, Light																
1609	Truck Driver Lowboy-Float	$14.46	$13.63	$13.41	$15.00	$15.93	$15.66			$16.24	$16.39	$14.30	$16.62	$15.63	$14.28	$16.03	
1612	Truck Driver Transit-Mix									$14.14							
1600	Truck Driver, Single Axle	$12.74	$10.82	$10.75			$11.79	$13.53	$13.16	$12.31	$13.40	$10.30	$11.61		$11.97	$11.46	
1606	Truck Driver, Single or Tandem Axle Dump Truck	$11.33	$14.53	$11.95			$11.68		$14.06	$12.62	$11.45	$12.28		$13.08	$11.68	$11.48	$11.10
1607	Truck Driver, Tandem Axle Tractor with Semi Trailer	$12.49	$12.12	$12.50			$12.81	$13.16		$12.86	$16.22	$12.50			$13.80	$12.27	
1441	Tunneling Machine Operator, Heavy																
1442	Tunneling Machine Operator, Light																
1706	Welder		$14.02				$15.97		$13.74	$14.84					$13.78		
1520	Work Zone Barricade Servicer	$10.30	$12.88	$11.46	$11.70		$11.85	$10.77		$11.68	$12.20	$11.22	$11.51	$12.96	$10.54	$11.67	

Notes:

Any worker employed on this project shall be paid at the rate of one and one half (1-1/2) times the regular rate for every hour worked in excess of forty (40) hours per week.

The titles and descriptions for the classifications listed here are further detailed in the AGC of Texas' *Standard Job Classifications and Descriptions for Highway, Heavy, Utilities, and Industrial Construction in Texas*. AGC will make it available on its Web site for any contractor.

TEXAS COUNTIES IDENTIFIED BY
WAGE RATE ZONES: 7, 8, 11, 12, 14, 16, 18, 34, 35, 37, 38, 40, 41, 54, 56, 63

County Name	Zone	County Name	Zone	County Name	Zone	County Name	Zone
Anderson	38	Donley	54	Karnes	37	Reagan	54
Andrews	54	Duval	41	Kaufman	35	Real	54
Angelina	38	Eastland	54	Kendall	16	Red River	38
Aransas	40	Ector	7	Kenedy	41	Reeves	18
Archer	35	Edwards	18	Kent	54	Refugio	37
Armstrong	7	El Paso	34	Kerr	37	Roberts	54
Atascosa	16	Ellis	35	Kimble	54	Robertson	16
Austin	56	Erath	38	King	54	Rockwall	35
Bailey	54	Falls	38	Kinney	18	Runnels	54
Bandera	16	Fannin	38	Kleberg	37	Rusk	11
Bastrop	16	Fayette	37	Knox	54	Sabine	38
Baylor	54	Fisher	54	Lamar	38	San Augustine	38
Bee	37	Floyd	54	Lamb	54	San Jacinto	56
Bell	16	Foard	54	Lampasas	16	San Patricio	40
Bexar	16	Fort Bend	56	LaSalle	41	San Saba	54
Blanco	37	Franklin	38	Lavaca	37	Schleicher	54
Borden	54	Freestone	38	Lee	37	Scurry	54
Bosque	38	Frio	37	Leon	38	Shackelford	54
Bowie	11	Gaines	54	Liberty	56	Shelby	38
Brazoria	56	Galveston	56	Limestone	38	Sherman	54
Brazos	16	Garza	54	Lipscomb	54	Smith	11
Brewster	18	Gillespie	37	Live Oak	37	Somervell	38
Briscoe	54	Glasscock	54	Llano	37	Starr	41
Brooks	41	Goliad	40	Loving	54	Stephens	54
Brown	54	Gonzales	37	Lubbock	7	Sterling	54
Burleson	16	Gray	54	Lynn	54	Stonewall	54
Burnet	37	Grayson	35	Madison	38	Sutton	18
Caldwell	16	Gregg	11	Marion	38	Swisher	54
Calhoun	40	Grimes	38	Martin	54	Tarrant	35
Callahan	35	Guadalupe	16	Mason	37	Taylor	7
Cameron	8	Hale	54	Matagorda	37	Terrell	18
Camp	38	Hall	54	Maverick	41	Terry	54
Carson	7	Hamilton	38	McCulloch	54	Throckmorton	54
Cass	38	Hansford	54	McLennan	16	Titus	38
Castro	54	Hardeman	54	McMullen	41	Tom Green	7
Chambers	56	Hardin	56	Medina	16	Travis	16
Cherokee	38	Harris	56	Menard	54	Trinity	38
Childress	54	Harrison	63	Midland	7	Tyler	38
Clay	35	Hartley	54	Milam	38	Upshur	11
Cochran	54	Haskell	54	Mills	54	Upton	54
Coke	54	Hays	16	Mitchell	54	Uvalde	41
Coleman	54	Hemphill	54	Montague	54	Val Verde	18
Collin	35	Henderson	38	Montgomery	56	Van Zandt	38
Collingsworth	54	Hidalgo	8	Moore	54	Victoria	14
Colorado	37	Hill	38	Morris	38	Walker	38
Comal	16	Hockley	54	Motley	54	Waller	56
Comanche	54	Hood	38	Nacogdoches	38	Ward	54
Concho	54	Hopkins	38	Navarro	38	Washington	38
Cooke	54	Houston	38	Newton	38	Webb	8
Coryell	16	Howard	54	Nolan	54	Wharton	37
Cottle	54	Hudspeth	18	Nueces	40	Wheeler	54
Crane	54	Hunt	35	Ochiltree	54	Wichita	12
Crockett	18	Hutchinson	54	Oldham	54	Wilbarger	54
Crosby	7	Irion	7	Orange	56	Willacy	41
Culberson	18	Jack	38	Palo Pinto	38	Williamson	16
Dallam	54	Jackson	37	Panola	38	Wilson	16
Dallas	35	Jasper	38	Parker	35	Winkler	54
Dawson	54	Jeff Davis	18	Parmer	54	Wise	35
Deaf Smith	54	Jefferson	56	Pecos	18	Wood	38

Delta	35	Jim Hogg	41	Polk	38	Yoakum	54
Denton	35	Jim Wells	37	Potter	7	Young	54
DeWitt	37	Johnson	35	Presidio	18	Zapata	41
Dickens	54	Jones	35	Rains	38	Zavala	41
Dimmit	41			Randall	7		

ATTACHMENT 4 TO EXHIBIT 3

SPECIAL PROVISION

000---006

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

1. As used in these specifications:

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

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

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

   d. "Minority" includes:

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

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

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

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

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

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

participating in the 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 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 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 Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

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

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

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

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

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

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

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

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

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

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

g. Review, at least annually, the company'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 recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

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

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

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

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

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or

laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

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

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

ATTACHMENT 5 TO EXHIBIT 3

SPECIAL PROVISION

000---004

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 Bidder'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 the Department within 10 working 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 the Department 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
Kenedy	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	Wise	18.2
Rusk	22.5	Wood	22.5
Sabine	22.6	Yoakum	19.5
San Augustine	22.5	Young	11.0
San Jacinto	27.4	Zapata	49.4
San Patricio	41.7	Zavala	49.4
San Saba	20.0		
Schleicher	20.0		
Scurry	10.9		
Shackelford	10.9		
Shelby	22.5		
Sherman	11.0		
Smith	23.5		
Somervell	17.2		
Starr	72.9		
Stephens	10.9		
Sterling	20.0		
Stonewall	10.9		
Sutton	20.0		
Swisher	11.0		
Tarrant	18.2		
Taylor	11.6		
Terrell	20.0		
Terry	19.5		
Throckmorton	10.9		
Titus	20.2		
Tom Green	19.2		
Travis	24.1		
Trinity	27.4		
Tyler	22.6		
Upshur	22.5		
Upton	18.9		
Uvalde	49.4		
Val Verde	49.4		
Van Zandt	17.2		
Victoria	27.4		
Walker	27.4		
Waller	27.3		
Ward	18.9		
Washington	27.4		

ATTACHMENT 6 TO EXHIBIT 3

CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

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

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

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

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

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

[Note: Pursuant to 31 U.S.C. §1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to

a civil penalty of not less than $10,000 and not more than $100,000 for each expenditure or failure.]

ATTACHMENT 7 TO EXHIBIT 3

COMPLIANCE WITH BUY AMERICA REQUIREMENTS

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

Concurrently with execution of the Agreement, Developer has completed and submitted, or shall complete and submit, to TxDOT a Buy America Certificate, in format below. After submittal, Developer is bound by its original certification.

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

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

BUY AMERICA CERTIFICATE

The undersigned certifies on behalf of itself and all proposed Subcontractors (at all tiers) that only domestic steel and iron will be used in the Project.

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

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

C. 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.

PROPOSER	
SIGNATURE	
NAME (printed or typed)	
TITLE	
DATE	

ATTACHMENT 8 TO EXHIBIT 3

2004 Specifications

SPECIAL PROVISION

000---009

Certification of Nondiscrimination in Employment

By signing this proposal, the bidder certifies that he has participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Orders 10925, 11114, or 11246, or if he has not participated in a previous contract of this type, or if he has had previous contract or subcontracts and has not filed, he will file with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

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

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

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

ATTACHMENT 9 TO EXHIBIT 3

SPECIAL PROVISION

On-the-Job Training Program for
Design - Build and Comprehensive Development Agreement Projects

This training special provision is the Department's implementation of 23 U.S.C. 140 (a). The primary objective of this provision is to train and upgrade minorities and women toward journey worker status. This training commitment is not intended and shall not be used to discriminate against any applicant for training, whether a member of a minority group or not.

As part of Developer's equal employment opportunity affirmative action program, training shall be provided as follows:

1. The Developer shall ensure that on-the-job training (OJT) aimed at developing full journey worker status in the type of trade or job classification involved is provided.

2. The Department has assigned a project-specific trainee goal in accordance with the following guidelines as set forth in 23 C.F.R.§230.111:

   1) Dollar value of the construction services contract;
   2) Duration of the construction work activity;
   3) Geographic location;
   4) Availability of minorities, women, and disadvantaged for training;
   5) The potential for effective training;
   6) Type of work;
   7) Total normal work force that the average proposer could be expected to use;
   8) The need for additional journeymen in the area;
   9) Recognition of the suggested minimum goal for the State; and
   10) A satisfactory ratio of trainees to journeymen expected to be on Developer's work force during normal operations.

Construction Cost Estimate		
From	**To**	**Trainees**
$0	$9,999,999.99	0
$10,000,000	$19,999,999.99	1
$20,000,000	$39,999,999.99	2
$40,000,000	$59,999,999.99	3
$60,000,000	$79,999,999.99	4
$80,000,000	$99,999,999.99	5
$100,000,000	$119,999,999.99	6
Thereafter for each increment of $20 million, goal is increased by one trainee		

3. The OJT program trainee goal for this project is __43__ trainees.

4. The Developer will have fulfilled its responsibilities under this provision when acceptable training has been provided to the number of trainees assigned to this project.

5. In the event that Developer subcontracts a portion of the contract work, it shall determine if any of the trainees are to be trained by the subcontractor. The Developer should insure that this training special provision is made applicable to such subcontract. However, Developer shall retain the primary responsibility for meeting the training requirements imposed by this special provision.

6. The Developer shall make every effort to ensure minorities and women are enrolled and trained in the program. The Developer shall conduct systematic and direct recruitment through public and private sources likely to yield minority and women trainees to the extent that such persons are available within a reasonable area of recruitment.

7. It is the intention of this provision that training is to be provided in the construction crafts. Training is permissible in lower level management positions such as office engineers, estimators, timekeepers, etc., where the training is oriented toward construction applications. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

8. The Department and the Federal Highway Administration (FHWA) shall approve a training program if it meets the equal employment opportunity obligations of Developer and aims to train and upgrade employees to journey worker status.

9. The Department's OJT Program has been designed to ensure that the trainee consistently receives the level and quality of training necessary to perform as a journey worker in his/her respective skilled trade classification. Standard training programs for each skilled construction trade classification are located in the OJT program manual.

10. Apprenticeship programs registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or training programs approved but not necessarily sponsored by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training shall also be considered acceptable provided the program is being administered in a manner consistent with the equal employment obligations of Federal-aid highway construction contracts.

11. The number of trainees shall be distributed among the work classifications on the basis of Developer's needs and the availability of journey worker in the various classifications.

12. No employee shall be employed as a trainee in any classification in which he or she has successfully completed a training course leading to journey worker status or in which he or she has been employed as a journey worker. The Developer may satisfy this requirement by including appropriate questions in the employee application or by other suitable means.

Regardless of the method used, Developer's records should document the findings in each case.

13. At or before contract execution, Developer must submit the Contractor OJT Plan form to the Department's Office of Civil Rights (OCR). The plan shall specify how Developer intends to satisfy its goal by including the following information: the type of apprentice or training program, number of trainees, type of training, and length of training.

14. The trainee(s) shall begin training on the project after start of work and remain on the project as long as training opportunities exist or until the training is completed.

15. The trainees will be paid at minimum, 60 percent of the appropriate journey worker's rate specified in the contract for the first half of the training period, 75 percent for the third quarter of the training period, and 90 percent for the last quarter of the training period. However, if the apprentices or trainees are enrolled in another program approved by the Department of Labor or other agency, such appropriate rates shall apply.

16. The OCR must approve all proposed apprentices and trainees before training begins. The Developer must submit the Federal OJT Enrollment Form in order for training to be counted toward the project goal and be eligible for reimbursement. The Developer shall provide each trainee with a copy of the training program he or she will follow.

17. On a monthly basis, Developer shall submit the Federal OJT Monthly Reporting Form to the Department's Strategic Projects office(s) and the OCR. The monthly reporting form will include the number of hours trained and training status. If a trainee is terminated, Developer is required to make a good faith effort to replace the trainee within 30 calendar days of the termination.

18. The Developer shall provide each trainee with a certification showing the type and length of training satisfactorily completed.

19. If requested, Developer may be reimbursed 80 cents per hour of training for each trainee working on this project and whose participation towards the OJT project goal has been approved.

    This reimbursement will be made regardless of whether Developer receives additional training program funds from other sources, provided such other program requirements do not specifically prohibit Developer from receiving other reimbursement. Reimbursement for offsite training indicated above may only be made to Developer if the trainees are concurrently employed on a federal-aid project and when Developer: contributes to the cost of the training, or provides the instruction to the trainee, or pays the trainee's wages during the offsite training period.

    No payment shall be made to Developer if either the failure to provide the required training or the failure to hire the trainee as a journeyman is caused by Developer and evidences a lack

of good faith on the part of Developer in meeting the requirements of this Training Special Provision.

20. Detailed program reporting requirements and procedures, reporting forms, and the list of approved training classifications are found in the OJT program manual, which can be obtained upon request by contacting the OCR.

ATTACHMENT 10 TO EXHIBIT 3

2004 Specifications Required for all construction and maintenance projects starting with June 2013 letting.

SPECIAL PROVISION

000---2711

Important Notice to Contractors

By the 20th day of each month, report to the Engineer the number of incidents and injuries that occurred on the project the previous month. Report:

- the total number of incidents and injuries for the Contractor and all subcontractors, and
- the number of Contractor and subcontractor related incidents and injuries that involved a third party.

An "incident" is defined as any work-related occurrence that had the potential to cause bodily harm but caused only damage to vehicles, equipment, materials, etc.

An "injury" is defined as an OSHA recordable injury.

Use the form prescribed by the Department for submitting this information. Failure to submit this information to the Engineer by the 20th day of each month will result in the Department taking actions including but not limited to withholding estimates and suspending the work. This reporting will not be paid for directly but will be considered subsidiary to items of the Contract.

ATTACHMENT 11 TO EXHIBIT 3

2004 Specifications

SPECIAL PROVISION

000--2607

Nondiscrimination

Description. All recipients of federal financial assistance are required to comply with various nondiscrimination laws including Title VI of the Civil Rights Act of 1964, as amended, (Title VI). Title VI forbids discrimination against anyone in the United States on the grounds of race, color, or national origin by any agency receiving federal funds.

Texas Department of Transportation, as a recipient of Federal financial assistance, and under Title VI and related statutes, ensures that no person shall on the grounds of race, religion (where the primary objective of the financial assistance is to provide employment per 42 U.S.C. § 2000d-3), color, national origin, sex, age or disability be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any Department programs or activities.

Definition of Terms. Where the term "contractor" appears in the following six nondiscrimination clauses, the term "contractor" is understood to include all parties to contracts or agreements with the Texas Department of Transportation.

Nondiscrimination Provisions. During the performance of this contract, the contractor agrees as follows:

(1) Compliance with Regulations: The Contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

(2) Nondiscrimination: The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

(3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

(4) Information and Reports: The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Texas Department of Transportation to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the Recipient, or the Texas Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Recipient shall impose such contract sanctions as it or the Texas Department of Transportation may determine to be appropriate, including, but not limited to:

(a) withholding of payments to the contractor under the contract until the contractor complies, and/or

(b) cancellation, termination or suspension of the contract, in whole or in part.

(6) Incorporation of Provisions: The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Recipient or the Texas Department of Transportation may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Recipient to enter into such litigation to protect the interests of the Recipient, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

EXHIBIT 4

TXDOT-PROVIDED APPROVALS

1. Loop 12/IH 35E: Environmental Assessment and Finding of No Significant Impact (FONSI) issued by the Federal Highway Administration (FHWA) in December 2002.

2. Loop 12/IH 35E: Environmental Assessment Re-Evaluation and FONSI issued by the FHWA in June 2008.

3. SH 183: Environmental Assessment and FONSI issued by the FHWA in February 2004.

4. SH 183: Environmental Assessment Re-Evaluation and FONSI issued by FHWA in April 2012.

5. NTE Segment 2W, "Airport Freeway:" Environmental Assessment and FONSI issued by FHWA and Federal Aviation Administration (FAA) in October 2009.

6. NTE Segment 2W "Airport Freeway:" Environmental Assessment Re-Evaluation and FONSI issued by FHWA in June 2011.

7. SH 114 Environmental Assessment (April 2009)

8. Loop 12/IH 35E Environmental Assessment Re-Evaluation (April 17, 2014)

9. SH 183 Environmental Assessment Re-Evaluation (April 17, 2014)

10. NTE Segment 2E "Airport Freeway" Environmental Assessment Re-Evaluation (March 11, 2014)

11. SH 114 Environmental Assessment Re-Evaluation (April 17, 2014)

12. Initial Section 408 Permit Submittal Package Determination (June 27, 2014)

13. Design Deviations specifically indicated in Attachment 11-2 to the Technical Provisions, Roadway Design Deviations, as stated in Section 11.2.4 of the Technical Provisions and subject to the limitations set forth therein and in Attachment 11-2 to the Technical Provisions.

EXHIBIT 5

MAXIMUM D&C PAYMENT SCHEDULE

Total Maximum D&C Payment Schedule
(all figures are in nominal U.S. dollars)

Payments up to Scheduled Substantial Completion Date	
Months after NTP 1	**Maximum Allowable Cumulative Draw / Cash Flow**
1	$27,625,000
2	$72,845,000
3	$88,655,000
4	$103,445,000
5	$123,165,000
6	$153,000,000
7	$177,905,000
8	$205,785,000
9	$232,645,000
10	$255,255,000
11	$277,950,000
12	$303,535,000
13	$338,980,000
14	$363,970,000
15	$393,465,000
16	$421,090,000
17	$447,780,000
18	$469,625,000
19	$490,365,000
20	$516,120,000
21	$529,805,000
22	$552,500,000
23	$570,350,000
24	$589,815,000
25	$600,000,000
26	$600,000,000
27	$600,000,000
28	$600,000,000
29	$600,000,000
30	$600,000,000

Payments up to Scheduled Substantial Completion Date	
Months after NTP 1	**Maximum Allowable Cumulative Draw / Cash Flow**
31	**$600,000,000**
32	**$600,000,000**
33	**$600,000,000**
34	**$600,000,000**
35	**$600,000,000**
36	**$600,000,000**
37	**$600,000,000**
38	**$600,000,000**
39	**$600,000,000**
40	**$600,000,000**
41	**$600,000,000**
42	**$600,000,000**
Payments after Scheduled Substantial Completion Date	
Years after Scheduled Substantial Completion	**Maximum Allowable Cumulative Draw / Cash Flow**
1	**$650,000,000**
2	**$700,000,000**
3	**$750,000,000**
4	**$800,000,000**
5	**$847,600,000**

EXHIBIT 6

DBE SPECIAL PROVISIONS

FOR NON-TRADITIONAL CONTRACTS

000---___

Disadvantaged Business Enterprise in Federal-Aid Construction for Non-Traditional Contracts

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 for this Agreement is greater than zero, Article A, "Disadvantaged Business Enterprise in Federal-Aid Construction", of this Special Provision shall apply to this Agreement. If there is no DBE goal, Article B, "Race-Neutral DBE Participation", of this Special Provision shall apply to this Agreement.

Article A. Disadvantaged Business Enterprise in Federal-Aid Construction for Non-Traditional Contracts

1. Policy. In the performance of this Agreement Developer shall comply with 49 CFR Part 26, the Department's DBE Program, and 43 Texas Administration Code (TAC), Chapter 9, Sections 9.200 – 9.242, as amended. For a conflict between the language of this Special Provision and 49 CFR Part 26, the Department's DBE Program, or 43 Texas Administration Code, Chapter 9, Sections 9.200 – 9.242, as amended, 49 CFR Part 26, the Department's DBE Program, or 43 TAC, Chapter 9, Sections 9.200 – 9.242 as applicable, shall control**.**

a. Developer, its Contractor and subcontractors must meet the DBE goal set out in the Agreement by obtaining commitments from eligible DBEs or Developer must show acceptable evidence of Good Faith Efforts to meet the DBE goal.

b. The Developer shall solicit DBEs through reasonable and available means.

c. The Developer, 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 Developer shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by

Developer to carry out these requirements is a material breach of this Agreement, that may result in the termination of this Agreement or such other remedy as the recipient deems appropriate.

d. The Developer will include this Special Provision in all Contracts entered into by Developer. The Developer will also require any Contractor to include this Special Provision in any Contract that the Contractor enters into under this Agreement.

e. By signing this Agreement Developer certifies that the DBE goal as stated in the Agreement will be met by obtaining commitments from eligible DBEs or that Developer will provide acceptable evidence of good faith effort to meet the commitment within the time frame set out below.

2. Definitions. The definition for terms used in this Provision can be found in Exhibit 1 of this Agreement, 49 CFR, Part 26 or 43 TAC §9.202, Definitions. Terms not defined in Exhibit 1 of this Agreement, 49 CFR, Part 26, or 43 TAC §9.202 will for the purpose of this Special Provision be defined by the term's common usage.

3. Developer's Responsibilities. These requirements must be satisfied by Developer. Failure of Developer to meet these requirements may result in the issuance of Sanctions by the Department.

a. The Developer shall, in consultation with the Department, develop and submit a DBE Performance Plan describing the methods to be employed for achieving TxDOT's DBE participation goals for the Agreement, including Developer's exercise of good faith efforts. The selected Developer's DBE Performance Plan is subject to TxDOT review, comment and approval prior to execution of the Agreement. Each DBE Performance Plan must at a minimum include the following: specific categories of services and work anticipated for DBE participation on the project; schedule for submission of DBE commitment agreements based on Developer's initial project schedule; good faith efforts performed to date; good faith efforts that will be exercised by Developer following execution of the Agreement to achieve the DBE participation goal for the project; and the name, qualifications, responsibilities and contact information for the DBE liaison officer. The Developer shall also submit the completed Non-Traditional Contract form for the applicable type of commitment for each DBE that will be used 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 not later than 5:00 p.m. on the 30th business day, excluding national holidays, after the conditional award of this Agreement. The DBE Performance Plan is subject to review, comment and approval by the Department prior to and as a condition of execution of the Agreement.

b. Should Developer to whom the Agreement 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.

c. The Developer shall designate a DBE liaison officer who will administer Developer's DBE program and who will be responsible for all aspects of Developer's DBE program including maintaining all records and all reporting and correspondence with the Department on DBE issues.

d. A Developer who cannot meet the Agreement 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.

e. The Developer and Contractors shall not terminate a DBE without written consent of the Department. The Developer must comply with 49 CFR §26 and 43 TAC §9.229, DBE Substitution and Termination, prior to terminating or substituting a DBE. This includes written notification to the DBE and the Department and providing the DBE five days in which to respond to Developer's or Contractor's reasons for the termination. The Department will not consent to the termination or substitution if Developer or Contractor cannot demonstrate that the provisions of 49 CFR §26.53 and 43 TAC §9.229, DBE Substitutions and Terminations, have been followed. Terminating a DBE without Department approval is a violation of this Special Provision and can lead to Sanctions.

f. If the Department approves the termination of the DBE Contractor, Developer or Contractor shall make a good faith effort to replace the terminated DBE Contractor with another DBE, to the extent needed to meet the Agreement goal. The Developer shall submit the applicable Non-Traditional Contract commitment form for the substitute DBE firm(s). The Developer 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.

4. Eligibility of DBEs.

a. 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 OCR Office. An update of the Directory can be found on the Internet at http://www.txdot.gov.

b. Only DBE firms certified at the time the commitments are submitted are eligible to be included in the information furnished by Developer as required under this Special Provision.

c. For purposes of the DBE goal on this project, DBEs are only 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 or subcontract 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 detailed in 49 CFR §26.55, 43 TAC §9.231, Computing Work Performed by a DBE, 43 TAC §9.232, Commercially Useful Function, 43 TAC §9.233, Commercially Useful Function by DBE Trucking Firm, and 43 TAC §9.234, Counting Materials or Supplies Provided by DBE Manufacturer or Regular Dealer, shall be counted by Developer toward the DBE goal.

6. Records and Reports.

a. The Developer shall submit monthly reports, after work begins, on payments to all Contractors both DBE and non-DBE. These reports will be due within 15 days after the end of each calendar month. These reports will be required until all DBE Contracting or material supply activity is completed.

b. The Developer shall submit a final summary report of DBE payments upon completion of the project. The Developer will not receive final payment until this final report has been received and approved by the Department. If the DBE goal requirement is not met, documentation supporting Good Faith Efforts must be submitted.

c. 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.

d. Negative reports are required when no activity has occurred in a monthly period.

e. The Developer shall provide copies of Contracts or agreements and other documentation upon request.

f. The Developer must provide a certification of prompt payment, the Prompt Payment Certification Form 2177, to certify that all Contractors and Suppliers were paid from the previous month's payments and retainage was released for those whose work is complete. A completed Prompt Payment Certification Form 2177 must be submitted each month and the month following the month when final acceptance occurred at the end of the project.

g. A copy of all reports submitted to the department and all supporting documentation 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.

7. Compliance of Developer.

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

b. The Developer shall receive credit toward the DBE goal based on actual payments to the DBE Contractor. The Developer shall notify the Department if Developer withholds or reduces payment to any DBE Contractor. The Developer shall submit an affidavit detailing the DBE Contract payments prior to receiving final payment for this Agreement.

c. The Developer's failure to comply with the requirements of this Special Provision shall constitute a material breach of this Agreement. In such a case, the Department reserves the right to terminate this Agreement or seek sanctions under 43 TAC §9.237, Determination of Noncompliance; Sanctions.

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 to the Department each month and at project completion. Payments to DBEs reported on Form SMS.4903 are subject to the requirements of Article A.5, "Determination of DBE Participation."

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

EXHIBIT 7

DEVELOPER'S DBE PERFORMANCE PLAN

[See attached.]

EXHIBIT 7

SouthGate Mobility Partners DBE Performance Plan

DBE PLAN

The following is submitted as an individual Disadvantaged Business Enterprise (DBE) Plan to address the applicable requirements as set forth in Section 7.1 of the Development Agreement, the DBE Special Provision for Non-Traditional Contracts (Exhibit 6 of the Development Agreement) and TxDOT's Disadvantaged Business Enterprise (DBE) Program adopted pursuant to Title 49 CFR Part 26.

1. GOALS

A. Percentage Goals

The following percentage goals reflect SouthGate Mobility Partner's (SGMP) good faith effort to employ Disadvantaged Business Enterprises whenever possible in accordance with the regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The goals are as follows:

i. 7.0% for professional services

ii. 7.0% for construction of the Project

iii. Good faith efforts will be utilized to encourage DBE participation in the O&M work.

2. PRINCIPAL CATEGORIES OF SERVICES/WORK ANTICIPATED FOR DBE PARTICIPATION and SCHEDULE

The principal services and/or work SGMP anticipates subcontracting as well as the identification of DBEs for performance of design work, other professional services and construction will be determined as work progresses with specific commitment amounts pending agreement and award of subcontracts as they are finalized. Forms to be utilized as appropriate include SMS.9401, SMS.4901-MS, SMS.4901-T, SMS4903 and SMS.4904. Some level of DBE participation is anticipated in the following:

Design or Other Professional Services	Schedule *(Anticipated Dates)*
• Roadway Design	2014 – Q3
• ROW Acquisition	2014 – Q4
• Quality Assurance Program	2014 – Q4
• Survey Support	2014 – Q4

Construction	Schedule *(Anticipated Dates)*	Construction	Schedule *(Anticipated Dates)*
• Hourly Trucking	2015 – Q1	• Grind Asphalt Pvmnt.	2015 – Q4
• Aggregate Hauling	2015 – Q2	• Concrete Repair	2016 – Q1
• Tie Resteel	2015 – Q2	• Illumination	2016 – Q2
• Crash Attenuator	2015 – Q3	• ITS	2016 – Q2
• Drainage CIP	2015 – Q3	• Signals	2016 – Q2
• Guardrail/Attenuator	2015 – Q3	• Signs	2016 – Q2
• Demolition	2015 – Q4	• Seeding/Landscaping	2016 – Q3

3. GOOD FAITH EFFORTS

Good faith efforts during pre-award have included solicitation and outreach to potential DBE participants in the design, services, and construction related areas. Bid quotations for various services and suppliers were sought and tracked utilizing Smartbidnet.com.

Additional good faith efforts used the following steps to ensure the DBE community was aware of the opportunities associated with this project. The information for the project, which was in the proposal stages, was distributed through the following organizations:

1. Dallas Black Chamber of Commerce- sent to approximately 150 interested parties.
2. Dallas Black Contractors Associations- sent to its entire membership and posted on the website.
3. Dallas Regional Contractors Association- sent to approximately 1500 members and advertised on its website.
4. Fort Worth Black Chamber of Commerce- sent to entire membership.
5. Tarrant County Purchasing Department- sent to approximately 500 parties from its database of firms that had profiles that matched the needs of the team.
6. Fort Worth Hispanic Chamber of Commerce-sent to members of the membership that had profiles that matched the needs of the firm.
7. Texas Association of African American Chambers of Commerce-sent to its statewide membership.

Information was also distributed to and through Chambers of Commerce located within the Metroplex. A local NCTRCA certified firm, Legacy Resource Group, supported Kiewit in the above effort.

The team sponsored an Opportunity Mixer, which was held at the DFW Airport Marriott, to give invited firms a chance to get information about the project, meet the representatives of the team. Approximately 200 firms registered for the event. After the initial presentation, attendees were given the opportunity to meet the discipline leads working on the proposal. This proved to be very useful. Every attendee was asked to complete a sub-contractor questionnaire. The information for each attendee was loaded into a database which was accessible to each discipline lead.

Following execution of the Agreement, SGMP will continue good faith efforts to reach established DBE goals utilizing this DBE Participation Plan. SGMP's DBE Participation Plan includes procedures and policies for solicitation, outreach, selection, compliance reporting and tracking of DBE efforts.

4. OUTREACH EFFORTS

A. Efforts will be taken to assure that DBE firms will have an equitable opportunity to compete, along with large businesses, for subcontract work. Outreach efforts will be made through:

I. Contacts with minority and small business trade associations.
II. Contacts with business development organizations.
III. Contacts with the Office of Civil Rights.
IV. Attendance at SBA procurement conferences and trade fairs.

B. Internal efforts will be made to guide and encourage purchasing agents, buyers, etc., to utilize DBE firms, as follows:

I. By notifying appropriate internal purchasing agents and buyers of DBE sources.
II. By monitoring efforts to achieve the goals of the subcontracting plan.

5. SOURCES FOR SOLICITATION

The following sources have been identified by SGMP as available resources to locate and solicit qualified disadvantaged business enterprises:

I. Owner provided subcontractor listings
II. Texas Unified Certification Program (TUCP) directory
III. Procurement Marketing and Access Network (PRO-Net) of the Small Business Administration (SBA);
IV. SGMP's Internal Vendor Database - created from letters of introduction, pre-qualification documents, and personal interviews with small, small disadvantaged, women-owned, HUB Zone, and service disabled veteran enterprise representatives;
V. *The Blue Book of Building and Construction*, regional directories of building and construction vendors;
VI. Community outreach meetings
VII. Office of Small and Disadvantaged Business Utilization Specialist;
VIII. National Directories
- *National Directory of Women-Owned Businesses*
- *National Directory of Minority-Owned Business Firms*
- *Smoke Signals*
- *The Business Women's Network Directory*
- *National Center of American Indian-Owned Businesses*

IX. Databases
- *Minority Business Development Agency (MBDA)*
- *GSA's Office of Enterprise Development Vendor Profile Database*
- *Databases Established by Various Government Agencies*

X. Publications
- *Small Business Resource Guide*
- *Federal Acquisition Report*
- *Washington Business Journal's Book of Lists*
- *Minorities in Business Daily*
- *Local Newspaper and Trade Publications*

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

- *Latin American Management Association*
- *The National Black Business Council, Inc.*
- *Hispanic Business Professional Women Association*

Ultimately, any firm selected for use toward DBE goals on this project must be certified eligible to participate as DBE's on DOT financially assisted contracts through the TUCP (Reference Section 6 below).

All subcontractors considered for Invitations to Bid by SGMP, including DBEs may be asked to complete a Prequalification Form. This form is reviewed internally by SGMP to evaluate the following areas:

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

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

6. Eligibility of DBEs

Firms must be certified as eligible to participate as DBE's on DOT financially assisted contracts through the Texas Unified Certification Program. DBE firms must be certified at the time of execution of a Contract or subcontract, thereby making them eligible for inclusion toward the DBE goals set for this project. For purposes of the DBE goal on this project, DBEs will only be allowed to perform work in the categories of work for which they are certified.

7. METHOD FOR DEVELOPING GOALS

The work activities to be self-performed by SGMP's workforce will be identified by project management personnel based on best value assessment of each work activity and labor resource. SGMP's labor and materials sourcing strategy embodies preferences in offering subcontractor-designated work to qualified DBE's, as feasible. The goals listed herein reflect internal policy objectives and procedures that require a careful review and evaluation process of the services and/or products to be subcontracted. The subcontracting data accumulated by SGMP through our sourcing/evaluation process for this project will be based on an outreach program targeting qualified DBE's whenever practical by using a broad base of resources to identify and source potential DBE's.

8. INVITATION TO BID

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

9. SELECTION PROCESS AND AWARD

The responsive subcontractor quotes are evaluated based on price, qualifications of bid, inclusions/exclusions, prequalification information; all in accordance with 49 CFR Appendix A to Part 26 – Guidance Concerning Good Faith Efforts. After careful consideration the project management team selects the successful subcontractors for each work scope subcontracted. If a DBE is not selected the reasons for this decision are documented. Appropriate agreements are drafted and forwarded to the successful subcontractor for execution.

10. PLANS FOR SUBCONTRACTORS FOR SGMP

SGMP will include DBE Special Provisions for Non-Traditional Contracts (Exhibit 6 of the Development Agreement) into all contracts entered and will require any Contractor to include this Special Provision in any Contract that the Contractor enters into under this Agreement.

11. PLAN ADMINISTRATION

The following individual will administer the subcontracting program:

NAME: David Gierkey
DBE Liaison

ADDRESS: 7651 Esters Blvd., Suite 150
Irving, TX. 75063

PHONE: TBD
FAX: TBD

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

- Preparing and submitting periodic governmental required subcontracting reports.
- Coordinating activities during compliance reviews by Federal agencies.
- Coordinating activities involving small, small disadvantaged, women owned, HUB Zone, and service disabled veteran enterprises, as related to the subcontracting program.
- Monitoring attainment of proposed goals.

12. COMPLIANCE WITH REPORTING REQUIREMENTS

A. SGMP agrees to submit monthly reports, after work begins, on payments to all Contractors both DBE and non-DBE. These reports will be due within 15 days after the end of a calendar month and will be submitted until all DBE subcontracting or material supply activity is completed.

B. SGMP agrees to submit a final summary report of the DBE payments upon completion of the project. Good Faith Efforts documentation will be provided should DBE goal requirements not be met.

C. SGMP agrees to submit negative reports when no activity has occurred in a monthly period.

D. SGMP agrees to provide a certification of prompt payment (Form 2177) to certify that all Contractors and Suppliers were paid from the previous month's payments and retainage was released for those whose work is complete. Additionally, a completed Prompt Payment Certification (Form 2177) will be submitted monthly and the month following the month when final acceptance occurs at the end of the project.

E. SGMP agrees to submit all applicable Standard Forms modified to fit the Agreement. SMS.4901, SMS.4901-MS, SMS.4901-T, SMS.4903 and SMS.4904 located on the TxDOT website at: http://www.txdot.gov/inside-txdot/forms-publications/doing-business/dbe.html

F. To ensure that DBE requirements are complied with, TxDOT will monitor SGMP's efforts by reviewing monthly reports submitted to TxDOT by SGMP indicating progress in achieving the DBE contract goal and by compliance reviews conducted on the project site by TxDOT.

G. All reports submitted and supporting documentation will be retained for a period of 3 years following completion of the Contract work.

13. RECORDS

A. SGMP agrees to maintain the following types of records to document compliance with the DBE plan:

I. Small, small disadvantaged, women-owned, HUB Zone, and service disabled veteran business concern source lists, guides, and the other data identifying these suppliers, subcontractor, etc.

II. Organizations contacted for providing small, small disadvantaged, women-owned, HUB Zone, and service disabled veteran business sources.

III. Records on each subcontract solicitation resulting in an award showing whether or not small and small disadvantaged business concerns were contacted, and if not, why not; whether or not small, small disadvantaged, women-owned, HUB Zone, and service disabled veteran business concerns were contacted, and if not, why not; and, if

applicable the reason the award was not made to a small or small disadvantaged business concern.

IV. Records of any outreach efforts to contact trade associations, business development, business development organizations, and conferences and trade fairs, to locate DBEs.

V. Records of internal guidance and encouragement provided to buyers through workshops, seminars, training, etc., and performance monitoring to evaluate compliance with program requirements.

VI. Records on a contract-by-contract basis to support award data submitted by the offeror to the government, including name, address, and business size of each subcontractor.

14. TRAINING

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

15. EEO

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

16. IMPLEMENTATION

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

A. Assist disadvantaged businesses by allowing time for the preparation of bids, quantities, specifications and delivery schedules. Where the lists of potential DBE subcontractors are excessively long, reasonable effort shall be made to give all such business concerns an opportunity to compete over a period of time.

B. Counsel and discuss subcontracting opportunities with representatives of DBE's.

C. Provide notice to subcontractors concerning enforcement actions that apply to firms participating in DBE programs (Relative to 49 CFR, Part 26, Subpart F, §26.107) This will be done for the purpose of obtaining a subcontract that is to be included as part or all of a DBE goal contained in SGMP's subcontracting plan.

EXHIBIT 8

DEVELOPER'S JOB TRAINING PLAN / SMALL BUSINESS OPPORTUNITY PLAN

[See attached.]

Exhibit 8

SouthGate Mobility Partners On-the-Job Training Program

Policy Statement

SouthGate Mobility Partners (SGMP) will institute an on-the-Job Training (OJT) Program on the SH-183 Managed Lanes project, in accordance with the regulations of the U.S. Department of Transportation 23 CFR Part 230, Subpart A, Equal Employment Opportunity on Federal and Federal-aid Construction Contracts. The primary objective of the OJT program is the training of minorities and women toward journeymen level positions. Training will be provided in the construction crafts and/or lower level management positions oriented toward construction applications that; as approved by TxDOT and FHWA. This program is developed and will be implemented to meet the Special Provision for On –the-Job Training Program for Design-Build and Comprehensive Development Agreement Projects (Attachment 1 to this plan, and included in the Development Agreement as Attachment 9 to Exhibit 3)

Nondiscrimination

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

Goals

SGMP's goal is to train 43 employees through our OJT plan over the course of the project. A portion of this goal may be obtained through training by subcontractors. The number of trainees to be trained in each selected classification, type of training and length of training will be submitted for approval prior to commencement of construction. Training will begin in 2015.

Good Faith Efforts & Dissemination of OJT Program

SGMP will disseminate information on the available business and subcontracting opportunities carry out technical assistance, including capacity-building workshops, and provide firms with an equitable opportunity to complete and perform work.

SGMP will advise employees and applicants for employment of available training programs and prerequisites for each program. Trainees will be furnished a copy of the program they will be a part of. When an employee completes the program they will be provided a certification showing the type and length of training satisfactorily completed.

Reporting Requirements

SGMP will submit the Federal OJT Program Enrollment Form to the OCR or program sponsor, if applicable, within seven business days of its intent to assign trainees to the project and the training classification to be utilized.

SGMP will submit the Federal OJT Program Monthly Reporting Form to the applicable Strategic Projects Office by the 10th of each month. A copy will also be submitted to the OCR and program sponsor, if applicable. If there are no hours worked during the month, the monthly report will reflect no hours. The certified payroll will reflect the trainee's training classification and the actual number of hours training for that payroll period. Upon graduation or termination, this information will be included on the monthly report submitted. SGMP reserves the right to graduate a qualified trainee at any time should they be deemed qualified. Additionally, reimbursement may be requested utilizing this form.

SGMP will utilize the appropriate forms to notify the Department of the termination of a trainee and the enrollment of a replacement trainee. The replacement trainee need not be in the same classification code as the terminated trainee.

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

Trainee Requirements

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

Trainee Wage Rates

Trainees will be paid at a minimum the established percentages of the project specific journeyman starting wage rates specified in the contract. Under no circumstance will the trainee receive less than the minimum wage. Wage rates during training period:

- 1st half of training program: Not less than 60% of appropriate minimum journeyman's rate specified in contract.
- 3rd quarter of training program: Not less than 75% of appropriate minimum journeyman's rate specified in contract.
- 4th quarter of training program: Not less than 90% of appropriate minimum journeyman's rate specified in contract.

If apprentices or trainees are enrolled in an existing approved Department of Labor or Transportation program, then appropriate approved rates shall apply for the same classification.

ATTACHMENT 1

SPECIAL PROVISION

000--____

On-the-Job Training Program for
Design - Build and Comprehensive Development Agreement Projects

This training special provision is the Department's implementation of 23 U.S.C. 140 (a). The primary objective of this provision is to train and upgrade minorities and women toward journey worker status. This training commitment is not intended and shall not be used to discriminate against any applicant for training, whether a member of a minority group or not.

As part of Developer's equal employment opportunity affirmative action program, training shall be provided as follows:

1. The Developer shall ensure that on-the-job training (OJT) aimed at developing full journey worker status in the type of trade or job classification involved is provided.

2. The Department has assigned a project-specific trainee goal in accordance with the following guidelines as set forth in 23 C.F.R.§230.111:

   1) Dollar value of the construction services contract;
   2) Duration of the construction work activity;
   3) Geographic location;
   4) Availability of minorities, women, and disadvantaged for training;
   5) The potential for effective training;
   6) Type of work;
   7) Total normal work force that the average proposer could be expected to use;
   8) The need for additional journeymen in the area;
   9) Recognition of the suggested minimum goal for the State; and
   10) A satisfactory ratio of trainees to journeymen expected to be on Developer's work force during normal operations.

Construction Cost Estimate		
From	**To**	**Trainees**
$0	$9,999,999.99	0
$10,000,000	$19,999,999.99	1
$20,000,000	$39,999,999.99	2
$40,000,000	$59,999,999.99	3
$60,000,000	$79,999,999.99	4
$80,000,000	$99,999,999.99	5
$100,000,000	$119,999,999.99	6
Thereafter for each increment of $20 million, goal is increased by one trainee		

3. The OJT program trainee goal for this project is __43__ trainees.

4. The Developer will have fulfilled its responsibilities under this provision when acceptable training has been provided to the number of trainees assigned to this project.

5. In the event that Developer subcontracts a portion of the contract work, it shall determine if any of the trainees are to be trained by the subcontractor. The Developer should insure that this training special provision is made applicable to such subcontract. However, Developer shall retain the primary responsibility for meeting the training requirements imposed by this special provision.

6. The Developer shall make every effort to ensure minorities and women are enrolled and trained in the program. The Developer shall conduct systematic and direct recruitment through public and private sources likely to yield minority and women trainees to the extent that such persons are available within a reasonable area of recruitment.

7. It is the intention of this provision that training is to be provided in the construction crafts. Training is permissible in lower level management positions such as office engineers, estimators, timekeepers, etc., where the training is oriented toward construction applications. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

8. The Department and the Federal Highway Administration (FHWA) shall approve a training program if it meets the equal employment opportunity obligations of Developer and aims to train and upgrade employees to journey worker status.

9. The Department's OJT Program has been designed to ensure that the trainee consistently receives the level and quality of training necessary to perform as a journey worker in his/her respective skilled trade classification. Standard training programs for each skilled construction trade classification are located in the OJT program manual.

10. Apprenticeship programs registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or training programs approved but not necessarily sponsored by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training shall also be considered acceptable provided the program is being administered in a manner consistent with the equal employment obligations of Federal-aid highway construction contracts.

11. The number of trainees shall be distributed among the work classifications on the basis of Developer's needs and the availability of journey worker in the various classifications.

12. No employee shall be employed as a trainee in any classification in which he or she has successfully completed a training course leading to journey worker status or in which he or she has been employed as a journey worker. The Developer may satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used, Developer's records should document the findings in each case.

13. At or before contract execution, Developer must submit the Contractor OJT Plan form to the Department's Office of Civil Rights (OCR). The plan shall specify how Developer intends to satisfy its goal by including the following information: the type of apprentice or training program, number of trainees, type of training, and length of training.

14. The trainee(s) shall begin training on the project after start of work and remain on the project as long as training opportunities exist or until the training is completed.

15. The trainees will be paid at minimum, 60 percent of the appropriate journey worker's rate specified in the contract for the first half of the training period, 75 percent for the third quarter of the training period, and 90 percent for the last quarter of the training period. However, if the apprentices or trainees are enrolled in another program approved by the Department of Labor or other agency, such appropriate rates shall apply.

16. The OCR must approve all proposed apprentices and trainees before training begins. The Developer must submit the Federal OJT Enrollment Form in order for training to be counted toward the project goal and be eligible for reimbursement. The Developer shall provide each trainee with a copy of the training program he or she will follow.

17. On a monthly basis, Developer shall submit the Federal OJT Monthly Reporting Form to the Department's Strategic Projects office(s) and the OCR. The monthly reporting form will include the number of hours trained and training status. If a trainee is terminated, Developer is required to make a good faith effort to replace the trainee within 30 calendar days of the termination.

18. The Developer shall provide each trainee with a certification showing the type and length of training satisfactorily completed.

19. If requested, Developer may be reimbursed 80 cents per hour of training for each trainee working on this project and whose participation towards the OJT project goal has been approved.

    This reimbursement will be made regardless of whether Developer receives additional training program funds from other sources, provided such other program requirements do not specifically prohibit Developer from receiving other reimbursement. Reimbursement for offsite training indicated above may only be made to Developer if the trainees are concurrently employed on a federal-aid project and when Developer: contributes to the cost of the training, or provides the instruction to the trainee, or pays the trainee's wages during the offsite training period.

    No payment shall be made to Developer if either the failure to provide the required training or the failure to hire the trainee as a journeyman is caused by Developer and evidences a lack of good faith on the part of Developer in meeting the requirements of this Training Special Provision.

20. Detailed program reporting requirements and procedures, reporting forms, and the list of approved training classifications are found in the OJT program manual, which can be obtained upon request by contacting the OCR.

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SouthGate Mobility Partners Small Business Opportunity Plan

Program Overview

SouthGate Mobility Partners (SGMP) has created a Small Business Opportunity Plan that utilizes mentoring to provide opportunities for selected disadvantaged businesses. Mentoring allows for the development, management and implementation of our proven policies on a day-to-day basis. We will disseminate information on the available business and subcontracting opportunities, carry out technical assistance, provide workshops, and provide firms with an equitable opportunity to complete and perform the work.

Program Goals

SGMP is committed to providing education for our DBE partners in order to enable them to grow their businesses and gain new skills. Instruction for training and education will be provided by project personnel, local business leaders and construction professionals.

Education Workshops

In addition to project orientation, training and SGMP's mentoring, workshops provide additional training in specific disciplines.

Targeted Technical Disciplines

Our DBE's will gain valuable OJT training through exposure to the work, and we will educate them on topics such as estimating, financial management, procurement, business development and compliance. In addition, training on safety, environmental, quality and other site-specific topics will be available to all SGMP employees and subcontractor personnel.

A subcontract monitor will be assigned to each subcontractor. The subcontract monitor, in conjunction with the subcontractor, will develop a custom 0-6 month plan detailing the most advantageous workshops for the subcontractor. Workshops will be held quarterly or as required depending on the subcontractor's needs determined during development of short and long-term plans. Short term goals address immediate, observed needs for skill sets and/or information

The subcontract monitor and subcontractor will also develop a custom 6-12 month plan. The long-term goal of the workshop is to raise the knowledge level of our DBE partners on a range of topics from "beginner" to "advanced". Workshops will be available to all registered DBEs and advertised through local organizations and TxDOT.

Workshop topics and frequency will flexible and evaluated based off the feedback, requests and observed needs and wants of the DBEs and their employees, and in partnership with TxDOT.

Bonding and Insurance Workshops

Workshops explaining project insurance coverage and performance and payment (P&P) bond requirements will be offered as well. These workshops allow interested DBEs an opportunity to ask questions, review subcontract quotations and improve their ability to obtain insurance and/or bonds. The project team will use experts in these fields from SGMP and the local community to provide accurate information for the small business community.

Eligibility

To be eligible and considered for mentoring, the small business must be certified by the State of Texas as a DBE for at least one consecutive year and must perform a category of work or supply a type of material that adds value to the project (e.g., design services, concrete supplier, and rebar tier). SGMP will offer participation in the program to each DBE that has an active role in the project. The actual number of mentees participating in the program will depend on the total number of candidate firms working on the project that express interest in the program. This is a voluntary program and either party may withdraw at any time by providing notice outlining the reason for withdrawal from the program (a courtesy copy will be provided to TxDOT).

EXHIBIT 9

FORMS OF D&C PERFORMANCE BOND

9-1 Form of D&C Performance Bond*

9-2 Form of Multiple Obligee Rider for D&C Performance Bond

**If the bond is to secure the payment or performance obligations of Design-Build Contractor rather than Developer, then the form of bond shall be revised to reflect Design-Build Contractor as the "Principal" or "Contractor", Developer in place of TxDOT as the bond obligee, and the Design-Build Contract as the "Agreement". Further, if the bond is to secure the payment or performance obligations of Design-Build Contractor rather than Developer, then the multiple obligee rider in the form set forth as Exhibit 9-1 must be provided that identifies TxDOT as the "Ultimate Obligee."*

EXHIBIT 9-1

FORM OF D&C PERFORMANCE BOND

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

SH 183 MANAGED LANES PROJECT

Bond No. _____

WHEREAS, the Texas Department of Transportation ("Obligee"), has awarded to _____, a _____ ("Principal"), a Development Agreement for the SH 183 Managed Lanes Project, duly executed and delivered as of _____, 201_ (the "Contract"), on the terms and conditions set forth therein; and

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

NOW, THEREFORE, Principal and _____, a _____ ("Surety"), an admitted surety insurer in the State of Texas, are held and firmly bound unto Obligee in the amount of $742,009,402 (the "Bonded Sum"), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

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

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

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

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

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

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

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

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

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

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

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

6. After the Obligee has terminated the Principal's right to complete the Contract, and if Surety elects to act under Subparagraph 4.a, 4.b, or 4.c above, then the responsibilities of Surety to the Obligee shall not be greater than those of the Principal under the Contract, and the responsibilities of the Obligee to Surety shall not be greater than those of the Obligee under the Contract. To the limit of the Bonded Sum, but subject to commitment of the unpaid balance of the D&C Price to mitigation costs and damages on the Contract, Surety is obligated without duplication for:

a. the responsibilities of the Principal for correction of defective work and completion of the D&C Work;

b. actual damages, including additional legal, design, engineering, professional and delay costs resulting from Principal's default, and resulting from the actions or failure to act of Surety under Paragraph 4 of this Bond; and

c. Liquidated Damages under the Contract.

7. No alteration, modification or supplement to the Contract Documents or the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Surety under this Bond provided that the aggregate dollar amount of TxDOT-Directed Changes, without the Surety's prior written consent thereto having been obtained, does not increase the D&C Price by more than $84,760,000. Surety waives notice of any alteration, modification, supplement or extension of time other than Change Orders for TxDOT-Directed Changes in excess of such amount.

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

_____
_____
_____

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

IN WITNESS WHEREOF, Principal and Surety have caused this Bond to be executed and delivered as of _____, 201__.

Principal:

_____
By:_____
Its: _____
(Seal)

Surety:

_____
By:_____
Its: _____
(Seal)

[*ADD APPROPRIATE SURETY ACKNOWLEDGMENTS*]

SURETY

_____
or secretary attest

By:_____
Name
Title:
Address:

EXHIBIT 9-2

FORM OF MULTIPLE OBLIGEE RIDER (D&C PERFORMANCE BOND)

MULTIPLE OBLIGEE RIDER

This Rider is executed concurrently with and shall be attached to and form a part of Performance Bond No._____.

WHEREAS, on or about the _____ day of _____, 20__, _____, (hereinafter called the "Principal"), entered into a written agreement bearing the date of _____, 20__ (hereinafter called the "Contract") with _____, (hereinafter called the "Primary Obligee") for the performance of D&C Work for the SH 183 Managed Lanes Project (the "Project"); and

WHEREAS, the Primary Obligee requires that Principal provide a performance bond and that the Texas Department of Transportation ("TxDOT"), be named as an additional obligee under the performance bond; and

WHEREAS, Principal and the Surety have agreed to execute and deliver this Rider concurrently with the execution of Performance Bond No._____ (hereinafter referred to as "Performance Bond") upon the conditions herein stated.

NOW, THEREFORE, the undersigned hereby agree and stipulate as follows: TxDOT is hereby added to the Performance Bond as a named obligee (hereinafter referred to as the "Ultimate Obligee").

The Surety shall not be liable under the Performance Bond to the Primary Obligee, the Ultimate Obligee, or either of them, unless the Primary Obligee, the Ultimate Obligee, or either of them, shall make payments to the Principal (or in the case the Surety arranges for completion of the Contract, to the Surety) in accordance with the terms of the Contract as to payments and shall perform all other obligations to be performed under the Contract in all material respects at the time and in the manner therein set forth such that no material default by the Primary Obligee shall have occurred and be continuing under the Contract.

The aggregate liability of the Surety under this Performance Bond, to any or all of the obligees, is limited to the penal sum of the Performance Bond. The Ultimate Obligee's rights hereunder are subject to the same defenses Principal and/or Surety have against the Primary Obligee, provided that the Ultimate Obligee has received notice and 30 days prior opportunity to cure breach or default by the Primary Obligee under the Contract. The total liability of the Surety shall in no event exceed the amount recoverable from the Principal by the Primary Obligee under the Contract.

The rights of the Primary Obligee under the Performance Bond are subordinate in all respects to the Ultimate Obligee's rights hereunder. The Primary Obligee shall have no right to receive any

payments under the Performance Bond and the Surety shall make any and all payments under the Performance Bond to the Ultimate Obligee.

In the event of a conflict between the Performance Bond and this Rider, this Rider shall govern and control. All references to the Performance Bond, either in the Performance Bond or in this Rider, shall include and refer to the Performance Bond as supplemented and amended by this Rider. Except as herein modified, the Performance Bond shall be and remains in full force and effect.

Signed, sealed and dated this____ day of _____, 201__.

Principal: _____
By:_____
Its: _____
(Seal)

Surety: _____
By:_____
Its: _____
(Seal)

EXHIBIT 10

FORMS OF D&C PAYMENT BOND

10-1 Form of D&C Payment Bond*

10-2 Form of Multiple Obligee Rider for D&C Payment Bond

**If the bond is to secure the payment or performance obligations of Design-Build Contractor rather than Developer, then the form of bond shall be revised to reflect Design-Build Contractor as the "Principal" or "Contractor", Developer in place of TxDOT as the bond obligee, and the Design-Build Contract as the "Agreement". Further, if the bond is to secure the payment or performance obligations of Design-Build Contractor rather than Developer, then the multiple obligee rider in the form set forth as Exhibit 10-1 must be provided that identifies TxDOT as the "Ultimate Obligee".*

EXHIBIT 10-1

FORM OF D&C PAYMENT BOND

[*To be replaced by actual Payment Bond.*]

SH 183 MANAGED LANES PROJECT

Bond No. _____

WHEREAS, the Texas Department of Transportation ("Obligee"), has awarded to _____, a _____ ("Principal"), a Development Agreement for the SH 183 Managed Lanes Project, duly executed and delivered as of _____, 201_ (the "Contract"), on the terms and conditions set forth therein; and

WHEREAS, upon award of the Contract, Principal is required to furnish a bond (this "Bond") guaranteeing payment of claims by Subcontractors and Suppliers in relation to the D&C Work.

NOW, THEREFORE, Principal and _____, a _____ ("Surety"), an admitted surety insurer in the State of Texas, are held and firmly bound unto Obligee in the initial amount of $742,009,402 (the "Bonded Sum"), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS BOND IS SUCH THAT, if Principal shall fail to pay any valid claims by Subcontractors and Suppliers with respect to the D&C Work, then Surety shall pay for the same in an amount not to exceed the Bonded Sum; otherwise this Bond shall be null and void upon the occurrence of all of the conditions to release set forth in Section 8.1.4 of the Development Agreement.

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

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

2. No alteration, modification or supplement to the Contract Documents or the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Surety under this Bond, provided that the aggregate dollar amount of TxDOT-Directed Changes without the Surety's prior written consent thereto having been obtained, does not increase the Price by more than $84,760,000. Surety waives notice of any alteration, modification, supplement or extension of time other than Change Orders for TxDOT-Directed Changes in excess of such amount.

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

_____
_____
_____

4. This Bond shall inure to the benefit of Subcontractors and Suppliers with respect to the D&C Work so as to give a right of action to such persons and their assigns in any suit brought upon this Bond.

IN WITNESS WHEREOF, Principal and Surety have caused this Bond to be executed and delivered as of _____, 201__.

Principal: _____
By:_____
Its: _____
(Seal)

Surety: _____
By:_____
Its: _____
(Seal)

[*ADD APPROPRIATE SURETY ACKNOWLEDGMENTS*]

SURETY

_____
or secretary attest

By:_____
Name
Title:
Address:

EXHIBIT 10-2
FORM OF MULTIPLE OBLIGEE RIDER (D&C PAYMENT BOND)

MULTIPLE OBLIGEE RIDER

This Rider is executed concurrently with and shall be attached to and form a part of Performance Bond No._____.

WHEREAS, on or about the _____ day of _____, 20__, _____, (hereinafter called the "Principal"), entered into a written agreement bearing the date of _____, 20__ (hereinafter called the "Contract") with _____, (hereinafter called the "Primary Obligee") for the performance of the D&C Work for the SH 183 Managed Lanes Project (the "Project"); and

WHEREAS, the Primary Obligee requires that Principal provide a payment bond and that the Texas Department of Transportation ("TxDOT"), be named as an additional obligee under the payment bond; and

WHEREAS, Principal and the Surety have agreed to execute and deliver this Rider concurrently with the execution of Payment Bond No._____ (hereinafter referred to as "Payment Bond") upon the conditions herein stated.

NOW, THEREFORE, the undersigned hereby agree and stipulate as follows: TxDOT is hereby added to the Payment Bond as a named obligee (hereinafter referred to as the "Ultimate Obligee").

The Surety shall not be liable under the Payment Bond to the Primary Obligee, the Ultimate Obligee, or either of them, unless the Primary Obligee, the Ultimate Obligee, or either of them, shall make payments to the Principal (or in the case the Surety arranges for completion of the Contract, to the Surety) in accordance with the terms of the Contract as to payments and shall perform all other obligations to be performed under the Contract in all material respects at the time and in the manner therein set forth such that no material default by the Primary Obligee shall have occurred and be continuing under the Contract.

The aggregate liability of the Surety under this Payment Bond, to any or all of the obligees, is limited to the penal sum of the Payment Bond. The Ultimate Obligee's rights hereunder are subject to the same defenses Principal and/or Surety have against the Primary Obligee, provided that the Ultimate Obligee has received notice and 30 days prior opportunity to cure breach or default by the Primary Obligee under the Contract. The total liability of the Surety shall in no event exceed the amount recoverable from the Principal by the Primary Obligee under the Contract.

The rights of the Primary Obligee under the Payment Bond are subordinate to the Ultimate Obligee's rights hereunder. The Primary Obligee shall have no right to receive any payments

under the Payment Bond and Surety shall make any and all payments under the Payment Bond to the Ultimate Obligee.

In the event of a conflict between the Payment Bond and this Rider, this Rider shall govern and control. All references to the Payment Bond, either in the Payment Bond or in this Rider, shall include and refer to the Payment Bond as supplemented and amended by this Rider. Except as herein modified, the Payment Bond shall be and remains in full force and effect.

Signed, sealed and dated this____ day of _____, 201__.

Principal:

_____
By:_____
Its: _____
(Seal)

Surety:

_____
By:_____
Its: _____
(Seal)

EXHIBIT 11

FORM OF D&C RETAINAGE BOND

CONTRACT NO. _____
COUNTY _____
BOND NO. _____

RETAINAGE BOND

KNOW ALL PERSONS BY THESE PRESENTS that CONTRACTOR, as Principal, and the undersigned surety, are held and firmly bound unto the State of Texas as Obligee, in the amount of FOUR PERCENT (4%) of the total amount paid the Principal under the contract, including any increases due to change orders, quantities of work, new items of work, or other additions as the Obligee may pay under the Contract, lawful money of the United States, well and truly to be paid to the State of Texas, and we bind ourselves, our heirs, successors, executors, and administrators jointly and severally, firmly by these presents.

Whereas, the Principal has entered into the above-referenced contract with the State of Texas, attached hereto, and

Whereas, under the contract, the Principal is required before commencing the work provided for in the contract to execute a bond in the above amount.

Now therefore, the condition of this obligation is such that if the Principal and its heirs, successors, executors, and administrators shall fully indemnify and save harmless the State of Texas from all costs and damages from valid claims filed within 90 days of notification of final acceptance of the work under the contract by any person or entity against the contract funds, and shall fully reimburse the State of Texas for amounts owed by the **Principal** to the State of Texas with regard to the contract after notification of final acceptance of the work, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

Provided further, that the said surety(s) for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract, or to the work to be performed thereunder, or the Specifications accompanying the same, shall in anywise affect its obligation on this bond. The surety(s) does hereby waive notice of any such change, extension of time, alteration or addition, to the terms of the Contract or to the work or to the Specifications, unless otherwise specified in the contract.

WITNESS our hand this, _____day of_____, 20____.

CONTRACTOR

_____	By: _____
SURETY (Print Firm Name and Seal)	(Title)
*By:_____	By: _____
(Title)	(Title)
_____	_____
SURETY (Print Firm Name and Seal)	**SURETY** (Print Firm Name and Seal)
*By:_____	*By: _____
(Title)	(Title)

*NOTE: A Power of Attorney, showing that the surety officer or Attorney-In-Fact has authority to sign such obligation, must be impressed with the corporate seal and attached behind the Payment Bond in each contract.

This form has been approved by the ATTORNEY GENERAL OF TEXAS & TEXAS DEPARTMENT OF INSURANCE.

EXHIBIT 12

FORM OF O&M DRAW REQUEST AND CERTIFICATE

Page 1 of 2

SH 183 Managed Lanes Project − Development Agreement
Texas Department of Transportation

Draw Request # 1

Date: _____ month/day/year

Texas Department of
Transportation
[Address]

Shaded Cells Require Entry, if applicable

Draw Request for O&M Work performed in the month of [Month , (year)

A	Month #		O&M Period Year #		Available Monthly Disbursement Amount	
		(1-12)		(1-25)		
B	Monthly Amount for Annual O&M Payment					$0.00
C	Total Pavement Payment Due					$0.00
D	Total Bridge Payment Due (only in year 10)					$0.00
E	Total Change Order Amount Due					$0.00
F	Total Liquidated Damages Amount					$0.00
G	Current Amount Due (B +C+D+E-F)					

FORM OF O&M DRAW REQUEST AND CERTIFICATE

Page 2 of 2

SH 183 Managed Lanes Project – Development Agreement
Texas Department of Transportation

Draw Request #		Date	

month/day/year

Request for Payment:

Developer Authorized Representative **Date**

Review and Final Approval by TxDOT

Draw Request Approved for Payment: ❑ **Yes** ❑ **No**

TxDOT Authorized Representative **Date**

FORM OF O&M DRAW REQUEST AND CERTIFICATE

Page 1 of 1

SH 183 Managed Lanes Project − Development Agreement
Texas Department of Transportation

O&M WORK DRAW REQUEST CHECKLIST

Enclosed with this cover sheet are the following:

☐ Certification by the Maintenance QC Manager

☐ O&M Draw Request data sheet(s) and documents that support and substantiate the amount requested.

NOTE - following for information only

O&M Draw Request, Developer shall submit a certificate in a form approved by TxDOT and signed and sealed by the Maintenance QC Manager, certifying that:

- Except as specifically noted in the certification, all O&M Work, including that of designers, Subcontractors and Suppliers, which is the subject of the O&M Draw Request has been checked and/or inspected by the Maintenance QC Manager;
- Except as specifically noted in the certification, all O&M Work which is the subject of the Draw Request conforms to the requirements of the Contract Documents, the Governmental Approvals and applicable Law;
- All amounts payable to any designers, consultants, Subcontractors and Suppliers for completed O&M Work have been paid; and
- The Maintenance Services QCP procedures provided therein are functioning properly and are being followed.

EXHIBIT 13

FORMS OF GUARANTY

- *13-1 – Form of D&C Guaranty (use this form if a D&C Guaranty is required)*
- *13-2 – Form of O&M Guaranty (use this form if an O&M Guaranty is required)*

EXHIBIT 13-1

FORM OF D&C GUARANTY

GUARANTY

THIS GUARANTY (this "Guaranty") is made as of _____, 20__ by _____, a _____ ("Guarantor"), in favor of the TEXAS DEPARTMENT OF TRANSPORTATION, an agency of the State of Texas ("TxDOT").

R E C I T A L S

A. _____, as developer ("Developer"), and TxDOT are parties to that certain Development Agreement (the "Agreement") pursuant to which Developer has agreed to develop, design, construct, operate and maintain the Project. Initially capitalized terms used herein without definition will have the meaning given such term in the Contract Documents.

B. To induce TxDOT to (i) enter into the Agreement; and (ii) consummate the transactions contemplated thereby, Guarantor has agreed to enter into this Guaranty.

C. Developer is a _____. The Guarantor is _____. The execution of the Agreement by TxDOT and the consummation of the transactions contemplated thereby will materially benefit Guarantor. Without this Guaranty, TxDOT would not have entered into the Agreement with Developer. Therefore, in consideration of TxDOT's execution of the Agreement and consummation of the transactions contemplated thereby, Guarantor has agreed to execute this Guaranty.

NOW, THEREFORE, in consideration of the foregoing Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor agrees as follows:

1. Guaranty. Guarantor guarantees to TxDOT and its successors and assigns the full and prompt payment and performance when due of all of the obligations of Developer arising out of, in connection with, under or related to (a) the D&C Work under the Contract Documents and (b) subject to the limitation on Guarantor's liability set forth in Section 22, the O&M Work under the Contract Documents solely until the O&M Security and, as applicable, the O&M Guaranty have been provided by Developer as required in accordance with Sections 8.2 and 8.7 of the Agreement. The obligations guaranteed pursuant to this Guaranty are collectively referred to herein as the "Guaranteed Obligations."

2. Unconditional Obligations. This Guaranty is a guaranty of payment and performance and not of collection. Except as provided in Sections 21 and 22, this Guaranty is an absolute, unconditional and irrevocable guarantee of the full and prompt payment and performance when due of all of the Guaranteed Obligations, whether or not from time to time reduced or extinguished or hereafter increased or incurred, and whether or not enforceable against Developer. If any payment made by Developer or any other Person and applied to the

Guaranteed Obligations is at any time annulled, set aside, rescinded, invalidated, declared to be fraudulent or preferential or otherwise required to be repaid or refunded, then, to the extent of such payment or repayment, the liability of Guarantor will be and remain in full force and effect as fully as if such payment had never been made. Guarantor covenants that this Guaranty will not be fulfilled or discharged, except by the complete payment and performance of the Guaranteed Obligations, whether by the primary obligor or Guarantor under this Guaranty. Without limiting the generality of the foregoing, Guarantor's obligations hereunder will not be released, discharged or otherwise affected by: (a) any change in the Contract Documents or the obligations thereunder, or any insolvency, bankruptcy or similar proceeding affecting Developer, Guarantor or their respective assets, and (b) the existence of any claim or set-off which Developer has or Guarantor may have against TxDOT, whether in connection with this Guaranty or any unrelated transaction, provided that nothing in this Guaranty will be deemed a waiver by Guarantor of any claim or prevent the assertion of any claim by separate suit. This Guaranty will in all respects be a continuing, absolute, and unconditional guaranty irrespective of the genuineness, validity, regularity or enforceability of the Guaranteed Obligations or any part thereof or any instrument or agreement evidencing any of the Guaranteed Obligations or relating thereto, or the existence, validity, enforceability, perfection, or extent of any collateral therefor or any other circumstances relating to the Guaranteed Obligations, except as provided in Section 21.

3. <u>Independent Obligations</u>. Guarantor agrees that the Guaranteed Obligations are independent of the obligations of Developer and if any default occurs hereunder, a separate action or actions may be brought and prosecuted against Guarantor whether or not Developer is joined therein. TxDOT may maintain successive actions for other defaults of Guarantor. TxDOT's rights hereunder will not be exhausted by the exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless all Guaranteed Obligations have been paid and fully performed.

a. Guarantor agrees that TxDOT may enforce this Guaranty, at any time and from time to time, without the necessity of resorting to or exhausting any security or collateral and without the necessity of proceeding against Developer. Guarantor hereby waives the right to require TxDOT to proceed against Developer, to exercise any right or remedy under any of the Contract Documents or to pursue any other remedy or to enforce any other right.

b. Guarantor will continue to be subject to this Guaranty notwithstanding: (i) any modification, agreement or stipulation between Developer and TxDOT or their respective successors and assigns, with respect to any of the Contract Documents or the Guaranteed Obligations; (ii) any waiver of or failure to enforce any of the terms, covenants or conditions contained in any of the Contract Documents or any modification thereof; (iii) any release of Developer from any liability with respect to any of the Contract Documents; or (iv) any release or subordination of any collateral then held by TxDOT as security for the performance by Developer of the Guaranteed Obligations.

c. The Guaranteed Obligations are not conditional or contingent upon the genuineness, validity, regularity or enforceability of any of the Contract Documents or the pursuit by TxDOT of any remedies which TxDOT either now has or may hereafter have with respect thereto under any of the Contract Documents.

d. Notwithstanding anything to the contrary contained elsewhere in this Guaranty, Guarantor's obligations and undertakings hereunder are derivative of, and not in excess of, the obligations of Developer under the Agreement. Accordingly, in the event that Developer's obligations have been changed by any modification, agreement or stipulation between Developer and TxDOT or their respective successors or assigns, this Guaranty shall apply to the Guaranteed Obligations as so changed.

4. <u>Liability of Guarantor.</u>

a. TxDOT may enforce this Guaranty upon the occurrence of a breach by Developer of any of the Guaranteed Obligations, notwithstanding the existence of any dispute between TxDOT and Developer with respect to the existence of such a breach.

b. Guarantor's performance of some, but not all, of the Guaranteed Obligations will in no way limit, affect, modify or abridge Guarantor's liability for those Guaranteed Obligations that have not been performed.

c. TxDOT, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability of this Guaranty or giving rise to any reduction, limitation, impairment, discharge or termination of Guarantor's liability hereunder, from time to time may (i) with respect to the financial obligations of Developer, if and as permitted by the Agreement, renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment of financial obligations that are Guaranteed Obligations, and/or subordinate the payment of the same to the payment of any other obligations, (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto, (iii) request and accept other guarantees of the Guaranteed Obligations and take and hold security for the payment and performance of this Guaranty or the Guaranteed Obligations, (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for performance of the Guaranteed Obligations, any other guarantees of the Guaranteed Obligations, or any other obligation of any Person with respect to the Guaranteed Obligations, (v) enforce and apply any security hereafter held by or for the benefit of TxDOT in respect of this Guaranty or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that TxDOT may have against any such security, as TxDOT in its discretion may determine, and (vi) exercise any other rights available to it under the Contract Documents.

d. This Guaranty and the obligations of Guarantor hereunder will be valid and enforceable and will not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than indefeasible performance in full of the Guaranteed Obligations), including without limitation the occurrence of any of the following, whether or not Guarantor will have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Contract Documents, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement or instrument relating thereto; (ii) any rescission, waiver, amendment or modification of, or any consent to departure

from, any of the terms or provisions (including without limitation provisions relating to events of default) of the Contract Documents or any agreement or instrument executed pursuant thereto; (iii) TxDOT's consent to the change, reorganization or termination of the corporate structure or existence of Developer; (iv) any defenses, set-offs or counterclaims that Developer may allege or assert against TxDOT in respect of the Guaranteed Obligations, except as provided in Section 21.

5. <u>Waivers.</u> To the fullest extent permitted by law, Guarantor hereby waives and agrees not to assert or take advantage of: (a) any right to require TxDOT to proceed against Developer or any other Person or to proceed against or exhaust any security held by TxDOT at any time or to pursue any right or remedy under any of the Contract Documents or any other remedy in TxDOT's power before proceeding against Guarantor; (b) any defense that may arise by reason of the incapacity, lack of authority, death or disability of, or revocation hereby by Guarantor, Developer or any other Person or the failure of TxDOT to file or enforce a claim against the estate (either in administration, bankruptcy or any other proceeding) of any such Person; (c) any defense that may arise by reason of any presentment, demand for payment or performance or otherwise, protest or notice of any other kind or lack thereof; (d) any right or defense arising out of an election of remedies by TxDOT even though the election of remedies, such as nonjudicial foreclosure with respect to any security for the Guaranteed Obligations, has destroyed the Guarantor's rights of subrogation and reimbursement against Developer by the operation of law or otherwise; (e) all notices to Guarantor, to the Purchasers, to any Purchaser or to any other Person, including, but not limited to, notices of the acceptance of this Guaranty or the creation, renewal, extension, modification, accrual of any of the obligations of Developer under any of the Contract Documents, or of default in the payment or performance of any such obligations, enforcement of any right or remedy with respect thereto or notice of any other matters relating thereto, except the notice required in Section 16.1.3 of the Agreement; (f) any defense based upon any act or omission of TxDOT which directly or indirectly results in or aids the discharge or release of Developer, Guarantor or any security given or held by TxDOT in connection with the Guaranteed Obligations; and (g) any and all suretyship defenses under applicable law.

6. <u>Waiver of Subrogation and Rights of Reimbursement.</u> Until the Guaranteed Obligations have been indefeasibly paid in full, Guarantor waives any claim, right or remedy which it may now have or may hereafter acquire against Developer that arises from the performance of Guarantor hereunder, including, without limitation, any claim, right or remedy of subrogation, reimbursement, exoneration, contribution, or indemnification, or participation in any claim, right or remedy of TxDOT against Developer, or any other security or collateral that TxDOT now has or hereafter acquires, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise. All existing or future indebtedness of Developer or any shareholders, partners, members, joint venturers of Developer to Guarantor is subordinated to all of the Guaranteed Obligations. Whenever and for so long as Developer shall be in default in the performance of a Guaranteed Obligation, no payments with respect to any such indebtedness shall be made by Developer or any shareholders, partners, members, joint venturers of Developer to Guarantor without the prior written consent of TxDOT. Any payment by Developer or any shareholders, partners, members, joint venturers of Developer to Guarantor in violation of this provision shall be deemed to have been received by Guarantor as trustee for TxDOT.

7. <u>Waivers by Guarantor if Real Property Security.</u> If the Guaranteed Obligations are or become secured by real property or an estate for years, Guarantor waives all rights and defenses that Guarantor may have because the Guaranteed Obligations are secured by real property. This means, among other things:

a. TxDOT may collect from Guarantor without first foreclosing on any real or personal property collateral pledged by Developer.

b. If TxDOT forecloses on any real property collateral pledged by Developer:

(1) The amount of the Guaranteed Obligation may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.

(2) TxDOT may collect from Guarantor even if TxDOT, by foreclosing on the real property collateral, has destroyed any right Guarantor may have to collect from Developer.

This is an unconditional and irrevocable waiver of any rights and defenses Guarantor may have because the Guaranteed Obligations secured by real property.

8. <u>Cumulative Rights</u>. All rights, powers and remedies of TxDOT hereunder will be in addition to and not in lieu of all other rights, powers and remedies given to TxDOT, whether at law, in equity or otherwise.

9. <u>Representations and Warranties.</u> Guarantor represents and warrants that:

a. it is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware and qualified to do business and is in good standing under the laws of the State of Texas;

b. it has all requisite corporate power and authority to execute, deliver and perform this Guaranty;

c. the execution, delivery, and performance by Guarantor of this Guaranty have been duly authorized by all necessary corporate action on the part of Guarantor and proof of such authorization will be provided with the execution of this Guaranty;

d. this Guaranty has been duly executed and delivered and constitutes the legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms;

e. neither the execution nor delivery of this Guaranty nor compliance with or fulfillment of the terms, conditions, and provisions hereof, will conflict with, result in a material breach or violation of the terms, conditions, or provisions of, or constitute a material default, an event of default, or an event creating rights of acceleration, termination, or cancellation, or a loss of rights under: (1) the certificate of incorporation or by-laws of

Guarantor, (2) any judgment, decree, order, contract, agreement, indenture, instrument, note, mortgage, lease, governmental permit, or other authorization, right restriction, or obligation to which Guarantor is a party or any of its property is subject or by which Guarantor is bound, or (3) any federal, state, or local law, statute, ordinance, rule or regulation applicable to Guarantor;

f. it now has and will continue to have full and complete access to any and all information concerning the transactions contemplated by the Contract Documents or referred to therein, the financial status of Developer and the ability of Developer to pay and perform the Guaranteed Obligations;

g. it has reviewed and approved copies of the Contract Documents and is fully informed of the remedies TxDOT may pursue, with or without notice to Developer or any other Person, in the event of default of any of the Guaranteed Obligations;

h. it has made and so long as the Guaranteed Obligations (or any portion thereof) remain unsatisfied, it will make its own credit analysis of Developer and will keep itself fully informed as to all aspects of the financial condition of Developer, the performance of the Guaranteed Obligations of all circumstances bearing upon the risk of nonpayment or nonperformance of the Guaranteed Obligations. Guarantor hereby waives and relinquishes any duty on the part of TxDOT to disclose any matter, fact or thing relating to the business, operations or conditions of Developer now known or hereafter known by TxDOT;

i. no consent, authorization, approval, order, license, certificate, or permit or act of or from, or declaration or filing with, any governmental authority or any party to any contract, agreement, instrument, lease, or license to which Guarantor is a party or by which Guarantor is bound, is required for the execution, delivery, or compliance with the terms hereof by Guarantor, except as have been obtained prior to the date hereof; and

j. there is no pending or, to the best of its knowledge, threatened action, suit, proceeding, arbitration, litigation, or investigation of or before any Governmental Authority which challenges the validity or enforceability of this Guaranty.

10. Governing Law. The validity, interpretation and effect of this Guaranty are governed by and will be construed in accordance with the laws of the State of Texas applicable to contracts made and performed in such State and without regard to conflicts of law doctrines except to the extent that certain matters are preempted by Federal law. Guarantor consents to the jurisdiction of the State of Texas with regard to this Guaranty. The venue for any action regarding this Guaranty shall be Travis County, Texas.

11. Entire Document. This Guaranty contains the entire agreement of Guarantor with respect to the transactions contemplated hereby, and supersede all negotiations, representations, warranties, commitments, offers, contracts and writings prior to the date hereof, written or oral, with respect to the subject matter hereof. No waiver, modification or amendment of any provision of this Guaranty is effective unless made in writing and duly signed by TxDOT referring specifically to this Guaranty, and then only to the specific purpose, extent and interest so provided.

12. Severability. If any provision of this Guaranty is determined to be unenforceable for any reason by a court of competent jurisdiction, it will be adjusted rather than voided, to achieve the intent of the parties and all of the provisions not deemed unenforceable will be deemed valid and enforceable to the greatest extent possible.

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

If to TxDOT: Texas Department of Transportation
Dallas District Office
4777 E. Highway 80
Mesquite, Texas 75150
Attention: Mr. Dan H. Peden, P.E.
Telephone: (214) 320-6112
Facsimile: (214) 320-6130

With copies to: Texas Department of Transportation
Office of General Counsel
125 East 11th Street
Attention: Claire McGuinness, Esq.
Telephone: (512) 463-8630
Facsimile: (512) 475-3070

If to Guarantor: _____
_____
_____
Attention:_____
Telephone:_____
Facsimile:_____

Either Guarantor or TxDOT may from time to time change its address for the purpose of notices by a similar notice specifying a new address, but no such change is effective until it is actually received by the party sought to be charged with its contents.

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

14. Captions. The captions of the various Sections of this Guaranty have been inserted only for convenience of reference and do not modify, explain, enlarge or restrict any of the provisions of this Guaranty.

15. Assignability. This Guaranty is binding upon and inures to the benefit of the successors and assigns of Guarantor and TxDOT, but is not assignable by Guarantor without the prior written consent of TxDOT, which consent may be granted or withheld in TxDOT's sole discretion. Any assignment by Guarantor effected in accordance with this Section 15 will not relieve Guarantor of its obligations and liabilities under this Guaranty.

16. Construction of Agreement. Ambiguities or uncertainties in the wording of this Guaranty will not be construed for or against any party, but will be construed in the manner that most accurately reflects the parties' intent as of the date hereof.

17. No Waiver. Any forbearance or failure to exercise, and any delay by TxDOT in exercising, any right, power or remedy hereunder will not impair any such right, power or remedy or be construed to be a waiver thereof, nor will it preclude the further exercise of any such right, power or remedy.

18. Bankruptcy; Post-Petition Interest; Reinstatement of Guaranty.

a. The obligations of Guarantor under this Guaranty will not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of Developer or by any defense which Developer may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding. TxDOT is not obligated to file any claim relating to the Guaranteed Obligations if Developer becomes subject to a bankruptcy, reorganization, or similar proceeding, and the failure of TxDOT so to file will not affect Guarantor's obligations under this Guaranty.

b. Guarantor acknowledges and agrees that any interest on any portion of the Guaranteed Obligations which accrues after the commencement of any proceeding referred to in clause (a) above (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of said proceeding, such interest as would have accrued on such portion of the Guaranteed Obligations if said proceedings had not been commenced) will be included in the Guaranteed Obligations because it is the intention of Guarantor and TxDOT that the Guaranteed Obligations should be determined without regard to any rule of law or order which may relieve Developer of any portion of such Guaranteed Obligations. Guarantor will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or any similar person to pay TxDOT, or allow the claim of TxDOT in respect of, any such interest accruing after the date on which such proceeding is commenced.

19. Attorneys' Fees. Guarantor agrees to pay to TxDOT without demand reasonable attorneys' fees and all costs and other expenses (including such fees and costs of litigation, arbitration and bankruptcy, and including appeals) incurred by TxDOT in enforcing, collecting or compromising any Guaranteed Obligation or enforcing or collecting this Guaranty against Guarantor or in attempting to do any or all of the foregoing.

20. Joint and Several Liability. If the Guarantor is comprised of more than one individuals and/or entities, such individuals and/or entities, as applicable, shall be jointly and

severally liable for the Guaranteed Obligations. If more than one guaranty is executed with respect to Developer and the Project, each guarantor under such a guaranty shall be jointly and severally liable with the other guarantors with respect to the obligations guaranteed under such guaranties.

21. Defenses. Notwithstanding any other provision to the contrary, Guarantor shall be entitled to the benefit of all defenses available to Developer under the Agreement except (a) those expressly waived in this Guaranty, (b) failure of consideration, lack of authority of Developer and any other defense to formation of the Agreement, and (c) defenses available to Developer under any federal or state law respecting bankruptcy, arrangement, reorganization or similar relief of debtors. Action against Guarantor under this Guaranty shall be subject to no prior notice or demand except for the notice provided in Section 16.1.3 of the Agreement.

22. Limitation on Liability. Notwithstanding any other provision of this Guaranty, the Guaranteed Obligations, with respect to the O&M Work, shall not exceed an amount equal to $100,000,000 (which amount shall specifically include any Liquidated Damages paid with respect to the O&M Work pursuant to Section 17), less any amounts paid to TxDOT pursuant to a draw or claim upon the O&M Letter of Credit or O&M Bonds, as applicable. The amount described in this Section 22 shall be adjusted annually based on changes in the CCI commencing on the Effective Date of the Agreement and continuing annually thereafter during the Term.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date first written above.

_____
a _____

By: _____
Name:_____
Title:_____

By: _____
Name:_____
Title:_____

EXHIBIT 13-2

FORM OF O&M GUARANTY

GUARANTY

THIS GUARANTY (this "Guaranty") is made as of _____, 20__ by _____, a _____ ("Guarantor"), in favor of the TEXAS DEPARTMENT OF TRANSPORTATION, an agency of the State of Texas ("TxDOT").

R E C I T A L S

A. _____, as developer ("Developer"), and TxDOT are parties to that certain Development Agreement (the "Agreement") pursuant to which Developer has agreed to develop, design, construct, operate and maintain the Project. Initially capitalized terms used herein without definition will have the meaning given such term in the Contract Documents.

B. To induce TxDOT to (i) enter into the Agreement; and (ii) consummate the transactions contemplated thereby, Guarantor has agreed to enter into this Guaranty.

C. Developer is a _____. The Guarantor is _____. The execution of the Agreement by TxDOT and the consummation of the transactions contemplated thereby will materially benefit Guarantor. Without this Guaranty, TxDOT would not have entered into the Agreement with Developer. Therefore, in consideration of TxDOT's execution of the Agreement and consummation of the transactions contemplated thereby, Guarantor has agreed to execute this Guaranty.

NOW, THEREFORE, in consideration of the foregoing Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor agrees as follows:

1. Guaranty. Guarantor guarantees to TxDOT and its successors and assigns the full and prompt payment and performance when due of all of the obligations of Developer arising out of, in connection with, under or related to the O&M Work under the Contract Documents subject to the limitation on Guarantor's liability set forth in Section 22. The obligations guaranteed pursuant to this Guaranty are collectively referred to herein as the "Guaranteed Obligations."

2. Unconditional Obligations. This Guaranty is a guaranty of payment and performance and not of collection. Except as provided in Section 21, this Guaranty is an absolute, unconditional and irrevocable guarantee of the full and prompt payment and performance when due of all of the Guaranteed Obligations, whether or not from time to time reduced or extinguished or hereafter increased or incurred, and whether or not enforceable against Developer. If any payment made by Developer or any other Person and applied to the Guaranteed Obligations is at any time annulled, set aside, rescinded, invalidated, declared to be fraudulent or preferential or otherwise required to be repaid or refunded, then, to the extent of such payment or repayment, the liability of Guarantor will be and remain in full force and effect as fully as if such payment had never been made. Guarantor covenants that this Guaranty will not be fulfilled or discharged, except by the

complete payment and performance of the Guaranteed Obligations, whether by the primary obligor or Guarantor under this Guaranty. Without limiting the generality of the foregoing, Guarantor's obligations hereunder will not be released, discharged or otherwise affected by: (a) any change in the Contract Documents or the obligations thereunder, or any insolvency, bankruptcy or similar proceeding affecting Developer, Guarantor or their respective assets, and (b) the existence of any claim or set-off which Developer has or Guarantor may have against TxDOT, whether in connection with this Guaranty or any unrelated transaction, provided that nothing in this Guaranty will be deemed a waiver by Guarantor of any claim or prevent the assertion of any claim by separate suit. This Guaranty will in all respects be a continuing, absolute, and unconditional guaranty irrespective of the genuineness, validity, regularity or enforceability of the Guaranteed Obligations or any part thereof or any instrument or agreement evidencing any of the Guaranteed Obligations or relating thereto, or the existence, validity, enforceability, perfection, or extent of any collateral therefor or any other circumstances relating to the Guaranteed Obligations, except as provided in Section 21.

3. <u>Independent Obligations</u>. Guarantor agrees that the Guaranteed Obligations are independent of the obligations of Developer and if any default occurs hereunder, a separate action or actions may be brought and prosecuted against Guarantor whether or not Developer is joined therein. TxDOT may maintain successive actions for other defaults of Guarantor. TxDOT's rights hereunder will not be exhausted by the exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless all Guaranteed Obligations have been paid and fully performed.

a. Guarantor agrees that TxDOT may enforce this Guaranty, at any time and from time to time, without the necessity of resorting to or exhausting any security or collateral and without the necessity of proceeding against Developer. Guarantor hereby waives the right to require TxDOT to proceed against Developer, to exercise any right or remedy under any of the Contract Documents or to pursue any other remedy or to enforce any other right.

b. Guarantor will continue to be subject to this Guaranty notwithstanding: (i) any modification, agreement or stipulation between Developer and TxDOT or their respective successors and assigns, with respect to any of the Contract Documents or the Guaranteed Obligations; (ii) any waiver of or failure to enforce any of the terms, covenants or conditions contained in any of the Contract Documents or any modification thereof; (iii) any release of Developer from any liability with respect to any of the Contract Documents; or (iv) any release or subordination of any collateral then held by TxDOT as security for the performance by Developer of the Guaranteed Obligations.

c. The Guaranteed Obligations are not conditional or contingent upon the genuineness, validity, regularity or enforceability of any of the Contract Documents or the pursuit by TxDOT of any remedies which TxDOT either now has or may hereafter have with respect thereto under any of the Contract Documents.

d. Notwithstanding anything to the contrary contained elsewhere in this Guaranty, Guarantor's obligations and undertakings hereunder are derivative of, and not in excess of, the obligations of Developer under the Agreement. Accordingly, in the event that Developer's obligations have been changed by any modification, agreement or stipulation

between Developer and TxDOT or their respective successors or assigns, this Guaranty shall apply to the Guaranteed Obligations as so changed.

4. <u>Liability of Guarantor.</u>

a. TxDOT may enforce this Guaranty upon the occurrence of a breach by Developer of any of the Guaranteed Obligations, notwithstanding the existence of any dispute between TxDOT and Developer with respect to the existence of such a breach.

b. Guarantor's performance of some, but not all, of the Guaranteed Obligations will in no way limit, affect, modify or abridge Guarantor's liability for those Guaranteed Obligations that have not been performed.

c. TxDOT, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability of this Guaranty or giving rise to any reduction, limitation, impairment, discharge or termination of Guarantor's liability hereunder, from time to time may (i) with respect to the financial obligations of Developer, if and as permitted by the Agreement, renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment of financial obligations that are Guaranteed Obligations, and/or subordinate the payment of the same to the payment of any other obligations, (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto, (iii) request and accept other guarantees of the Guaranteed Obligations and take and hold security for the payment and performance of this Guaranty or the Guaranteed Obligations, (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for performance of the Guaranteed Obligations, any other guarantees of the Guaranteed Obligations, or any other obligation of any Person with respect to the Guaranteed Obligations, (v) enforce and apply any security hereafter held by or for the benefit of TxDOT in respect of this Guaranty or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that TxDOT may have against any such security, as TxDOT in its discretion may determine, and (vi) exercise any other rights available to it under the Contract Documents.

d. This Guaranty and the obligations of Guarantor hereunder will be valid and enforceable and will not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than indefeasible performance in full of the Guaranteed Obligations), including without limitation the occurrence of any of the following, whether or not Guarantor will have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Contract Documents, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement or instrument relating thereto; (ii) any rescission, waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions (including without limitation provisions relating to events of default) of the Contract Documents or any agreement or instrument executed pursuant thereto; (iii) TxDOT's consent to the change, reorganization or termination of the corporate structure or

existence of Developer; (iv) any defenses, set-offs or counterclaims that Developer may allege or assert against TxDOT in respect of the Guaranteed Obligations, except as provided in Section 21.

5. <u>Waivers.</u> To the fullest extent permitted by law, Guarantor hereby waives and agrees not to assert or take advantage of: (a) any right to require TxDOT to proceed against Developer or any other Person or to proceed against or exhaust any security held by TxDOT at any time or to pursue any right or remedy under any of the Contract Documents or any other remedy in TxDOT's power before proceeding against Guarantor; (b) any defense that may arise by reason of the incapacity, lack of authority, death or disability of, or revocation hereby by Guarantor, Developer or any other Person or the failure of TxDOT to file or enforce a claim against the estate (either in administration, bankruptcy or any other proceeding) of any such Person; (c) any defense that may arise by reason of any presentment, demand for payment or performance or otherwise, protest or notice of any other kind or lack thereof; (d) any right or defense arising out of an election of remedies by TxDOT even though the election of remedies, such as nonjudicial foreclosure with respect to any security for the Guaranteed Obligations, has destroyed the Guarantor's rights of subrogation and reimbursement against Developer by the operation of law or otherwise; (e) all notices to Guarantor, to the Purchasers, to any Purchaser or to any other Person, including, but not limited to, notices of the acceptance of this Guaranty or the creation, renewal, extension, modification, accrual of any of the obligations of Developer under any of the Contract Documents, or of default in the payment or performance of any such obligations, enforcement of any right or remedy with respect thereto or notice of any other matters relating thereto, except the notice required in Section 16.1.3 of the Agreement; (f) any defense based upon any act or omission of TxDOT which directly or indirectly results in or aids the discharge or release of Developer, Guarantor or any security given or held by TxDOT in connection with the Guaranteed Obligations; and (g) any and all suretyship defenses under applicable law.

6. <u>Waiver of Subrogation and Rights of Reimbursement.</u> Until the Guaranteed Obligations have been indefeasibly paid in full, Guarantor waives any claim, right or remedy which it may now have or may hereafter acquire against Developer that arises from the performance of Guarantor hereunder, including, without limitation, any claim, right or remedy of subrogation, reimbursement, exoneration, contribution, or indemnification, or participation in any claim, right or remedy of TxDOT against Developer, or any other security or collateral that TxDOT now has or hereafter acquires, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise. All existing or future indebtedness of Developer or any shareholders, partners, members, joint venturers of Developer to Guarantor is subordinated to all of the Guaranteed Obligations. Whenever and for so long as Developer shall be in default in the performance of a Guaranteed Obligation, no payments with respect to any such indebtedness shall be made by Developer or any shareholders, partners, members, joint venturers of Developer to Guarantor without the prior written consent of TxDOT. Any payment by Developer or any shareholders, partners, members, joint venturers of Developer to Guarantor in violation of this provision shall be deemed to have been received by Guarantor as trustee for TxDOT.

7. <u>Waivers by Guarantor if Real Property Security.</u> If the Guaranteed Obligations are or become secured by real property or an estate for years, Guarantor waives all rights and defenses that Guarantor may have because the Guaranteed Obligations are secured by real property. This means, among other things:

a. TxDOT may collect from Guarantor without first foreclosing on any real or personal property collateral pledged by Developer.

b. If TxDOT forecloses on any real property collateral pledged by Developer:

(3) The amount of the Guaranteed Obligation may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.

(4) TxDOT may collect from Guarantor even if TxDOT, by foreclosing on the real property collateral, has destroyed any right Guarantor may have to collect from Developer.

This is an unconditional and irrevocable waiver of any rights and defenses Guarantor may have because the Guaranteed Obligations secured by real property.

8. Cumulative Rights. All rights, powers and remedies of TxDOT hereunder will be in addition to and not in lieu of all other rights, powers and remedies given to TxDOT, whether at law, in equity or otherwise.

9. Representations and Warranties. Guarantor represents and warrants that:

a. it is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware and qualified to do business and is in good standing under the laws of the State of Texas;

b. it has all requisite corporate power and authority to execute, deliver and perform this Guaranty;

c. the execution, delivery, and performance by Guarantor of this Guaranty have been duly authorized by all necessary corporate action on the part of Guarantor and proof of such authorization will be provided with the execution of this Guaranty;

d. this Guaranty has been duly executed and delivered and constitutes the legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms;

e. neither the execution nor delivery of this Guaranty nor compliance with or fulfillment of the terms, conditions, and provisions hereof, will conflict with, result in a material breach or violation of the terms, conditions, or provisions of, or constitute a material default, an event of default, or an event creating rights of acceleration, termination, or cancellation, or a loss of rights under: (1) the certificate of incorporation or by-laws of Guarantor, (2) any judgment, decree, order, contract, agreement, indenture, instrument, note, mortgage, lease, governmental permit, or other authorization, right restriction, or obligation to which Guarantor is a party or any of its property is subject or by which Guarantor is bound, or (3) any federal, state, or local law, statute, ordinance, rule or regulation applicable to Guarantor;

f. it now has and will continue to have full and complete access to any and all information concerning the transactions contemplated by the Contract Documents or referred to therein, the financial status of Developer and the ability of Developer to pay and perform the Guaranteed Obligations;

g. it has reviewed and approved copies of the Contract Documents and is fully informed of the remedies TxDOT may pursue, with or without notice to Developer or any other Person, in the event of default of any of the Guaranteed Obligations;

h. it has made and so long as the Guaranteed Obligations (or any portion thereof) remain unsatisfied, it will make its own credit analysis of Developer and will keep itself fully informed as to all aspects of the financial condition of Developer, the performance of the Guaranteed Obligations of all circumstances bearing upon the risk of nonpayment or nonperformance of the Guaranteed Obligations. Guarantor hereby waives and relinquishes any duty on the part of TxDOT to disclose any matter, fact or thing relating to the business, operations or conditions of Developer now known or hereafter known by TxDOT;

i. no consent, authorization, approval, order, license, certificate, or permit or act of or from, or declaration or filing with, any governmental authority or any party to any contract, agreement, instrument, lease, or license to which Guarantor is a party or by which Guarantor is bound, is required for the execution, delivery, or compliance with the terms hereof by Guarantor, except as have been obtained prior to the date hereof; and

j. there is no pending or, to the best of its knowledge, threatened action, suit, proceeding, arbitration, litigation, or investigation of or before any Governmental Authority which challenges the validity or enforceability of this Guaranty.

10. Governing Law. The validity, interpretation and effect of this Guaranty are governed by and will be construed in accordance with the laws of the State of Texas applicable to contracts made and performed in such State and without regard to conflicts of law doctrines except to the extent that certain matters are preempted by Federal law. Guarantor consents to the jurisdiction of the State of Texas with regard to this Guaranty. The venue for any action regarding this Guaranty shall be Travis County, Texas.

11. Entire Document. This Guaranty contains the entire agreement of Guarantor with respect to the transactions contemplated hereby, and supersede all negotiations, representations, warranties, commitments, offers, contracts and writings prior to the date hereof, written or oral, with respect to the subject matter hereof. No waiver, modification or amendment of any provision of this Guaranty is effective unless made in writing and duly signed by TxDOT referring specifically to this Guaranty, and then only to the specific purpose, extent and interest so provided.

12. Severability. If any provision of this Guaranty is determined to be unenforceable for any reason by a court of competent jurisdiction, it will be adjusted rather than voided, to achieve the intent of the parties and all of the provisions not deemed unenforceable will be deemed valid and enforceable to the greatest extent possible.

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

If to TxDOT: Texas Department of Transportation
Dallas District Office
4777 E. Highway 80
Mesquite, Texas 75150
Attention: Mr. Dan H. Peden, P.E.
Telephone: (214) 320-6112
Facsimile: (214) 360-6130

With copies to: Texas Department of Transportation
Office of General Counsel
125 East 11th Street
Attention: Claire McGuinness, Esq.
Telephone: (512) 463-8630
Facsimile: (512) 475-3070

If to Guarantor: _____
_____
_____
Attention:_____
Telephone:_____
Facsimile:_____

Either Guarantor or TxDOT may from time to time change its address for the purpose of notices by a similar notice specifying a new address, but no such change is effective until it is actually received by the party sought to be charged with its contents.

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

14. Captions. The captions of the various Sections of this Guaranty have been inserted only for convenience of reference and do not modify, explain, enlarge or restrict any of the provisions of this Guaranty.

15. Assignability. This Guaranty is binding upon and inures to the benefit of the successors and assigns of Guarantor and TxDOT, but is not assignable by Guarantor without the prior written consent of TxDOT, which consent may be granted or withheld in TxDOT's sole discretion. Any assignment by Guarantor effected in accordance with this Section 15 will not relieve Guarantor of its obligations and liabilities under this Guaranty.

16. <u>Construction of Agreement.</u> Ambiguities or uncertainties in the wording of this Guaranty will not be construed for or against any party, but will be construed in the manner that most accurately reflects the parties' intent as of the date hereof.

17. <u>No Waiver.</u> Any forbearance or failure to exercise, and any delay by TxDOT in exercising, any right, power or remedy hereunder will not impair any such right, power or remedy or be construed to be a waiver thereof, nor will it preclude the further exercise of any such right, power or remedy.

18. <u>Bankruptcy; Post-Petition Interest; Reinstatement of Guaranty.</u>

a. The obligations of Guarantor under this Guaranty will not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of Developer or by any defense which Developer may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding. TxDOT is not obligated to file any claim relating to the Guaranteed Obligations if Developer becomes subject to a bankruptcy, reorganization, or similar proceeding, and the failure of TxDOT so to file will not affect Guarantor's obligations under this Guaranty.

b. Guarantor acknowledges and agrees that any interest on any portion of the Guaranteed Obligations which accrues after the commencement of any proceeding referred to in clause (a) above (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of said proceeding, such interest as would have accrued on such portion of the Guaranteed Obligations if said proceedings had not been commenced) will be included in the Guaranteed Obligations because it is the intention of Guarantor and TxDOT that the Guaranteed Obligations should be determined without regard to any rule of law or order which may relieve Developer of any portion of such Guaranteed Obligations. Guarantor will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or any similar person to pay TxDOT, or allow the claim of TxDOT in respect of, any such interest accruing after the date on which such proceeding is commenced.

19. <u>Attorneys' Fees</u>. Guarantor agrees to pay to TxDOT without demand reasonable attorneys' fees and all costs and other expenses (including such fees and costs of litigation, arbitration and bankruptcy, and including appeals) incurred by TxDOT in enforcing, collecting or compromising any Guaranteed Obligation or enforcing or collecting this Guaranty against Guarantor or in attempting to do any or all of the foregoing.

20. <u>Joint and Several Liability</u>. If the Guarantor is comprised of more than one individuals and/or entities, such individuals and/or entities, as applicable, shall be jointly and severally liable for the Guaranteed Obligations. If more than one guaranty is executed with respect to Developer and the Project, each guarantor under such a guaranty shall be jointly and severally liable with the other guarantors with respect to the obligations guaranteed under such guaranties.

21. <u>Defenses</u>. Notwithstanding any other provision to the contrary, Guarantor shall be entitled to the benefit of all defenses available to Developer under the Agreement except (a) those

expressly waived in this Guaranty, (b) failure of consideration, lack of authority of Developer and any other defense to formation of the Agreement, and (c) defenses available to Developer under any federal or state law respecting bankruptcy, arrangement, reorganization or similar relief of debtors. Action against Guarantor under this Guaranty shall be subject to no prior notice or demand except for the notice provided in Section 16.1.3 of the Agreement.

22. Limitation on Liability. Notwithstanding any other provision of this Guaranty, the Guaranteed Obligations, with respect to the O&M Work, shall not exceed an amount equal to $100,000,000 (which amount shall specifically include any Liquidated Damages paid with respect to the O&M Work pursuant to Section 17), less any amounts paid to TxDOT pursuant to a draw or claim upon the O&M Letter of Credit or O&M Bonds, as applicable. The amount described in this Section 22 shall be adjusted annually based on changes in the CCI commencing on the Effective Date of the Agreement and continuing annually thereafter during the Term.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date first written above.

_____
a _____

By: _____
Name:_____
Title:_____

By: _____
Name:_____
Title:_____

EXHIBIT 14

INSURANCE COVERAGE REQUIREMENTS

1. Builder's Risk Insurance During Construction

At all times during the period from the commencement of Construction Work until Substantial Completion, Developer shall procure and keep in force, or cause to be procured and kept in force, a policy of builder's risk insurance as specified below.

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

(b) The policy shall cover (i) all property, roads, buildings, structures, fixtures, materials, supplies, foundations, pilings, machinery and equipment that are part of or related to the portions or elements of the Project under construction, and the works of improvement, including permanent and temporary works and materials, and including goods intended for incorporation into the works located at the Site, in storage or in the course of inland transit on land to the Site, (ii) unless covered by commercial general liability insurance pursuant to Section 3 of this Exhibit 14, all existing property and improvements that are within the construction work zone or are or will be affected by the Construction Work, provided however that the policy may include a sublimit of not less than $2,500,000 for the property of others; and (iii) valuable papers and restoration of data, plans and drawings.

(c) The policy shall provide coverage per occurrence of $200,000,000 of the covered property loss without risk of co-insurance; provided, however, that the policy may also include the following sublimits: (i) for earth movement and flood, not less than $5,000,000 per occurrence and $10,000,000 aggregate; (ii) for the peril of a named windstorm, not less than $100,000,000 per occurrence; (iii) for existing property improvements, not less than $2,500,000; (iv) for building ordinance compliance and increased replacement cost due to any change in applicable codes or other Laws, not less than $10,000,000; (v) for "soft cost expense," not less than $5,000,000; (vi) for professional fees, not less than $1,000,000; and (vii) for delay in startup expense, not less than $10,000,000; and (viii) for demolition and debris removal, not less than $25,000,000.

(d) TxDOT and the Indemnified Parties shall be named as additional insureds on the policy as their respective interests appear. Developer also may, but is not obligated to, include other Subcontractors 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 additional insureds.

(e) To the extent commercially 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) 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, (x) loss of revenue due to delays in start-up, 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.

2. Property Insurance/Builder's Risk Insurance During the O&M Period

Commencing on the Substantial Completion Date and continuing through the O&M Period, 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 O&M Limits for terrorism, earthquake, earth movement, volcanic activity, tsunami, flood, storm, tempest, windstorm, hurricane, tornado, ice flow, subsidence, or loss of property while waterborne or under the water. The policy shall contain extensions of coverage that are typical for a project of the nature of the Project, and shall contain only those exclusions that are typical for a project of the nature of the Project (including the sublimits noted below).

(b) The policy shall cover all property, roads, buildings, bridge structures, other structures, fixtures, materials, supplies, foundations, pilings, machinery and equipment that are part of the Project or within the O&M Limits.

(c) The policy shall provide coverage per occurrence sufficient to reinstate the insured property for a limit not less than the probable maximum loss, and will include reasonable sublimits for Property in the Course of Construction, 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 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 every five years 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. If for

some reason TxDOT is not a named insured on the policy, TxDOT shall be named as additional insured on the policy. Developer also may, but is not obligated to, include Subcontractors and other interested parties as additional insureds as their respective interests appear. The policy shall be written so that no acts or omissions of a named insured shall vitiate coverage of the other named insureds or additional insureds (as applicable). TxDOT shall be named as loss payee under the policy. If TxDOT, as loss payee, 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 to the Project.

(e) To the extent commercially 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, (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) and (xii) Property in the Course of Construction with a sublimit of $5,000,000, provided that such amount shall be increased, as needed, to equal the value of any construction during the O&M Period in advance of such construction work. The sublimit for coverage (vii) shall be not less than $25,000,000. The sublimit coverage for (xi) shall be not less than $5,000,000. The aggregate sublimit for coverages (viii) and (x) shall be not less than $10,000,000.

(f) The policy shall provide a deductible not exceeding $1,000,000 per occurrence.

(g) Developer shall also procure and keep in force, or cause to be procured and kept in force, a policy covering any contractor's equipment on site for a limit not less than $2,500,000, with a deductible not exceeding $10,000 per occurrence.

3. Business Interruption Insurance

TxDOT is not currently requiring Developer procure business interruption insurance to cover loss toll revenues for the Project. However TxDOT retains the right to request Developer to provide such coverage in the future, provided that TxDOT shall be responsible for any additional costs for such coverage.

4. Commercial General Liability Insurance During the Construction Period

At all times during the Construction Period and for the D&C Warranty 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 6 of this Exhibit 14, the commercial general liability insurance policy need not duplicate the builder's third party liability insurance coverage.

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

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

(i) Contractual liability;

(ii) Premises/operations;

(iii) Independent contractors;

(iv) Products and Completed Operations for the applicable State Statute of Repose after final completion and acceptance of the final payment for the D&C Work (with acknowledgement that the Project constitutes the premises and not a product);

(v) Broad form property damage, providing the same coverage as ISO form CG 00 01 10 93 provides;

(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 7 of this Exhibit 14.

(c) The policy shall have limits of not less than $100,000,000 per occurrence and in the aggregate per policy period. Such limits may be provided through umbrella insurance and shall be shared by all insured and additional insured parties and shall reinstate annually during the D&C Period, and may be included in an umbrella insurance combined with such other insurance that this Exhibit 14 stipulates may be similarly included.

(d) TxDOT and the Indemnified Parties shall be named as additional insureds, using ISO form CG 20 10 07/04, ISO form CG 20 37 07/04 or equivalent. The policy shall be written so that no act or omission of a named insured shall vitiate coverage of the additional insureds.

(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) not exceeding $1,000,000 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.

5. Commercial General Liability Insurance During the O&M Period

At all times during the O&M Period and for the O&M Warranty Period, 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 6 of this Exhibit 14, the commercial general liability insurance policy need not duplicate the builder's third party liability insurance coverage.

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

(b) The policy shall insure against the legal liability of the insureds named in Section 5(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 for the applicable State Statute of Repose after final completion and acceptance of the final payment for the O&M Work (with acknowledgement that the Project constitutes the premises and not a product);

(v) Broad form property damage, providing the same coverage as ISO form CG 00 01 10 93 provides;

(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 14.

(c) The policy shall have limits of not less than $25,000,000 per occurrence and in the aggregate per policy period. Such limits may be provided through umbrella insurance and shall be shared by all insured and additional insured parties and shall reinstate annually, and may be included in an umbrella insurance combined with such other insurance that this Exhibit 14 stipulates may be similarly included.

(d) TxDOT and the Indemnified Parties shall be named as additional insureds, using ISO form CG 20 10 07/04, ISO form CG 20 37 07/04 or equivalent. The policy shall be written so that no act or omission of a named insured shall vitiate coverage of the additional insureds.

(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) not exceeding $1,000,000 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.

6. Builder's Third Party Liability Insurance

During any period in which Construction Work or any other work of construction is performed or in progress during the Term, 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 or any construction work performed during the applicable warranty period set forth in the Agreement. The policy shall contain extensions of coverage that are typical for a project of the nature of the Project, and shall contain only those exclusions that are typical for a project of the nature of the Project.

(b) The policy shall otherwise include the same provisions as described for the commercial general liability insurance under Sections 4(b) through (e) of this Exhibit 14.

7. Automobile Liability Insurance

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

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

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

(c) Developer's policy shall have a single limit per policy period of not less than $50,000,000 for any one claim and in the aggregate, and may be included in an umbrella insurance combined with such other insurance that this Exhibit 14 stipulates may be similarly included.

(d) Each policy shall provide a deductible (but not self-insured retention) not exceeding $1,000,000 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.

8. Pollution Liability Insurance

Developer shall procure and maintain, or cause to be procured and maintained, at all times throughout the Term insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by Developer, its agents, representatives, employees or subcontractors. Coverage shall be at least as broad as:

(a) Contractors Pollution Liability with coverage for losses caused by pollution conditions that arise from the operations of Developer described under the scope of services of this Development Agreement:

(i) Bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death; medical monitoring,

(ii) Property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, clean up costs, and the loss of use of tangible property that has not been physically injured or destroyed;

(iii) Defense including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages;

(iv) Non-owned Disposal Site coverage for specified sites (by endorsement) if contractor is disposing of waste(s); and

(v) Coverage for loss, clean-up costs and related legal expense because of a pollution condition arising from the Named Insured's goods, products, or waste during the course of transportation by a carrier to or from: (1) A job site where contracting services are being performed; or (2) a covered location; Including loading or unloading of such goods, products or waste, which the insured becomes legally obligated to pay as a result of a claim first made against the insured during the policy period.

(b) Coverage shall apply to sudden and non-sudden pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, provided such conditions are not naturally present in the environment in the concentration or amounts discovered, unless such natural condition(s) are released or dispersed as a result of the performance of Covered Operations.

(c) Contractor's Pollution Liability (occurrence form): Developer shall maintain limits no less than $10,000,000 per occurrence/$25,000,000 aggregate for the term of the Agreement.

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

(e) TxDOT shall be named as an additional insured on the policy. The specific scope of services required under the Development Agreement shall be listed on the certificate of insurance.

9. Professional Liability Insurance

At all times during the Term that Professional Services are rendered under the Agreement respecting design and construction of the Project (which services to be provided during the D&C Period are conclusively presumed to start on the Effective Date) until the first to occur of (1) five years after the Professional Services have concluded for the Project or (2) expiration of all applicable statutes of limitation and repose applicable to Professional Services performed for the Project, Developer shall procure and keep in force, and shall cause the Design-Build Contractor and the Lead Design Firm and each Subcontractor that is under direct contract with Developer and provides Professional Services to Developer respecting such design and construction to procure and keep in force, professional liability insurance as specified in subparagraphs (a), (b), (c) and (d) below. Such insurance requirements also shall apply in like manner to Professional Services for any construction work during the O&M Period, including Renewal Work and Handback Requirements in excess of $10,000,000, or Developer may satisfy the foregoing requirements during the O&M Period through Developer's annual contractor's protective professional indemnity policy that meets the requirements of subparagraphs (b), (c) and (d) below and is procured and kept in force until the first to occur of (1) five years after the applicable Professional Services have concluded or (2) expiration of all applicable statutes of limitation and repose applicable to the Professional Services performed. The retroactive date applicable to coverage under such policies must precede the effective date of the applicable Subcontract. Developer may satisfy such insurance via a Project policy covering all the foregoing providers of professional services, provided no "insured versus insured" or similar exclusion precludes coverage of professionals for claims made by TxDOT or its successors or assigns.

(a) The insurance policy shall be Project-specific and provide coverage of liability of the party performing the Professional Services arising out of any negligent act, error or omission in the performance of Professional Services or activities for the Project, including for bodily injury or property damage.

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

(d) The insurance policy shall provide a vicarious indemnity endorsement for the benefit of TxDOT and the Indemnified Parties.

In addition, Developer shall cause each other Subcontractor that provides Professional Services for the Project or the O&M Limits, as applicable, to procure and keep in force until the first to occur of (1) five years after the Subcontractor's Professional Services have concluded for the Project or (2) expiration of all applicable statutes of limitation and repose applicable the

Subcontractor's Professional Services performed for the Project or the O&M Limits, as applicable, professional liability insurance, covering its professional services practice, of not less than $2,000,000 per claim and in the aggregate per annual policy period. Such policy need not be Project-specific, and shall include a commercially reasonable deductible. The retroactive date applicable to coverage under the policy must precede the effective date of the applicable Subcontract.

10. Workers' Compensation Insurance

At all times when Work is being performed by any employee of Developer or any Subcontractor, 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 Subcontractors, whichever is the applicable employer, shall be the named insured on these policies. 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 only if performing railroad related work;

(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.

11. 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 and all Subcontractors working on or about any Site or otherwise engaged in the work.

(b) Developer and/or the Subcontractor, whichever is the applicable employer, shall be the named insured.

(c) The policy shall have a limit of not less than $50,000,000 (during the D&C Period) and $25,000,000 (during the O&M Period) per accident and in the aggregate during the period of insurance, and may be included in an umbrella insurance combined with such other insurance that this Exhibit 14 stipulates may be similarly included.

12. Railroad Insurance

Developer shall procure and keep in force, or cause to be procured and kept in force, prior to performing any Work across, under or adjacent to the railroad's tracks or railroad right-of-way, the following types of insurance as may be required by the operating railroad:

(a) Railroad Protective Liability Insurance Policy; and

(b) Commercial General Liability Insurance.

All insurance policies shall be in a form acceptable to the operating railroad and shall name the railroad as the named insured. Copies of all insurance policies shall be submitted to TxDOT prior to any entry by Developer upon operating railroad property. In the event any agreement between TxDOT and a railroad includes 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.

13. Subcontractors' Insurance

(a) At all times during the Term, Developer shall cause each Subcontractor that performs work on the Site to provide commercial general liability insurance that complies with Section 9 of the Agreement, with commercially reasonable limits and deductibles or self-insured retentions as determined by Developer, in circumstances where the Subcontractor is not covered by Developer-provided liability insurance. Developer shall cause each such Subcontractor that provides such insurance to include each of the Indemnified Parties as additional insureds under such Subcontractor's liability insurance policies. Such insurance need not be Project-specific. TxDOT shall have the right to contact the Subcontractors directly in order to verify the above coverage.

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

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

(ii) Each such Subcontractor 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 when Work is being performed by any employee of a Subcontractor, Developer shall cause subcontractor to 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. Subcontractor shall be the named insured on these policies. The workers' compensation insurance policy shall contain the following endorsements:

(i) An endorsement extending the policy to cover the liability of the insureds under the Federal Employer's Liability Act only if performing railroad related work;

(ii) A voluntary compensation endorsement;

(iii) An alternative employer endorsement; and

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

(d) At all times during the Term, Developer shall cause each Subcontractor to procure and keep in force employer's liability insurance as specified below.

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

(ii) Subcontractor shall be the named insured.

(iii) The policy shall have a limit of not less than $1,000,000 per accident and in the aggregate during the period of insurance, and may be included in an umbrella insurance combined with such other insurance that this Exhibit 14 stipulates may be similarly included.

EXHIBIT 15

FORM OF DRAW REQUEST AND CERTIFICATE

Draw Request # _____ Date: _____
month/day/year

Texas Department of Transportation
[Address]

"Entry Required in Cell"

A. Draw Request for Work performed for the period: _____ to _____
month/day/year month/day/year

B. Original Contract Amount	
C. Approved Change Order Amounts	
D. Revised Contract Amount (B+C)	$0.00
E. Cumulative Amount Earned to Date	
F. Cumulative Amount of Previous Draw Requests	
G. Amount Completed This Period (E-F)	
H. Amount of Cash Payment Requested this Period	
I. Amount of Deferred D&C Payment Certificate Requested this Period	
J. Cumulative Amount of Cash Payments Requested in Prior Draw Requests	
K. Cumulative Maximum D&C Payment Schedule Allowance (this period from Exhibit 5)	
L. Amount Qualified for Cash Payment this Period (Lesser of "K-J" or "H") (includes Electronic Communications and Landscaping work described below)	$0.00
M. Cumulative Amount of Deferred D&C Payment Certificates Previously Requested	
N. Cumulative Maximum Deferred D&C Payment Allowance (B - $ 600,000,000)	
O. Amount Qualified for Deferred D&C Payment Certificate this Period (Lesser of "N-M" or "I")	

(includes Electronic Communications and Landscaping work described below)	
P. Retainage Percentage this Draw Request for Record Drawings (1% of "L+O")	$0.00
Q. Deduction from progress payment per Section 11.6.2 of the Agreement (this Draw Request)	$
R. Deduction due to offset for Liquidated Damages and Lane Rental Fees (this Draw Request)	$
S. Total deductions ("P + Q + R")	$
T. Current Cash Payment Due (if "L - S" > 0, then "L - S", otherwise this is 0")	$
U. Current Deferred D&C Certificate to be Issued (if "L - S" ≤ 0, then "O – S+ L", otherwise this is "O")	$

Printed Name Developer's Project Manager	Signature	month/day/year
Printed Name TxDOT Program Manager	Signature	month/day/year
Printed Name Texas Department of Transportation	Signature	month/day/year

(Note: See Sheet 4 of 4 for Draw Request Checklist)

DRAW REQUEST NO. _____ CERTIFICATION

The undersigned hereby certifies that:

- Except as specifically noted in the certification, all Work, including that of designers, Subcontractors, and Suppliers, that is the subject of the Draw Request has been checked or inspected by the Professional Services Quality Control Manager with respect to Professional Services and the Construction Quality Acceptance Firm with respect to the Construction Work;

- Except as specifically noted in the certification, all Work that is the subject of the Draw Request conforms to the requirements of the Contract Documents;

- All amounts payable to any designers, consultants, Subcontractors and Suppliers for completed Work have been paid;

- The Professional Services Quality Program and the Construction Quality Program and all of the measures and procedures provided therein are functioning properly and are being followed;

- The Professional Services percentages and construction percentages indicated are accurate and correct; and

- All quantities for which payment is requested on a unit price basis are accurate.

Exceptions:
_____
_____
_____

_____ _____
Name: _____ Date
[PSQCM] [CQAF] Representative

Seal:

DRAW REQUEST CHECKLIST

Enclosed with this cover sheet are the following:

- ☐ Monthly progress report as described in Section 2.1.1.4 of the Technical Provisions
- ☐ Certifications by the Professional Services Quality Control Manager and the Construction Quality Acceptance Firm
- ☐ Monthly report of personnel hours
- ☐ Draw Request data sheet(s) and documents that support and substantiate the amount requested
- ☐ An approved Schedule of Values or an approved revised Schedule of Values as described in Section 2.1.1.2.10 of the Technical Provisions
- ☐ DBE utilization reports
- ☐ Prompt Payment Certification Form 2177 evidencing prompt payment to DBEs
- ☐ Cash flow curves and comparison to the Maximum Payment Schedule
- ☐ An approved Project Baseline Schedule Update as described in Section 2.1.1.3 of the Technical Provisions

EXHIBIT 16

FORM OF CHANGE ORDER

CHANGE ORDER REQUEST NO. _____ CONTRACT NO. _____

SECTION I

Originator:_____ Date: _____

- **Title: _____**

Contract No: _____

- **Company Name: _____**

DESCRIPTION:

_____
_____
_____
_____
_____

SCOPE:

_____
_____
_____
_____
_____

REASON FOR REQUEST FOR CHANGE ORDER:

_____
_____
_____
_____
_____

_____
Developer Project Manager Date

SECTION II

The total amount of this Change Order is $ _____. Documentation supporting the Change Order is attached as Exhibits _____ through _____.

Payment Schedule Items Added/Deducted:

Activity No.	Description	Amount
_____	_____	_____

This Change Order Request is for (check the applicable categories below):

- _____ A lump sum, negotiated price Change Order (provide information in Section IIA below)
- _____ A unit price/quantities Change Order (provide information in Section IIB below)
- _____ A Time and Materials Change Order (provide information in Section IIC below)

Section IIA

Lump sum price is $_____

Section IIB

UNIT PRICE ITEM	UNIT PRICE	QUANTITY	PRICE (Unit Price x Quantity)

Total of all items in above Table: $_____

Section IIC

Summary of Change Order Request by Categories: [Additives/(Credits)]

A. Developer Labor (construction)
   1. Wages[1] $ _____ _____
   2. Labor benefits[2] (55% of A.1) $ _____

B.	Developer and Subcontractor Labor (professional services)		
	1.	Wages (Raw)	$ _____
	2.	Labor benefits[1] (145% of B.1, which includes overhead and profit)	$ _____
	3.	Off-duty peace officers and patrol cruisers[1]	$ _____
C.	Materials (with taxes, freight and discounts)		$ _____
D.	Equipment[2]		$ _____
E.	Subcontracts (Time and Materials cost)		$ _____
F.	Utility Direct Costs		$ _____
G.	Other Direct Costs		$ _____
H.	Overhead and Profit		
	1.	Labor (25% of A.1)	$ _____
	2.	Traffic Control (5% of B.3)	$ _____
	3.	Materials (15% of C)	$ _____
	4.	Equipment (5% of D)	
	5.	Subcontracts (5% of E)	$ _____
	6.	Utility Direct Costs (5% of F)	$ _____
I.	Grand Total		$ _____

[1] Premiums on public liability and workers' compensation insurance, Social Security and unemployment insurance taxes.
[2] Equipment Costs (estimated or actual) based on Blue Book Equipment Rental Rates calculated in accordance with Section 12.7.3 of the Agreement.

SECTION III

The status of Substantial Completion is as follows:

- ❑ Unaffected by this Change Order Proposal
- ❑ Affected by (increasing) (decreasing) the date of Substantial Completion by _____calendar days.
- ❑ Affected by (increasing) (decreasing) the _____ Float by _____ calendar days.

The status of Final Acceptance is as follows:

- ❑ Unaffected by this Change Order Proposal
- ❑ Affected by (increasing) (decreasing) the date of Final Acceptance by _____calendar days.
- ❑ Affected by (increasing) (decreasing) the _____ Float by _____ calendar days.

Accordingly, the summary of the dates of Substantial Completion and Final Acceptance and Float are as follows:

1. Substantial Completion: _____
   (+ or - _____ days from base of _____ calendar days after NTP1)

2. Final Acceptance: _____
   (+ or - _____ days from base of _____ calendar days after NTP1)

3. Number of days of Project Float _____

Justification for Change Order with reference to the Agreement:
_____
_____
_____

The above three sections represent a true and complete summary of all aspects of this Request for Change Order.

This Request for Change Order includes all known and anticipated impacts or amounts, direct, indirect and consequential, which may be incurred as a result of the event, occurrence or matter giving rise to the proposed change.

If the foregoing Request for Change Order includes claims of Subcontractors or Suppliers, the undersigned have reviewed such claims and have determined in good faith that the claims are justified as to both entitlement and amount.

_____
Developer Authorized Representative

Date: _____

SECTION IV (Reviewed by Program Manager)

_____
Program Manager (Development Agreement) Date

Comments:
_____
_____
_____

SECTION V (Reviewed by TxDOT Project Director)

_____

TxDOT Project Director

Date_____

Comments:

_____

_____

_____

SECTION VI (Reviewed by FHWA Project Representative)

_____

FHWA Project Representative

Date

Comments:

_____

_____

_____

SECTION VII (Approval by TxDOT District Engineer and Deputy Director)

_____

TxDOT District Engineer **Date**

_____

TxDOT Deputy Director **Date**

Comments:

_____

_____

_____

EXHIBIT 17

LANE RENTAL FEES AND LIQUIDATED DAMAGES FOR LANE CLOSURES, DEFECT HAZARD MITIGATION CLASSIFICATIONS, AND CONSTRUCTION VIOLATION EVENTS

1. LANE CLOSURES DURING CONSTRUCTION PERIOD

1.1 Lane Closures on Connecting Highways

Not applicable

1.2 Lane Closures on the Project

(a) Lane Rental Fees, as defined in this Exhibit 17, and liquidated damages shall be assessed for certain Lane Closures during the Construction Period ("**Liquidated Damages for Construction Period Lane Closures")** in accordance with this Section 1.2 of Exhibit 17 and more particularly during the D&C Warranty Term, as described in Section 10.1.2 of the Development Agreement. Lane Rental Fees and Liquidated Damages for Construction Period Lane Closures shall be assessed for Lane Closures that are not permitted under Sections 18.3.1.2 and 19 of the Technical Provisions, except that Lane Rental Fees and Liquidated Damages for Construction Period Lane Closures shall not be levied if TxDOT, in its discretion, determines that the Lane Closure is required in connection with an Incident or Emergency. In the case of an Incident or Emergency, Developer is required to respond to the Incident or Emergency in order to assess the level of personnel and resources necessary to safely secure the area within the time frames identified in Table 19-3 of the Technical Provisions.

(b) Lane Rental Fees and Liquidated Damages for Construction Period Lane Closures shall be assessed for every hour or part thereof for each Lane Closure that is not permitted in accordance with Sections 18.3.1.2 and 19 of the Technical Provisions. Developer shall report to TxDOT on a daily basis any Lane Closures or reduced widths which give rise to Lane rental Fees or Liquidated Damages for Construction Period Lane Closures.

(c) Developer shall not be assessed Lane Rental Fees or Liquidated Damages for Construction Period Lane Closures for rolling Lane Closures for the purpose of construction and/or maintenance activities above closed lane(s) if the rolling Lane Closure is less than 15 minutes in duration during Period B and provided that the queued traffic can be dispersed within 10 minutes and returned to the same Level of Service (LOS) as existed prior to the commencement of the Work. If the traffic queue resulting from the Work cannot be dispersed within 10 minutes, then Lane Rental Fees and Liquidated Damages for Construction Period Lane Closures shall be assessed in accordance with Table 17-1. Liquidated Damages for Construction Period Lane Closures for rolling Lane Closures shall also be assessed in accordance with Table 17-1 if any rolling Lane Closure, including moving Lane Closures, is greater than 15 minutes in duration, is for any purposes other than overhead work, or if the traffic queue resulting from a Lane Closure cannot be disbursed within 10 minutes.

(d) Lane Rental Fees and Liquidated Damages for Lane Closures, each as defined in this Exhibit 17, shall be calculated for any period during the Construction Period in accordance with Table 17-1.

(e) The provision of Liquidated Damage values for Period A does not in any way imply TxDOT's consent to closing freeway or ramp lanes during the peak periods (Period A) and Developer is not permitted to schedule lane closures during Period A. Lane Rental Fees and Liquidated Damages are provided for Period A to permit assessment of additional Liquidated Damages if Lane Closures extend from other Periods into Period A.

(f) Each of the amounts of Lane Rental Fees and Liquidated Damages for Construction Period Lane Closures set forth in Table 17-1 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. In no event shall the amount be less than the amount in effect during the immediately preceding year. If there is a decrease or no increase in the CPI index then there shall be no increase in the amounts of Lane Rental Fees/Liquidated Damages for Construction Period Lane Closures or Lane Rental Fees.

(g) The first $14,696,000 of cumulative liquidated damages (the "**Lane Rental Bank**") incurred by Developer with respect to Lane Closures occurring during the Construction Period as described in this Exhibit 17(1.2) will be forgiven by TxDOT and such liquidated damages shall be considered "**Lane Rental Fees**".

Table 17-1: Lane Rental Fees/Liquidated Damages for Construction Period Lane Closures

General Purpose Lanes (3/4 Lanes)	**Liquidated Damages/Lane Rental Fees (Per Hour)**			
	Time Period A	**Time Period B**	**Time Period C**	**Time Period D**
One Lane Closed	$15,000	$5,500	$200	$50
Two Lane Closed	$26,000	$19,000	$900	$250
Three/Four Lanes Closed (Full Closure)	$136,000	$118,000	$51,000	$21,000

General Purpose Lanes (2 Lanes)	**Liquidated Damages/Lane Rental Fees (Per Hour)**		
	Time Period A	**Time Period B**	**Time Period C**
One Lane Closed	$6,000	$5,000	$250
Two Lanes Closed (Full Closure)	$65,500	$55,000	$22,000

Managed Lanes	Liquidated Damages/Lane Rental Fees (Per Hour)		
	Time Period A		
One Lane Closed (Full Closure)	$65,500		

2. LANE CLOSURES DURING O&M PERIOD

2.1 Lane Closures on the Project

(a) Liquidated damages shall be assessed in accordance with this Section 2.1 of Exhibit 17 for certain Lane Closures within the O&M Limits during the O&M Period ("**Liquidated Damages for O&M Period Lane Closures**"). Liquidated Damages for O&M Period Lane Closures shall be assessed for Lane Closures that are not permitted under Section 18.3.1.2 of the Technical Provisions, except that Liquidated Damages for O&M Period Lane Closures shall not be levied if TxDOT, in its discretion, determines that the Lane Closure is required in connection with an Incident or Emergency. In the case of an Incident or Emergency, Developer is required to respond to the Incident or Emergency in order to assess the level of personnel and resources necessary to safely secure the area within the time frames identified in Table 19-3 of the Technical Provisions.

(b) Liquidated Damages for O&M Period Lane Closures shall be assessed for every hour or part thereof for each Lane Closure that is not permitted. Developer shall report to TxDOT on a daily basis any Lane Closures or reduced widths that give rise to Liquidated Damages for O&M Period Lane Closures.

(c) General Purpose Lanes: For Lane Closures affecting the General Purpose Lanes, Liquidated Damages for O&M Period Lane Closures will be assessed as follows:

(i) For Lane Closures affecting General Purpose Lanes during Periods C and D, Liquidated Damages for O&M Period Lane Closures will be waived, except when:

A. Lane Closures that do not comply with Developer's Traffic Control Plan will be assessed Liquidated Damages at 50% of the Period A Full Closure value shown in Table 17-1;

B. In areas of 3/4 general purpose lanes, two may be closed with no assessment of Liquidated Damages during Period D, but upon closure of all general purpose lanes, Liquidated Damages will be assessed at 50% of the Period A Full Closure value shown in Table 17-1;

C. In areas of 2 general purpose lanes, one may be closed with no assessment of Liquidated Damages during Periods C and D, but upon closure of both general purpose lanes, Liquidated Damages will be assessed at 50% of the Period A Full Closure value shown in Table 17-1.

(ii) For Lane Closures affecting General Purpose Lanes for any period other than Periods C and D, Liquidated Damages for O&M Period Lane Closures will be assessed at 100% of the full Liquidated Damages for a Period A Full Closure as set forth in Table 17-1.

(d) Managed Lanes: For Lane Closures affecting the Managed Lanes, Liquidated Damages for O&M Period Lane Closures will be assessed as follows:

(i) For Lane Closures affecting Managed Lanes during Period D, Liquidated Damages for O&M Period Lane Closures will be waived, provided that such Lane Closures comply with the Maintenance Management Plan and occur only when all General Purpose Lanes are open. If any such Lane Closures do not comply with the Maintenance Management Plan or occur during a period when any of the General Purpose lanes are closed, Liquidated Damages will be assessed in the amount of 150% of the Period A Full Closure value shown in Table 17-1;

(ii) For Lane Closures affecting Managed Lanes for any period other than Period D, Liquidated Damages for O&M Period Lane Closures will be assessed at 150% of the full Liquidated Damages for a Period A Full Closure as set forth in Table 17-1.

(e) Each of the amounts of Liquidated Damages set forth in Table 17-1 that may be assessed as Liquidated Damages for O&M Period Lane Closures shall be increased in the same manner set forth in Section 2.2(f) throughout the O&M Period. In no event shall the amount be less than the amount in effect during the immediately preceding year. If there is a decrease or no increase in the CPI index then there shall be no increase in the amounts of Liquidated Damages for O&M Period Lane Closures.

3. CONSTRUCTION LIQUIDATED DAMAGES FOR DEFECT HAZARD MITIGATION CLASSIFICATIONS AND CONSTRUCTION VIOLATION EVENTS

3.1 Liquidated damages will be assessed to Developer during the Construction Period ("**Construction Liquidated Damages**") for its failure to meet the minimum operations and maintenance performance requirements during the Construction Period that constitute a Defect Hazard Mitigation Classification or a Construction Violation Event as set forth in Tables 19-3 and 19-4 of the Technical Provisions and where such event is not cured within the "Cure Period" specified in Tables 19-3 and 19-4 of the Technical Provisions. Construction Liquidated Damages will be assessed in accordance with this Section 3.

(a) Developer shall promptly notify TxDOT of a Defect Hazard Mitigation Classification or Construction Violation Event. If TxDOT believes there has occurred any Defect Hazard Mitigation Classification or Construction Violation Event specified in Tables 19-3 and 19-4 of the Technical Provisions. Developer shall deliver to TxDOT a notice setting forth the Construction Violation Event, the applicable cure period (if any), whether the Defect Hazard Mitigation Classification or Construction Violation Event was cured during the applicable cure period (if any), including a statement supporting such determination, and the Construction Liquidated Damages to be assessed with respect thereto.

(b) For each Defect Hazard Mitigation Classification or Construction Violation Event with a cure period specified in Tables 19-3 and 19-4 of the Technical Provisions, Developer's cure period with respect to such Defect Hazard Mitigation Classification or Construction Violation Event shall be deemed to start upon the earliest of the date and time Developer first obtained knowledge of, or first reasonably should have known of, or the date and time that Developer received notice thereof by any third party the Defect Hazard Mitigation Classification or Construction Violation Event. For this purpose, if the notice of the Defect Hazard Mitigation Classification or Construction Violation Event is initiated by TxDOT, Developer shall be deemed to first obtain knowledge of the Defect Hazard Mitigation Classification or Construction Violation Event no later than the date of delivery of the initial notice to Developer.

(c) Each of the cure periods set forth in Tables 19-3 and 19-4 of the Technical Provisions shall be the only cure period for Developer applicable to the Defect Hazard Mitigation Classifications or Construction Violation Events; and if such cure period differs from any cure period set forth in Section 16.1.2 of the Agreement that might otherwise apply to the Defect Hazard Mitigation Classifications or Construction Violation Events such cure period set forth in Tables 19-3 and 19-4 of the Technical Provisions shall control for purposes of the assessment of Construction Liquidated Damages under Section 17 of the Agreement and this Exhibit 17.

(d) When Developer determines that it has completed cure of any Defect Hazard Mitigation Classification or Construction Violation Event for which it is being assessed Construction Liquidated Damages, Developer shall provide to TxDOT notice identifying the Defect Hazard Mitigation Classification or Construction Violation Event, stating that Developer has completed cure and briefly describing the cure. Thereafter, TxDOT shall have the right, but not the obligation, to inspect to verify completion of the cure. TxDOT may reject any Developer notice of cure if TxDOT determines that Developer has not fully cured the Defect Hazard Mitigation Classification or Construction Violation Event. Any Dispute regarding determination of cure shall be resolved according to the dispute resolution procedures set forth in this Agreement

3.2 Upon determination of a Defect Hazard Mitigation Classification or Construction Violation Event in accordance with Section 3.1 of this Exhibit 17, Construction Liquidated Damages shall be assessed in the amount set forth in Table 17-2 that corresponds with the Defect Hazard Mitigation Classification or Construction Violation Classification of such Construction Violation Event set forth in Tables 19-3 and 19-4 of the Technical Provisions. Construction Liquidated Damaged shall be assessed as follows:

(a) The date of assessment shall be deemed to be the date of the end of the first cure period, and the date of the end of each subsequent cure period, regardless of the date of the initial notice of such Defect Hazard Mitigation Classification or Construction Violation Event.

(b) For each Defect Hazard Mitigation Classification or Construction Violation Event for which a cure period is identified in Tables 19-3 and 19-4 of the Technical Provisions, provided that the Defect Hazard Mitigation Classification or Construction Violation Event is not cured, the Construction Liquidated Damages shall first be assessed at the end of the

first cure period, and shall be assessed again at the end of each subsequent "Interval of Recurrence" set forth in Tables 19-3 and 19-4 of the Technical Provision.

(c) If a Defect Hazard Mitigation Classification or Construction Violation Event for which a cure period is provided in Tables 19-3 and 19-4 of the Technical Provision is not fully cured within the applicable cure period, then continuation of such Defect Hazard Mitigation Classification or Construction Violation Event beyond such cure period shall be treated as a new and separate Defect Hazard Mitigation Classification or Construction Violation Event, without necessity for further notice, for the purpose of assessing Construction Liquidated Damages. Accordingly, without further notice, (i) a new cure period equal to the prior cure period shall commence upon expiration of the prior cure period and (ii) additional Construction Liquidated Damages shall be assessed against Developer in accordance with Section 17.3 and this Section 3 of Exhibit 17, deducted from payments of the D&C Price in accordance with Section 11 of the Agreement.

17-2: Construction Liquidated Damages

Defect Hazard Mitigation Classification	Liquidated Damages Amount
1A	$2,400
1B	$6,000
1C	$12,000
1D	$18,000
1E	$30,000
Construction Violation Classification	**Liquidated Damages Amount**
2A	$600
2B	$1,200
2C	$3,000
2D	$12,000
2E	$24,000

3.3 Each of the amounts of Construction Liquidated Damages set forth in Table 17-2 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. In no event shall the amount be less than the amount in effect during the immediately preceding year. If there is a decrease or no increase in the CPI index then there shall be no increase in the amounts of Construction Liquidated Damages.

EXHIBIT 18

INITIAL DESIGNATION OF AUTHORIZED REPRESENTATIVES

TxDOT Authorized Representative(s)

TxDOT's Executive Director, Chief Planning and Projects Officer and their designees,

LtGen J.F. Weber, USMC (Ret)
Russell Zapalac
Ed Pensock,
Bill Hale
Brian Barth

Developer's Authorized Representative(s)

Jay Knez
Shane Petersen
Randy Sanman

EXHIBIT 19

LIST OF REFERENCE INFORMATION DOCUMENTS (RID)

All folder names shown below in underlined/bolded text indicate that all files, except those labeled as "superseded" in the RID_INDEX, within that folder are included in this Exhibit 19.

0. General
- **QAP**

1. Environmental

2. DESIGN
- **01_Draft Schematic**
  - **SH 114 AND LOOP 12**
    - **PDF (03-11-14)**
  - **SH 183 2E_BELTLINE**
    - **PDF (03-11-14)**
  - **SH 183 BELTLINE_IH35E**
    - **PDF (03-11-14)**
- **Operations and Maintenance**
- **As Built Deliverable**

- **Hydrology and Hydraulics**
  - Exhibit 12-1_Diamond Interchange Ultimate Drainage Systems.pdf
  - Exhibit 12-2_Diamond Interchange Area 3 Pond.pdf
- **Interface with Other Projects**
  - **Diamond**
    - **75 Percent Diamond Plans**
      - **PDF**
  - **DFW Connector**
    - **DFW Connector Schematics**
      - **DGN**
        - A5-CENT.dgn
        - A5-PAVE.dgn
  - **LBJ Expressway**
  - **Loop 12**
  - **NTE Segment 2E Schematic**
    - **NTE 2E Schematics**
      - **PDFs**
  - **SH 114**
    - **SH 114 Schematics**
      - **PDFs**
  - **Trinity**
- **Pavement Conditions**
  - PMIS 2004 LP12.xls
  - PMIS 2004 SH114.xls
  - PMIS 2004 SH183.xls
  - PMIS 2005 LP12.xls
  - PMIS 2005 SH114.xls
  - PMIS 2005 SH183.xls
  - PMIS 2006 LP12.xls
  - PMIS 2006 SH114.xls

PMIS 2006 SH183.xls
PMIS 2007 LP12.xls
PMIS 2007 SH114.xls
PMIS 2007 SH183.xls
PMIS 2008 LP12.xls
PMIS 2008 SH114.xls
PMIS 2008 SH183.xls
PMIS 2009 LP12.xls
PMIS 2009 SH114.xls
PMIS 2009 SH183.xls
PMIS 2010 LP12.xls
PMIS 2010 SH114.xls
PMIS 2010 SH183.xls
PMIS 2011 LP12.xls
PMIS 2011 SH114.xls
PMIS 2011 SH183.xls
PMIS 2012 LP12.xls
PMIS 2012 SH114.xls
PMIS 2012 SH183.xls
PMIS 2013 LP12.xls
PMIS 2013 SH114.xls
PMIS 2013 SH183.xls
SH183 PMIS Composite Ratings 2004-2013.xls
SH 183 and LP 12 Pavement Condition.pdf

SH 183 Schematics

NEPA Environmental Re-Eval Schematic-Final

Schematic PDF

Structures

Subsurface Utility Exploration

Tolling

3. TRAFFIC AND REVENUE

Line Diagrams

SH 183

2013-11-25 Future Stick Diagrams with plaza configuration-draft-Scenario 1B.pdf

4. Estimates

5. ROW

Diamond Proposed ROW

Loop 12_CSJ 0581-02-115

Loop 12_CSJ 9118-01-024

PDF

Parcels

SH 114

SH 161

SH 183 Proposed ROW

SH 183_CSJ 0094-03-037-042

SH183-CSJ-0094-03-037-042.pdf
SH183-CSJ-0094-03-037-042-revised-sheets.pdf

SH 183_CSJ 0094-03-098

SH 183_CSJ 0094-03-099

0094-03-099_Sheet_1.pdf
0094-03-099_Sheet_2.pdf

0094-03-099_Sheet_3.pdf
0094-03-099_Sheet_4.pdf
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0094-03-099_Sheet_11.pdf
0094-03-099_Sheet_12.pdf
0094-03-099_Sheet_13.pdf
0816-12-SH183-Sheet 14.pdf
0094-03-099_Sheet_15.pdf

SH 183_CSJ 0094-03-100

ROW map7.pdf
ROW map8.pdf
ROW map9.pdf
ROW map10R.pdf
ROW map11.pdf
ROW map12.pdf

6. AESTHETICS

Aesthetic References

7. Utilities

As-Builts
Dallas District Permits 2004-2010
Full Project Limits Permits 2010-Present
SUE

20140207 SUE Update

SH183ESUE.dgn
SH183-XUTIL.dgn

20140130 SUE Update

0355existing-drainage.dgn
0355-sue-information.dgn
2005_TBE_SUE.dgn
ReadMe 2014-01-30.txt
S114EUTL.dgn

Dallas County

TESTHOLESX09570007util.dgn
Xutil474.dgn

Tarrant County
Testing

SH183_Testhole data summary_2013-12-20.pdf
SH183_TestholeSheets_2013-12-31(SignedSealed).pdf

8. Third Party Agreements

EXHIBIT 20

DISPUTES BOARD AGREEMENT

THIS DISPUTES BOARD AGREEMENT (this "**Agreement**") is made and entered into this ____ day of _____, 201_, (the "**Effective Date**") by and between the Texas Department of Transportation ("**TxDOT**"), and SouthGate Mobility Partners LLC ("**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 Development Agreement, for the SH 183 Managed Lanes Project, dated as of the Effective Date (the "**Development Agreement**") and the other Contract Documents, all of which collectively comprise a comprehensive development agreement under Chapter 223 of the Code.

B. Section 19.3 of the Development Agreement, among other things, provides for the establishment and operation of a disputes review board (each such board being referred to herein as the "**Disputes Board**") to resolve each Dispute if, as and when, a Dispute arises under the Contract Documents.

NOW THEREFORE, in consideration of the terms, conditions, covenants and agreements contained herein and in the Contract Documents, 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 Agreement and not defined or modified herein shall have the same meaning as set forth in the Contract Documents.

1.2 Reference Section of Development Agreement. Section 19.3 of the Development Agreement, which, among other things, discusses the Disputes Board's role in resolving Disputes, is incorporated herein by reference.

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

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

The sole purpose of the Disputes Board is to fairly and impartially consider all Disputes brought to it and to resolve such Disputes in a Disputes Board Decision (as defined in Section 5.5 below). The Disputes Board is not a supervisory, advisory, or facilitating body and has no role other than as expressly described in this Agreement and in Section 19.3 of the Development Agreement. Notwithstanding that each Disputes Board Member will have been engaged by a Party under a Disputes Board Member Joinder Agreement (as defined in Section 3.1.2 below), 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. Upon completion of the remainder of procedures required under the Code and the DRP Rules, each Disputes Board Decision shall be final, conclusive, binding upon and enforceable against the Parties.

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

3.1 Selection of Disputes Board Member 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 (as defined in Section 4 below) 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"**). As of the Effective Date, (a) TxDOT accepts and consents to the final Disputes Board Member Candidates List of Developer previously approved or deemed approved by TxDOT on or before the Effective Date and (b) Developer accepts and consents to the Disputes Board Member Candidates List of TxDOT previously approved or deemed approved by Developer on or before the Effective Date.

3.1.2 If at any time, pursuant to Section 19.3.4(b) of the Development Agreement, a Dispute is referred by TxDOT or Developer 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 preapproved 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 below, which shall consist of (a) one Disputes Board Member selected by TxDOT, (b) one Disputes Board Member selected by Developer and (c) a third individual selected pursuant to Section 3.1.3 below. 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 (each such agreement, upon execution, being referred to herein as a "**Disputes Board Member Joinder Agreement**" and incorporated herein by reference).

3.1.3 The two Disputes Board Members appointed to the Disputes Board shall, as their first duty following appointment, within 15 days after their appointment (or within seven days after their appointment, if the Dispute for resolution by the Disputes Board 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 Developer and TxDOT are unable to reach agreement on their selection of the Disputes Board Chair within such time period, then either Developer or TxDOT 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 that appear on the Parties' Disputes Board Member Candidate Lists. 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 qualified and approved candidates remaining on the Parties' Disputes Board Member Candidate Lists. Within 15 days after the selection of the Disputes Board Chair by the two appointed Disputes Board 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 on the Disputes Board shall enter into a Disputes Board Member Joinder Agreement.

3.1.4 The Parties may mutually agree at any time prior to the Dispute Board's 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 Disputes Board, and any such agreement shall be irrevocable upon issuance of the joint written directive next described. If the Parties so agree, they shall issue a joint written directive to the Disputes Board (or to the two appointed Disputes Board Members or the Chief Administrative Judge of the Travis County District Courts, if such Disputes Board Members or Chief Administrative Judge are or is then in the process of selecting the Disputes Board Chair pursuant to Section 3.1.3 above) stating their mutual agreement that the Disputes Board Chair alone shall resolve the relevant Dispute. If the Parties issue such a joint written directive, the Disputes Board Chair rather than the Disputes Board shall resolve the relevant Dispute in accordance with the terms and conditions of this Agreement (except insofar as this Agreement contemplates resolution of a Dispute by a three member Disputes Board) and, if the three member Disputes Board had been previously empanelled, the two Party-appointed Disputes Board Members shall be dismissed from any further service on the Disputes Board.

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 receipt of a proposed candidate's Disclosure Statements by the Evaluating Party (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, 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 all 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 detail in the Evaluating Party's notice of disapproval).

3.2.4 In furtherance of the Parties' objective of having in place at all times two Disputes Board Member Candidate Lists comprised of five nominated and approved candidates meeting the Disputes Board Qualifications, but subject to the provisions of Section 3.2.3, 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 initiate Informal Resolution Procedures and then, if such disagreement is not resolved to the Nominating Party's satisfaction, Dispute Resolution Procedures in order to resolve such Dispute.

3.3 Removal of Disputes Board Member; Appointment of Replacement.

3.3.1 The appointment of a Disputes Board Member (including the Disputes Board Chair) to the Disputes Board may be terminated at any time by any of the Persons specified below in this Section 3.3.1 due to the occurrence of Misconduct or due to Conflict of Interest not previously waived under Section 4.3.1 (such termination constituting a termination

"**For Cause**" hereunder), effective upon service of such Person's notice of termination on the affected Disputes Board Member and, if the terminating Person is a Party, the other Party or, if the terminating Person is not a Party, the Parties. Following termination and removal of a Disputes Board Member 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 Disputes Board Member 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.

Provided, however, that 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 notice of the Disputes Board Member's termination of appointment is received, initiate Informal Resolution Procedures and then, if such disagreement is not resolved to the disagreeing Party's satisfaction, Dispute Resolution Procedures in order to resolve such Dispute. A Party may not unilaterally or by mutual agreement with the other Party terminate the appointment of any Disputes Board member For Cause and then dispute the propriety of such termination.

3.3.2 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(s) until the Disputes Board is reconstituted as a three person board. The appointment of each replacement Disputes Board Member will begin as soon as notice of removal, death or resignation is given or received and shall be completed 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 below and the absence of grounds for disqualification as described in Section 4.2 below.

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 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.

4.2 Disqualification. No Disputes Board Member shall have a financial interest in the Development Agreement, in any Contract or the Project 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 below).

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 on the Disputes Board.

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 of the Parties' mutually agreed modification of such procedures describing such modification in detail (the foregoing being without limitation to any requirements applicable to the Parties' amendment of the Development 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, effective upon the Disputes Board Chair's receipt of the Parties' written consent thereto.

5.2 Ineligible Matters. As a preliminary matter prior to consideration of the underlying matter, the Disputes Board shall hear, consider and render a Disputes Board Decision with respect to the responding Party's assertion that a particular claim, demand, dispute, disagreement or controversy is an Ineligible Matter. Resolution of whether a claim, demand, dispute, disagreement or controversy is a Dispute that the Disputes Board has authority to resolve or an Ineligible Matter shall be resolved as a preliminary matter by the Disputes Board, and the Disputes Board Decision shall reflect that the underlying matter is a Dispute eligible for resolution by the Disputes Board unless a majority of the Disputes Board determines with positive assurance that such a determination would not be correct.

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 time periods in which actions by the Disputes Board shall occur. "**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 or is likely to arise that would prevent prompt resolution of the applicable Dispute in accordance with the Commercial Rules and this Agreement.

5.3.3 The following provisions pertain to Small Claims:

(a) A **"Small Claim"** is a Claim or related or similar Claims which 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. A non-binding example of a Small Claim is where the cumulative amount in controversy of a Claim or related or similar Claims is $100,000 or less.

(b) Once the Disputes Board Chair is appointed to resolve a Small Claim, the other two Disputes Board Members shall be released from further service. 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 19.3 of the Development 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 Disputes 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 $100,000, 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 $100,000; provided, however, that the amount of $100,000 as stated in this Section 5.3.3(c) 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.

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 of such Disputes for resolution in a single proceeding) that there are insufficient common questions of fact, Law and contract interpretation among the proposed aggregated Disputes and/or 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 (as specified in the Disputes Board Decision on this matter) 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 (other than a Fast-Track Dispute, in which case within five days after the final hearing on the Fast-Track Dispute), the Disputes Board Chair shall issue the Disputes Board's written decision (each, a "**Disputes Board Decision**"), together with its written findings of fact and conclusions of law in support of the Disputes Board Decision, to the Parties.

5.6 Confidential Materials; Return or Destruction Thereof. "**Confidential Materials**" are all discussions, negotiations, testimony and evidence between the Parties and/or in a proceeding before the Disputes Board that are confidential pursuant to Section 19.3.8 of the Development Agreement. Each Disputes Board Member shall maintain the privacy of Confidential Information pursuant to Section 19.3.8 of the Development Agreement. Within 30 days after issuance of the Final Order Implementing 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 other than making them available for production into evidence in subsequent proceedings.

5.7 Dissolution of Disputes Board. Once the Disputes Board Decision of the Disputes Board becomes final and the Executive Director has issued a Final Order Implementing 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. Necessity of Submission of Dispute to Disputes Board.

A Party's submission of a Dispute to the Disputes Board for resolution and the Dispute Board's issuance of the Disputes Board Decision shall be conditions precedent to any subsequent proceeding concerning such Dispute, except as otherwise provided in Section 19.3 of the Development Agreement.

Section 7. TxDOT and Developer Responsibilities.

7.1 TxDOT Responsibilities. TxDOT shall serve upon each Disputes Board Member one copy of the Contract Documents. 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 is disputing 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 the maximum rate permitted by Law, 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 determination of the Disputes Board Decision; subject, however, to the limitations on the Disputes Board's authority set forth in Section 19.3.4(a) of the Development Agreement.

Section 8. Term.

Consistent with the DRP Rules, the term of this Agreement shall commence on the Effective Date and continue in full force and effect for the Term of the Development Agreement and thereafter for so long as either Party has any obligation originating under the Contract 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 respective 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 in the operation of the Disputes Board.

9.2 Disputes Board Member Invoices. Each Disputes Board Member shall submit invoices on a monthly basis concurrently to TxDOT and Developer for payment 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. 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 its one-half share of all fees, costs and expenses of the Disputes Board Members' service on 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 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 is disputing 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 the maximum rate permitted by Law, 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 the final payment, the cost records and accounts pertaining to this Agreement and the performance of work and rendition of services as a member of the Disputes Board. If any claim arising out of, in connection with, or related to this Agreement is initiated before the expiration of the five year period, the cost records and accounts shall be retained until such claim involving the records 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.

9.6 Diligent Cooperation. The Parties shall diligently cooperate with one another and the Disputes Board, and shall perform such acts as may be necessary to obtain an efficient and expeditious resolution of Disputes submitted to the Disputes Board. If either Party refuses to diligently cooperate, and the other Party, after first giving notice setting forth the Party's basis for its contention of non-cooperation and requesting specific action, incurs additional costs or attorneys', accountants' and expert witness fees solely as a result of such failure to diligently cooperate, then the Disputes Board may award such additional costs and, accountants' and expert witness fees to the Party giving such notice, even if such Party is not the prevailing Party in the Dispute. The Party so entitled to such award shall have the right to pursue and enforce it in any subsequent proceedings.

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 Under the Contract Documents or by Law. Except for the payment, offset and reimbursement obligations agreed to by the Parties as set forth herein, nothing in this Agreement alters the potential liabilities of either Party as provided under the Contract Documents and, subject to the terms and conditions of the Contract Documents, by Law.

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 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 19.3 of the Development Agreement and any other relevant provisions of the Contract Documents, and the terms and conditions of this Agreement (except where this Agreement says they shall not apply), to be complementary. In the event of any conflict between this Agreement and Section 19.3 of the Development Agreement or any other relevant provision of the Contract Documents, the Development Agreement or other DRP Governed Agreement shall control.

Section 15. Notices.

Notices hereunder shall be sent as provided in Section 24.11 of the Development Agreement. The address for each Disputes Board Member shall be set forth on the signature page of each Disputes Board Member Joinder Agreement.

[signatures on following page]

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Agreement as of the Effective Date.

Developer:
SOUTHGATE MOBILITY PARTNERS LLC

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

TxDOT:

TEXAS DEPARTMENT OF TRANSPORTATION

By: _____
LtGen J.F. Weber, USMC (Ret)
Executive Director

ATTACHMENT 1 TO DISPUTES BOARD AGREEMENT

DISPUTES BOARD MEMBER JOINDER AGREEMENT

This DISPUTES BOARD MEMBER JOINDER AGREEMENT (this "**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 Development Agreement, for the SH 183 Managed Lanes Project, dated as of the Effective Date (the "**Development Agreement**") and the other Contract Documents, all of which collectively comprise a comprehensive development agreement under Chapter 223 of the Code.

B. Section 19.3 of the Development Agreement, among other things, provides for the establishment and operation of a disputes review board (each such board being referred to herein as the "**Disputes Board**") to resolve each Dispute if, as and when, a Dispute arises under the Contract Documents.

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 19.3 of the Development Agreement, the Disputes Board Agreement and this Agreement, and for that purpose, the parties hereto have agreed to enter into this Agreement pursuant to Section 3.1.2 of the Disputes Board 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 Agreement and not defined or modified herein shall have the same meaning as set forth in the Contract Documents and, if not defined therein, in the Disputes Board Agreement.

1.2 Reference to Disputes Board Agreement and Section 19.3 of Development Agreement. The Disputes Board Agreement and Section 19.3 of the Development 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, each in accordance with the terms and conditions of Section 19.3 of the Development Agreement, the Disputes Board Agreement and this Agreement.

2.2 Term of Service. The Disputes Board Member shall serve on the Disputes Board through resolution of the Dispute before the Disputes Board and issuance of the Final Order Implementing Decision in respect thereto, 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 circumstance that would, in such member's reasonable good faith judgment, prevent such member from discharging his or her duties in the resolution of a Dispute in the impartial and objective manner required under the Disputes Board Agreement or facts or circumstances that such member reasonably and in good faith believes would 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 resignation.

Section 3. Representations, Warranties and Covenants.

3.1 Representations and Warranties. The Disputes Board Member hereby represents and warrants to TxDOT and Developer, under penalty of perjury, 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:

(a) Shall be bound by and perform such member's obligations with respect to the Dispute Resolution Procedures in accordance with the procedures established under Section 19.3 of the Development Agreement;

(b) Shall not engage in any conduct, including, but not limited to, having any communications, dealings or interactions with either Party, the Conflicts Group or any other Person in any manner, that would be or result in a Disputes Board Error; and

(c) Shall preserve, maintain and protect the confidentiality of Confidential Materials in accordance with Section 19.3.8 of the Development 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 same are attached

hereto as Annex I. 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 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 Agreement, and the Disputes Board Member expressly waives any right to the foregoing.

5.5 Governing Law. This 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 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 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 Agreement shall automatically terminate upon expiration or termination of the Disputes Board Member's service hereunder, except that the provisions of this Section 5 shall survive termination of this 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.

IN WITNESS WHERE, the parties hereto, intending to be legally bound, have executed this 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:

_____

_____

_____

_____

<u>Annex I</u>

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. 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 19.3 of the Development Agreement, Section 19.3 of the Development 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 to be 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 an alleged Dispute is an Ineligible Matter.

(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 result of the arbitration 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 Contract Documents.

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 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 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 and gives the other Party advance notice and opportunity to participate in all verbal communication with such individuals. 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

Each Party may be represented by counsel or other authorized representative. 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, under penalty of perjury as to his or her meeting the Disputes Board Member Qualification and the absence of Conflicts of Interest and Misconduct (and a covenant to not engage in 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. An 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 claimant Party shall present evidence to support its claim. The respondent 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 is 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 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.

(c) A request for interim measures addressed by a Party to a Travis County, Texas district court shall not be deemed incompatible with the agreement to have the underlying Dispute resolved by the Disputes Board or a waiver of the right to have the underlying Dispute resolved by the Disputes Board.

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 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 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 the Disputes Board 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 judgment on any Disputes Board Decision made under these rules shall be given in accordance with Section 24.11 of the Development 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 to accompany 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 deems just and equitable and within the scope of the agreement of the Parties under Section 19.3 of the Development Agreement, including, but not limited to, specific performance of any obligation under the Contract Documents.

(b) In addition to a final Disputes Board Decision, the Disputes Board may make other decisions, including interim, interlocutory, or partial rulings, orders, and decisions. In any interim, interlocutory, or partial Disputes Board Decision, the Disputes Board may assess and apportion the fees, expenses, and compensation related to such Disputes Board Decision as the Disputes Board determines is appropriate, subject, however, to the limitations of the Disputes Board's authority in Section 19.3.4(a) of the Development Agreement.

(c) In the final Disputes Board Decision, the Disputes Board shall assess compensation amounts. The Disputes Board may apportion fees and expenses between the Parties in such amounts as the Disputes Board determines is appropriate in its discretion, subject, however, to the limitations of the Disputes Board's authority under Section 19.3.4(a).

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 Parties shall accept as notice and delivery of the written Disputes Board Decision, together with the written findings of fact and conclusions of law, addressed and provided to them in the manner provided under Section 24.11 of the Development Agreement.

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 redetermine 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 decision. The Disputes Board shall perform the request correction of errors within 10 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, if at all, 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. Expenses

The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All other expenses of the Dispute Board's proceedings, including required travel and other expenses of the Disputes Board, Disputes Board representatives, and any witness and the cost of any proof produced at the direct request of the Disputes Board, shall be borne equally by the Parties, unless they agree otherwise or unless the Disputes Board in the Disputes Board Decision assesses such expenses or any part thereof against any specified Party or The Parties (in the latter case subject, however, to the limitations of the Disputes Board's authority under Section 19.3.4(a)).

R-42. 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 to resolve.

R-43. 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 24.11 of the Development Agreement, the Parties can agree in writing to also accept notice by telephone. If the Parties so agree, a failure 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 arbitration 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 10 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 the 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 and such administrative conference shall take place at such date and time. Such administrative conference shall be conducted for the following purpose of obtaining additional information about the nature and magnitude of the Dispute and 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 premarking 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 (each, a **"Scheduling and Procedure Order"**). Nothing in any Schedule and Procedure Order shall conflict with the procedures established under Section 19.3 of the Development 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 19.3 of the Development Agreement.

(b) The Parties shall cooperate in the exchange of documents, exhibits and information within such Party's control if the Disputes Board(s) consider such production to be consistent with the goal of achieving a just, speedy and cost-effective resolution of a Large, Complex Commercial Case.

(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 expedited nature of arbitration, may establish the extent of the discovery.

(d) The Parties shall exchange copies of all exhibits they intend to submit at the hearing 10 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 21

BENCHMARK RATES

Part I (to be completed by all Proposers):

Proposer hereby elects (select only one):

☐ to utilize the market interest rate adjustment; or

☒ **not** to utilize the market interest rate adjustment.

Part I (to be completed solely by Proposers electing to utilize the market interest rate adjustment):

Benchmark Rates:

FLOATING RATE DEBT:

Debt Facility	Total Facility Amount	Benchmark Index	Benchmark Rate (%)
N/A	N/A	N/A	N/A

FIXED RATE DEBT:

Maturity	Amount	Benchmark Index	Base Interest Rate (%)	Assumed Rating
N/A	N/A	N/A	N/A	N/A

EXHIBIT 22

KEY SUBCONTRACTORS

List of Key Subcontractors by discipline or role:

– Project Management: SouthGate Mobility Partners LLC

– Lead Design Firm: Parsons Transportation Group Inc.

– Quality Control Management: SouthGate Constructors JV

– Quality Assurance Management: Lamb-Star Engineering, LP

– Key Task Leader – Geotechnical: Parsons Transportation Group Inc.

– Key Task Leader – Hydraulics and Hydrology: Parsons Transportation Group Inc.

– Key Task Leader – Structural: Parsons Transportation Group Inc.

– Key Task Leader – Environmental: Parsons Transportation Group Inc.

– Key Task Leader – Utilities: CSJ Engineering Associates, LLC

– Key Task Leader – Right of Way: SRLS Texas, LLC

– Routine O&M Management: Infrastructure Corporation of America

EXHIBIT 23-1.1

ROUTINE O&M PAYMENT SCHEDULE

YEAR	Annual Routine O&M Payment Amount in April 2014 U.S. dollars	Escalated Annual O&M Payment Amount
1	$10,863,414	
2	$5,920,302	
3	$7,216,999	
4	$7,793,185	
5	$6,264,393	
6	$11,307,191	
7	$8,033,514	
8	$6,610,795	
9	$4,660,821	
10	$4,660,821	
11	$8,508,989	
12	$4,443,284	
13	$4,443,284	
14	$6,014,599	
15	$4,443,284	
16	$8,074,239	
17	$5,544,245	
18	$4,071,137	
19	$4,071,137	
20	$4,071,137	
21	$6,753,596	
22	$3,787,328	
23	$3,967,151	
24	$4,690,215	
25	$3,967,151	
	$150,182,211	

EXHIBIT 23-2.1

RENEWAL-OTHER WORK PAYMENT SCHEDULE

YEAR	Annual Renewal-Other Work Payment Amount in April 2014 U.S. dollars	Escalated Annual Renewal-Other Work Payment Amount
1	$0	
2	$0	
3	$0	
4	$0	
5	$0	
6	$1,422,923	
7	$1,133,158	
8	$305,783	
9	$305,783	
10	$110,636	
11	$230,989	
12	$230,989	
13	$230,989	
14	$230,989	
15	$230,989	
16	$177,934	
17	$177,934	
18	$177,934	
19	$177,934	
20	$102,101	
21	$132,682	
22	$132,682	
23	$888,122	
24	$7,023,414	
25	$132,682	
	$13,556,647	

EXHIBIT 23-3.1

PAVEMENT RENEWAL WORK AND PAYMENT SCHEDULE

YEAR	Quantity in Square Yards	Pavement Renewal Price / Available Annual Draw Amount in April 2014 U.S. dollars	Escalated Available Annual Draw Amount	Cumulative Maximum Available Annual Draw Amount
1	[redacted]			
2				
3				
4				
5				
6				
7				
8				
9	153,087	$1,646,859		
10	1,486,098	$15,986,968		
11		$0		
12		$0		
13		$0		
14		$0		
15		$0		
16		$0		
17		$0		
18		$0		
19	153,087	$1,646,859		
20	1,486,098	$15,986,969		
21		$0		
22		$0		
23		$0		
24		$0		
25		$0		
	Total	**$35,267,655**		

EXHIBIT 23-4

BRIDGE RENEWAL WORK AND PAYMENT SCHEDULE

SH 183 Managed Lanes Project
Texas Department of Transportation

NBI Ref/ New Bridge ID	Structure Name	Price in April 2014 U.S. Dollars [1]
02-220-0-0094-02-094	BEAR CREEK BRIDGE	$0
02-220-0-0094-02-071	BEAR CREEK BRIDGE	$0
18-057-0-0094-03-017	3-10'x10' MBC FROM SDTA 63+12.38 TO 63+68.31	$0
18-057-0-0094-03-018	8-7'X6' MBC FROM STA 128+40	$0
18-057-0-0094-03-270	S.H. 183 INTERCHANGE AT BELT LINE ROAD EASTBOUND FREEWAY OVERPASS	$0
18-057-0-0094-03-271	S.H. 183 INTERCHANGE AT BELT LINE ROAD WESTBOUND FREEWAY OVERPASS	$0
18-057-0-0094-03-093	EASTBOUND FRONTAGE ROAD OVERPASS	$0
18-057-0-0353-06-097	SPUR 482 OVERPASS	$0
18-057-0-0353-06-098	SPUR 482 OVERPASS	$0
18-057-0-0353-06-358	SH 114 EB TO LP 12 SB DIRECT CONNECTOR	$0
18-057-0-0353-06-397	SH 114 LOOP 12 SBML U/P	$0
18-057-0-0353-06-395	LP 12 NB TO SH 114 WB DIRECT CONNECTOR	$0
18-057-0-0353-06-398	SH 114 LOOP 12 NBML U/P	$0
18-057-0-0353-06-351	SH 114 CISTERIAN RD WBML O/P	$0
18-057-0-0353-06-352	SH 114 CISTERIAN RD EBML O/P	$0
18-057-0-0353-06-409	SH 114 CISTERIAN RD WBML O/P	$0
18-057-0-0581-02-053	LOOP 12 ELM FORK TRINITY RIVER	$0
18-057-0-0581-02-101	LOOP 12 ELM FORK TRINITY RIVER	$0
18-057-0-0581-02-133	OLD SH 114 OVERPASS	$0
18-057-0-0581-02-413	OLD SH 114 OVERPASS	$0
	Bridge Renewal Price (D)	$0

1. Pursuant to Section 11.4.4 of the Agreement, the payments set forth in this table for bridge Renewal Work are payable at Year 10 of the O&M Period.

EXHIBIT 24

O&M NONCOMPLIANCE EVENTS

Noncompliance Items, Cure Periods and Noncompliance Points						
Ref	**Main Heading**	**Subheading**	**Developer's Failure to:**		**Cure Period**	**Number of Noncompliance Points**
1.	Operations and Maintenance	Access	Provide access to systems in accordance with Section 22.3.4 of the Technical Provisions.		14 Days	1
2.	Operations and Maintenance	Incident Management Plan	Comply with provisions in accordance with Section 22.3.5 of the Technical Provisions.		30 minutes	6
3.	Operations and Maintenance	O&M – Defect Hazard	Meet or exceed the minimum performance requirements as set forth in Section 19, Table 19-3 of the Technical Provisions, resulting in a Defect Hazard Mitigation Classification.	1A	As per Table 19-3	2
				1B		5
				1C		10
				1D		15
				1E		25
4.	Operations and Maintenance	O&M Noncompliance Classifications	Meet or exceed the minimum performance requirements as set forth in Section 19, Table 19-5 of the Technical Provisions, resulting in an O&M Noncompliance Classification.	3A	As per Table 19-5	1
				3B		2
				3C		3
				3D		4

Noncompliance Items, Cure Periods and Noncompliance Points						
Ref	**Main Heading**	**Subheading**	**Developer's Failure to:**		**Cure Period**	**Number of Noncompliance Points**
				3E		5
5.	Operations and Maintenance	Operations Management Plan	Comply with the requirements related to the Operations Management Plan as required by Section 22.2 of the Technical Provisions where failure impacts or has potential to impact on the level of service provided to Users or TxDOT's ability to meet its obligation.		7 days	3
6.	Operations and Maintenance	Reporting	Submit all reports relating to the O&M Work, including the O&M annual reports, in the form, with the content and within the time period required under the Contract Documents.		10 Days	1
7.	Operations and Maintenance	Reporting	Report to TxDOT on a daily basis any Lane Closures or reduced widths which give rise to Liquidated Damages for Lane Closures.		2 Days	2
8.	Operations and Maintenance	Reporting	Keep record of or report to TxDOT a Noncompliance Event as and when required under Section 13.2.1(a) or 13.2.1(b) of the Agreement.		10 Days	5
9.	Operations and Maintenance	Reporting	Provide information updates to the Maintenance Management Information System in accordance with Section 5.7 of the Agreement.		10 Days	1
10.	Operations and Maintenance	Safety	Implement and perform safety and compliance work in accordance with Section 6.2 of the Agreement.		3 Days	2

Noncompliance Items, Cure Periods and Noncompliance Points					
Ref	**Main Heading**	**Subheading**	**Developer's Failure to:**	**Cure Period**	**Number of Noncompliance Points**
11.	Operations and Maintenance	Quality Control	Prepare and submit a maintenance quality control plan in accordance with Section 5.8 of the Agreement.	10 Days	1
12.	Operations and Maintenance	Traffic Management	Prepare and submit to TxDOT for its approval a Traffic Management Plan in accordance with Section 6.5 of the Agreement.	5 Days	10
13.	Operations and Maintenance	Traffic Control Plans	Submit a Traffic Control Plan to TxDOT 10 days before a planned maintenance activity.	1 Day	3
14.	Operations and Maintenance	Traffic Control Plans	Implement traffic control measures in a manner consistent with the Traffic Control Plan submitted for a planned maintenance activity.	30 minutes	6
15.	Operations and Maintenance	Renewal and Replacement Plan	Deliver to TxDOT a written report of the Renewal Work in accordance with Section 5.5.2 of the Agreement.	14 Days	1
16.	Operations and Maintenance	Renewal and Replacement Plan	Prepare and submit to TxDOT for review and comment an O&M Work Schedule in accordance with Section 5.5 of the Agreement.	14 Days	1

EXHIBIT 25

FINANCIAL MODEL REQUIREMENTS

1.0 Financial Model and Related Materials, Adjustments and Updates

The Developer's Financial Model shall be compliant with the requirements set forth in this Exhibit. In the event that Developer elected to utilize the market interest rate adjustment to the D&C Price, Developer's Proposal Financial Model submitted with proposal shall be updated per Exhibit 29 of the Agreement, as applicable, and if financial close of Developer Debt is achieved before the Interest Rate Adjustment Expiration Date the updated Proposal Financial Model will become the Financial Model.

1.1 General and Structural Requirements

The Financial Model, which generates the financial projections contained in the Financial Proposal, shall be an electronic file constructed in an MS Excel 2007 (or higher version) (English United States) compatible format and shall not require the use of external modules other than those provided by Microsoft. Proposers are encouraged to make the Financial Model as user-friendly as possible. The Financial Model shall satisfy each of the following requirements:

(a) No part of the Financial Model (cell, column, row, sheet, macro or otherwise) shall be separately hidden, locked or protected with a password.

(b) The Financial Model shall contain no circular references and shall be coded to provide exactly what it is purported to represent, e.g., it should not have any balancing figures or input numbers. Use of macros is acceptable, provided they are visible (e.g., not password protected), well-structured and appropriately documented in the model and the Assumptions and Instructions Book.

(c) The Financial Model shall make use of the following three (3) types of worksheets:

(i) Input worksheets – which shall include data and assumptions to be hard-coded but not main calculations;

(ii) Calculation worksheets – which shall consist of the individual calculations that support each line of all outputs and reports. There shall be no duplication of calculations nor shall input cells be hard-coded in calculation sheets; and

(iii) Output worksheets (including Pro-Forma Tables and graphs worksheets) – which shall be used to display and generate model outputs. No input cells shall be hard coded in output sheets and no calculations, except for simple formulae such as sums and check totals, should be performed here.

(d) A separate color coding scheme (e.g., blue font on yellow fill color) shall be consistently used for input cells. Other color coding can also be used, but should be fully explained in the model's instruction worksheet (if used) and/or the model instruction book.

(e) Financial Model shall use columns to denote time periods and rows to denote specific cash flow items. This shall be consistent in all sheets of such Financial Model. There are two areas where consistency is most important:

(i) Columns – a column shall be used for the same period in each of its occurrence in model worksheets; and

(ii) Rows – with the exception of labels, or columns dedicated to totals or for use as a "row operator", a row shall contain only one formula, copied across all applicable columns.

1.2 Assumptions and Instructions Book

Proposers shall submit an Assumptions and Instructions Book providing:

(a) the logical layout and structure of the Financial Model, including the names of all worksheets and a description of the color coding and/or labeling scheme(s);

(b) key financial assumptions, the sources which constitute the basis of such assumptions and/or arguments about the adopted options for the construction of the Financial Model and the execution of any related sensitivity analysis;

(c) sufficient information and instruction regarding the operation of the Financial Model to ensure that TxDOT will be able to read, use and modify the data contained therein;

(d) a detailed description of the function and intended use of all macros (and each macro must be logically structured and well documented, i.e., TxDOT encourages the use of liberal comments within the programming code).

1.3 Financial Structuring Assumptions

(a) *Nominal Dollars*: All monetary figures will be expressed in inflated/year of expenditure Dollars.

(b) *Consistency with Funding Agreements and Security Documents:* The Financial Model must not contain inconsistencies with the Funding Agreements and Security Documents.

(c) *Interest Rates and Credit Spread Inputs*: The Financial Model shall be able to separately accommodate interest rates and credit spread inputs for each and every base interest rate and term used in the financial plan (differentiating inputs for

each Developer Debt facility, if applicable). Interest Rates and Credit Spreads should be those expected at financial close or at financial close, as applicable.

1.4 Mandatory Financial Model Elements

1.4.1 *Input Data Requirements*

The Financial Model shall clearly indicate in one or more input worksheets all assumptions supporting the calculation of projections, including:

(a) design and construction work expenditures, and spend curve; and

(b) all financial metrics for debt and associated instruments (such as swaps), including base interest rates and credit spread for applicable maturities within each debt structure; if not derived in the model, include pricing for all hedging instruments consistent with appropriate Funding Agreements.

1.4.2 *Worksheets and Outputs*

The Financial Model shall dedicate a separate output worksheet for each of the following:

(a) Monthly Cash Flows showing:

(i) all sources of funds including the TxDOT funds and debt facilities

(ii) construction drawdown and;

(iii) debt accounts and related costs and fees

(b) Debt facilities showing debt balances, drawdowns, monthly financing charges and principal repayments.

1.5 Financial Model Audit

In connection with Developer's submittal of a Financial Model pursuant to Section 11.3.1(d) of the Agreement, Developer shall cause an independent audit of Developer's Financial Model ("Financial Model Audit") to be conducted by an independent firm engaged by Developer and qualified to perform the work described herein (the "Model Auditor"). Such independent audit shall be at Developer's sole cost and expense. The audit report for the Financial Model shall state that the Financial Model is:

(a) free of mechanical error;

(b) consistent with the requirements in this Exhibit 25.

Developer assumes the risk of errors, omissions, defects, and deficiencies in its Financial Model. Any changes to the Financial Model required due to errors, omissions, defects, and deficiencies resulting in a change to the D&C Price set forth in the Financial Model will be

implemented solely for purposes of running the Financial Model, but will not result in any change to the D&C Price.

Copies of the audit report(s) and opinion(s) shall be delivered to TxDOT prior to financial close as described in Section 11.3.1(d) in accordance with this Exhibit 25.

Exhibit 26

BASE SCOPE SCHEDULE OF ANTICIPATED DRAW REQUESTS
(all figures are in nominal U.S. dollars)

Months after NTP1	(A) Proposer's Anticipated Draw Request	(B) Proposer's Cumulative Anticipated Draw Requests
1	$27,625,000	$27,625,000
2	$12,375,000	$40,000,000
3	$48,655,000	$88,655,000
4	$14,790,000	$103,445,000
5	$19,720,000	$123,165,000
6	$29,835,000	$153,000,000
7	$24,905,000	$177,905,000
8	$27,880,000	$205,785,000
9	$26,860,000	$232,645,000
10	$22,610,000	$255,255,000
11	$22,695,000	$277,950,000
12	$25,585,000	$303,535,000
13	$35,445,000	$338,980,000
14	$24,990,000	$363,970,000
15	$21,000,000	$384,970,000
16	$19,200,000	$404,170,000
17	$23,000,000	$427,170,000
18	$23,000,000	$450,170,000
19	$23,000,000	$473,170,000
20	$22,400,000	$495,570,000
21	$19,600,000	$515,170,000
22	$17,400,000	$532,570,000
23	$16,200,000	$548,770,000
24	$16,500,000	$565,270,000
25	$17,000,000	$582,270,000
26	$16,000,000	$598,270,000
27	$18,575,000	$616,845,000
28	$16,895,000	$633,740,000
29	$22,774,000	$656,514,000
30	$16,994,000	$673,508,000
31	$15,610,000	$689,118,000
32	$17,625,000	$706,743,000
33	$17,427,000	$724,170,000
34	$16,989,000	$741,159,000
35	$16,375,000	$757,534,000
36	$16,371,000	$773,905,000
37	$18,723,000	$792,628,000

Months after NTP1	(A) Proposer's Anticipated Draw Request	(B) Proposer's Cumulative Anticipated Draw Requests
38	$17,597,000	$810,225,000
39	$17,254,000	$827,479,000
40	$14,638,000	$842,117,000
41	$5,483,000	$847,600,000
TOTAL[1]	**$847,600,000**	

[1] An updated Exhibit 26 will be required in connection with TxDOT's election to prepay the Deferred D&C Payments or upon Termination for Convenience and the Total must be equal to the D&C Price, including all Deferred D&C Payment Certificates either already issued or under expected draw requests.

EXHIBIT 27

FORM OF
DEFERRED D&C PAYMENT CERTIFICATE

WHEREAS, the Texas Department of Transportation ("TxDOT") and SouthGate Mobility Partners LLC, a Delaware limited liability company ("Developer") are parties to a Development Agreement, dated November 20, 2014 (the "Development Agreement") to develop, design, construct, finance, operate and maintain the SH 183 Managed Lanes Project ("Project") in Dallas and Tarrant Counties, Texas; and

WHEREAS, TxDOT has reviewed and approved the [Draw Request][Final Reconciliation]***[Insert applicable item]*** delivered by Developer for satisfactory completion of a portion of the D&C Work on [_____ __, 20__]; and

WHEREAS, pursuant to the Maximum D&C Payment Schedule set forth in the Development Agreement, TxDOT's payments owed to Developer for D&C Work are in excess of the cumulative monthly amounts (exclusive of payments owed pursuant to a Change Order) allowed under the Maximum D&C Payment Schedule as of the date hereof or Developer has requested the early certification of Deferred D&C Payments in accordance with Section 11.3.2(g) of the Development Agreement; and

WHEREAS, TxDOT has determined that there is no dispute that it owes $_____ to Developer; and

NOW THEREFORE, TxDOT acknowledges its obligation, subject to Texas law, to pay Developer a total of $_____ (the "Certified Amount")***[Insert the portion of the amount owed in the approved Draw Certificate payable on the date set forth below up to an aggregate maximum of $50 million including all prior Deferred D&C Payment Certificates payable on the same date and any remainder amount will be certified in a separate certificate(s) and payable on the next succeeding anniversary(ies) of Scheduled Substantial Completion]***, and hereby certifies that it will pay that obligation on [_____]***[Insert applicable anniversary of Scheduled Substantial Completion in accordance with the Maximum D&C Payment Schedule]***, provided that payment may be made on an earlier date as permitted by and in accordance with the Development Agreement.

FURTHER, TxDOT hereby waives its rights under the Development Agreement to any further set-off, deduction, reduction or withholding from the Certified Amount for any reason, including but not limited to defective work, Liquidated Damages, default, termination, latent defects, or warranty claims.

FURTHER, subject to the requirements set forth in Section 11.3 of the Development Agreement, Developer and/or Borrower may sell or assign all or any portion of its rights, title and interests in and to payment of the amounts certified by TxDOT hereunder to any Lender or D&C Surety.

FURTHER, payment of the amount set forth in this Deferred D&C Payment Certificate is subject to appropriation as set forth in Section 1.12 of the Development Agreement.

FURTHER, the amount payable hereunder is subject to early payment at TxDOT's election in accordance with Section 11.3.2(f) of the Development Agreement, provided that TxDOT shall pay the Breakage Costs, if any, payable under Section 11.3.2(f)(ii) of the Development Agreement to the account specified in Developer's request for deposit of Deferred D&C Payments in the form set forth in Exhibit 28 to the Development Agreement if such direction has been timely provided to TxDOT.

Capitalized terms used herein and not otherwise defined shall have the meaning set forth in the Development Agreement.

Executed as of the ____ day of _____, 20__.

TEXAS DEPARTMENT OF TRANSPORTATION

_____

[_____], Executive Director

EXHIBIT 28

FORM OF
DEVELOPER REQUEST FOR DEPOSIT OF
DEFERRED D&C PAYMENTS

SouthGate Mobility Partners LLC (hereinafter "Developer"), has entered into that certain Development Agreement, dated November 20, 2014 (the "Development Agreement") with the Texas Department of Transportation (hereinafter "TxDOT"), to develop, design, construct, finance, operate and maintain the SH 183 Managed Lanes Project ("Project") in Dallas and Tarrant Counties, Texas and doing so solely for Developer's benefit, hereby expressly and irrevocably requests, authorizes and directs TxDOT to process, issue and transmit any and all future payments to be paid pursuant to the Deferred D&C Payment Certificates otherwise payable directly to Developer to now be processed, issued and transmitted to the Lockbox Account (as defined below) as set forth herein.

A. **ACCOUNT DIRECTIONS:** Developer requests all future payments payable pursuant to the Deferred D&C Payment Certificates under the Contract Documents be processed, issued and transmitted, based on the following information:

1. All future payments payable pursuant to the Deferred D&C Payment Certificates shall be transmitted by TxDOT into the following account established by Borrower (the "Lockbox Account"): [_____]

2. The Lockbox Account mailing address will be:

_____

_____

_____

_____

_____

3. Developer acknowledges that all such Account payments will be transmitted in the same manner as all other payments owed under the Contract Documents, subject to the payment instructions above.

B. **GENERAL TERMS:**

1. Developer understands and agrees that TxDOT will require reasonable time to respond and initiate any requested and permitted changes in the payee pursuant to this request; and, further, TxDOT shall have no liability, whatsoever, for any delay in processing any such payee change as set forth above prior to expiration of 30 business days following TxDOT's certified, return-receipt or registered mail receipt of Developer's formal request. Developer agrees hereby to

indemnify, defend, and hold-harmless TxDOT from any cause of action, suit, claim or other demand made against TxDOT arising in any way out of TxDOT's failure to process any such payee change as set forth above, if TxDOT does so as set forth above prior to the expiration of 30 business days following TxDOT's certified, return-receipt or registered mail receipt of the appropriate formal request.

2. This request is irrevocable by Developer, unless mutual written request to TxDOT is made by Developer and its Lenders (or any collateral agent for the Lenders on behalf of such Lenders), and acceptance by TxDOT of any such subsequent request to change from this Developer Request for Deposit of Deferred D&C Payments into Account for the processing, issuance and transmittal of payments due under the Contract Documents.

3. The fully executed original of this Developer Request for Deposit of Deferred D&C Payments must be delivered to TxDOT's Authorized Representative in accordance with the Contract Documents.

4. Capitalized terms not otherwise defined herein shall have the meaning set forth in the Development Agreement.

DEVELOPER

_____
(Signature)

_____
(Printed Name of Signatory)

_____
(Official Capacity)

_____
(Date of Signature)

EXHIBIT 29

ADJUSTMENTS TO D&C PRICE FOR GAIN SHARING DUE TO CHANGE IN FINANCIAL PLAN

1. In accordance with Section 11.1.3(b) of the Agreement, on the last day of the market interest rate adjustment period, the Proposal Financial Model submitted with the Developer's Proposal will be updated solely for the increase or decrease in Benchmark Rates, swaps and other hedging instruments affected by changes in Benchmark Rates over the market interest rate adjustment period. This updated Proposal Financial Model will be the "Interim Financial Model". Documented and verifiable costs due to Lenders under the Funding Agreements in the Interim Financial Model will be used as "FCI" below and the resulting D&C Price in the Interim Financial Model will be the "D&C Price Interim".

2. To the extent that the Developer (i) closes financing for Developer Debt before the Interest Rate Adjustment Expiration Date under a financial plan that is different from that reflected in the Proposal Financial Model, and (ii) such revised financial plan includes a reduction in the documented and verifiable costs due to Lenders under the Funding Agreements calculated as FCI above, Developer must submit a revised Financial Model reflecting the revised financial plan ("Revised Financial Model") in accordance with Section 11.3.1(d) of the Agreement and revised D&C Price ("D&C Price Revised") and the resulting gain will be calculated and shared as follows:

2.1. The documented and verifiable costs due to Lenders under the Funding Agreements ("FAD") will be determined from the Revised Financial Model.

2.2. The amount of the gain (G) will be calculated as FCI less FAD.

2.3. The D&C Price Revised will be increased by an amount equal to 40% of G and will become the D&C Price for the Project, which shall not exceed the D&C Price Interim.

2.4. The Maximum D&C Payment Schedule will be adjusted upward by the amount in Section 2.3 above. Adjustment of the Maximum D&C Payment Schedule for the amount in Section 2.3 above will be made to the first $600,000,000 in the schedule.

3. The Developer's Revised Financial Model updated in accordance with the steps set forth herein will be the Financial Model used for any future updates in accordance with the Agreement.

EXHIBIT 30

TIFIA REQUIREMENTS

(a) Representations and warranties:

(i) To the best of its knowledge and belief, Developer, the TIFIA Parties and any of their respective principals (as defined in 2 C.F.R. § 180.995):

A. Are not be debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

B. Have not within a three year period preceding the effective date of the TIFIA Loan Agreement 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 then 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 B above; and

D. Have not within a three-year period preceding the effective date of the TIFIA Loan Agreement had one or more public transactions (federal, state or local) terminated for cause or default.

(ii) The Development Agreement and each Subcontract or other agreement related to the Project to which a TIFIA Party is a party, is in full force and effect and all conditions precedent to the obligations of the respective parties under each agreement have been satisfied.

(iii) Unless otherwise disclosed to TxDOT, no event has occurred that gives Developer the right to terminate this Agreement, and, to the best of Developer's knowledge after reasonable and diligent inquiry and investigation, no event has occurred that gives any other TIFIA Party the right to terminate its respective Subcontract, Guaranty, or other agreement or obligation entered into with respect to this Project.

(iv) Neither Developer nor, to the best of Developer's knowledge after reasonable and diligent inquiry and investigation, any of the TIFIA Parties is in breach of any material term in, or in default under, any Subcontract, Guaranty or other agreement or contracts with respect to the Project to which it is a party;

(v) Neither Developer nor, to the best of Developer's knowledge after reasonable and diligent inquiry and investigation, any of the TIFIA Parties (A) is in violation of: (1) any applicable anti-money laundering laws, including those contained in the Bank Secrecy Act, as amended, and the regulations promulgated thereunder; (2) any applicable economic

sanction laws administered by OFAC or by the United States Department of State; or (3) any applicable anti-drug trafficking, anti-terrorism, or anti-corruption laws, civil or criminal; or (B) is a Person (1) that is charged with, or has reason to believe that he, she or it is under investigation for, any violation of any such laws; (2) that has been convicted of any violation of, has been subject to civil penalties pursuant to, or had any of its property seized or forfeited under any such laws; (3) that is named on the list of "Special Designated Nationals or Blocked Persons" maintained by OFAC (or any successor United States government office or list), or any similar list maintained by the United States Department of State (or any successor United States government office or list); (4) with whom any United States Person, any entity organized under the laws of the United States or its constituent states or territories, or any entity, regardless of where organized, having its principal place of business within the United States or any of its territories, is prohibited from transacting business of the type contemplated by this Agreement and the other Related Documents under any other applicable law; (5) that is owned, controlled by, or affiliated with any Person identified in clause (1), (2), (3) or (4) of this clause (B); or (6) that is in violation of any obligation to maintain appropriate internal controls as required by the governing laws of the jurisdiction of such Person as are necessary to ensure compliance with the economic sanctions, laundering and anti-corruption laws of the United States and the jurisdiction where the Person resides, is domiciled or has its principal place of business.

(vi) Developer is, and, to the best of Developer's knowledge after reasonable and diligent inquiry and investigation, each TIFIA Party is, in compliance in all material respects with, and has conducted (or caused to be conducted) its business and operations and the business and operations of the Project in compliance in all material respects with, all applicable Laws (other than Environmental Laws, which are addressed in subclause (a)(vii) below). No notices of violation of any applicable Law has been issued, entered or received by Developer, or, to the best of Developer's knowledge after reasonable and diligent inquiry and investigation, by any of the TIFIA Parties, that in each case could reasonably be expected to result in a material adverse change in (A) the Project, (B) the business, operations, properties, condition (financial or otherwise) or prospects of TxDOT, (C) the legality, validity or enforceability of any material provision of the TIFIA Loan Agreement, the Development Agreement or any document or contract related to the Project to which a TIFIA Party is a party with respect to the Project, (D) the ability of TxDOT, Developer or any TIFIA Party to perform or comply with any of its material obligations under the TIFIA Loan Agreement, the Development Agreement or any other document or contract to which a TIFIA party is a party with respect to the Project, respectively, (E) the validity, perfection or priority of the liens provided under any security document related to the TIFIA Loan Agreement on the collateral in favor of the TIFIA Lender or (F) the TIFIA Lender's rights or remedies available under the TIFIA Loan Agreement or any related document (such material adverse changes collectively, the "**TIFIA MAE**").

(vii) Except as disclosed to TxDOT, Developer and, to the best of Developer's knowledge after reasonable and diligent inquiry and investigation, each of the TIFIA Parties is in compliance in all material respects with all applicable Laws relating to (i) air emissions, (ii) discharges to surface water or ground water, (iii) noise emissions, (iv) solid or liquid waste disposal, (v) the use, generation, storage, transportation or disposal of toxic or hazardous substances or wastes, (vi) biological resources (such as threatened and endangered species) or (vii) other environmental, health or safety matters, in each case to the extent related to the Project (the "**TIFIA Environmental Laws**").

(viii) Except as otherwise disclosed to TxDOT, neither Developer nor, to the best of Developer's knowledge after reasonable and diligent inquiry and investigation, any of the TIFIA Parties has received any communication or notice (written or oral), whether from a Governmental Entity, employee, citizens group, or any other Person, that alleges that Developer or such TIFIA Party, as applicable, is not in full compliance with all TIFIA Environmental Laws and Governmental Approvals relating thereto in connection with the Project and, to the knowledge of Developer, there are no circumstances that may prevent or interfere with full compliance in the future.

(ix) There is no action, suit, proceeding, inquiry or investigation before or by any court or other Governmental Authority, pending or threatened against or affecting Developer, or to the best of Developer's knowledge after reasonable and diligent inquiry and investigation, any of the TIFIA Parties, except for matters arising after the effective date of the TIFIA Loan Agreement that could not reasonably be expected to result in a TIFIA MAE.

(b) Covenants:

(i) Neither Developer, nor, to the best of Developer's knowledge after reasonable and diligent inquiry and investigation, any of the TIFIA Parties or any Person owning (excluding Persons owning securities effected on a recognized public stock exchange, unless such securities were acquired in a transaction involving an initial public offering) or Controlling any of them, in each case, if the OFAC regulations are applicable to such entity, (A) shall violate (1) any applicable anti-money laundering laws, including those contained in the Bank Secrecy Act, (2) any applicable economic sanction laws administered by OFAC or by the United States Department of State, or (3) any applicable anti-drug trafficking, anti-terrorism, or anti-corruption laws, civil or criminal; or (B) shall be a Person (1) that is charged with, or has reason to believe that he, she or it is under investigation for, any violation of any such laws, (2) that has been convicted of any violation of, has been subject to civil penalties pursuant to, or had any of its property seized or forfeited under any such laws, (3) that is named on the list of "Special Designated Nationals or Blocked Persons" maintained by OFAC (or any successor United States government office or list), or any similar list maintained by the United States Department of State (or any successor United States government office or list), (4) with whom any United States Person, any entity organized under the laws of the United States or its constituent states or territories, or any entity, regardless of where organized, having its principal place of business within the United States or any of its territories, is prohibited from transacting business of the type contemplated by this Agreement and the other Related Documents under any other applicable law, (5) that is owned, controlled by, or affiliated with any Person identified in clause (1), (2), (3) or (4) of this clause (B), or (6) is in violation of any obligation to maintain appropriate internal controls as required by the governing laws of the jurisdiction of such Person as are necessary to ensure compliance with the economic sanctions, anti-money laundering and anti-corruption laws of the United States and the jurisdiction where the Person resides, is domiciled or has its principal place of business.

EXHIBIT 31

FORM OF O&M PERFORMANCE BOND

SH 183 Managed Lanes Project

Bond No. _____

WHEREAS, the Texas Department of Transportation ("Obligee"), has awarded to SouthGate Mobility Partners LLC, a Delaware limited liability company ("Principal"), a Development Agreement for the SH 183 Managed Lanes Project, duly executed and delivered as of November 20, 2014 (the "Contract"), on the terms and conditions set forth therein; and

WHEREAS, upon Substantial Completion, Principal is required to furnish a bond (this "Bond") guaranteeing the faithful performance of its obligations related to the O&M Work under the Contract Documents.

NOW, THEREFORE, Principal and _____, a _____ ("Surety"), an admitted surety insurer in the State of Texas, are held and firmly bound unto Obligee in the amount of $[_____] ***[amount calculated as set forth in Section 8.5.1 of the Contract]*** (the "Bonded Sum"), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS BOND IS SUCH THAT, if Principal shall promptly and faithfully perform all of its obligations under the Contract Documents, including any and all amendments and supplements thereto, then the obligations under this Bond shall be null and void; otherwise this Bond shall remain in full force and effect. Obligee shall release this Bond on the date that is one year after the end of the Term and upon such date thereafter that all of the conditions to release set forth in Section 8.5.2 of the Contract have occurred.

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

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

2. Principal and the Surety hereby agree to pay to Obligee the full Bonded Sum hereinabove set forth, as cash collateral for the performance of Principal's obligations under the Contract Documents, after the occurrence of any of the following:

a. failure of Principal to provide a replacement O&M Performance Bond or O&M Payment Bond, as applicable, in the adjusted amount required under Section 8.5.1 of the Contract or a replacement O&M Letter of Credit and O&M Guaranty (if required) meeting the requirements of Sections 8.3, 8.4 and 8.7 of the Contract at least 30 days prior to each five-year anniversary of the Substantial Completion Date;

b. failure of Principal to provide a replacement O&M Performance Bond or O&M Payment Bond or a replacement O&M Letter of Credit and O&M Guaranty (if required) meeting the requirements of Sections 8.3, 8.4 and 8.7 of the Contract at least 30 days prior to the expiration of the then current O&M Performance Bond or O&M Payment Bond, as applicable; or

c. failure of Principal to provide a replacement O&M Performance Bond or O&M Payment Bond or a replacement O&M Letter of Credit and O&M Guaranty (if required) meeting the requirements of Sections 8.3, 8.4 and 8.7 of the Contract within 10 days after this Bond becomes ineffective or the Surety no longer meets the requirements set forth in Section 8.5.4 of the Contract.

Principal agrees and acknowledges that such cash collateral is necessary to secure the performance of Principal under the Contract Documents as a result of Principal's failure to satisfy the O&M Security obligations under the Contract to which Principal agreed upon executing the Contract.

3. This Bond specifically guarantees the performance of each and every obligation of Principal related to the O&M Work under the Contract Documents, as they may be amended and supplemented, including but not limited to, its liability for payment in full of all Liquidated Damages as specified in the Contract Documents, but not to exceed the Bonded Sum.

4. The guarantees contained herein shall survive the expiration or termination of the O&M Period with respect to those obligations of Principal under the Contract Documents that survive such expiration or termination.

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

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

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

c. obtain bids or negotiated proposals from qualified contractors acceptable to the Obligee for a contract for performance and completion of the O&M Work, through a procurement process approved by the Obligee, arrange for a contract to be prepared for execution by the Obligee and the contractor selected with the Obligee's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Contract, and pay to the Obligee the amount of damages as described in Paragraph 7 of this Bond in excess of the unpaid balance of the O&M Price for the applicable O&M Period incurred by the Obligee resulting from the Principal's default; or

d. waive their right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances, (i) after

investigation, determine the amount for which they may be liable to the Obligee and, as soon as practicable after the amount is determined, tender payment therefore to the Obligee, or (ii) deny liability in whole or in part and notify the Obligee citing reasons therefore.

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

7. After the Obligee has terminated the Principal's right to complete the Contract, and if Surety elects to act under Subparagraph 5.a, 5.b, or 5.c above, then the responsibilities of Surety to the Obligee shall not be greater than those of the Principal under the Contract, and the responsibilities of the Obligee to Surety shall not be greater than those of the Obligee under the Contract. To the limit of the Bonded Sum, but subject to commitment of the unpaid balance of the O&M Price for the applicable O&M Period to mitigation costs and damages on the Contract, Surety is obligated without duplication for:

a. the responsibilities of the Principal for correction of defective O&M Work and completion of the O&M Work;

b. actual damages, including additional legal, design, engineering, professional and delay costs resulting from Principal's default, and resulting from the actions or failure to act of Surety under Paragraph 5 of this Bond; and

c. all Liquidated Damages under the Contract.

8. No alteration, modification or supplement to the Contract Documents or the nature of the O&M Work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Surety under this Bond. Surety waives notice of any alteration, modification, supplement or extension of time.

9. In no event shall the term of this bond be beyond the [__]***[term of the bond may not be less than 5 years, except that a bond in the amount required for the last year after the Term may be for a term not less than 1 year.]*** anniversary of the execution date without the express written consent of the Surety. Surety will have no obligation to extend or replace this bond for additional periods of time. Failure of the Principal to file a replacement bond as required under Section 8.5 of the Contract or a replacement O&M Letter of Credit and O&M Guaranty (if required) meeting the requirements of Sections 8.3, 8.4 and 8.7 of the Contract shall constitute an obligation to pay to Obligee the full Bonded Sum hereinabove set forth, as cash collateral for the performance of Principal's obligations under the Contract Documents, in accordance with Section 2 above.

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

_____
_____
_____

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

IN WITNESS WHEREOF, Principal and Surety have caused this Bond to be executed and delivered as of _____, 201[__]

Principal:

_____
By:_____
Its: _____
(Seal)

Surety:

_____
By:_____
Its: _____
(Seal)

[*ADD APPROPRIATE SURETY ACKNOWLEDGMENTS*]

SURETY

_____
or secretary attest

By:_____
Name
Title:
Address:

EXHIBIT 32

FORM OF O&M PAYMENT BOND

SH 183 Managed Lanes Project

Bond No. _____

WHEREAS, the Texas Department of Transportation ("Obligee"), has awarded to SouthGate Mobility Partners LLC, a Delaware limited liability company ("Principal"), a Development Agreement for the SH 183 Managed Lanes Project, duly executed and delivered as of November 20, 2014 (the "Contract"), on the terms and conditions set forth therein; and

WHEREAS, upon Substantial Completion, Principal is required to furnish a bond (this "Bond") guaranteeing payment in full to all Subcontractors and Suppliers.

NOW, THEREFORE, Principal and _____, a _____ ("Surety"), an admitted surety insurer in the State of Texas, are held and firmly bound unto Obligee in the amount of $[_____] ***[amount calculated as set forth in Section 8.5.1 of the Contract]*** (the "Bonded Sum"), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS BOND IS SUCH THAT, if Principal shall fail to pay any valid claims by Subcontractors and Suppliers with respect to the O&M Work, then Surety shall pay for the same in an amount in the aggregate of all Subcontracts not to exceed the Bonded Sum; otherwise this Bond shall be null and void upon the occurrence of all of the conditions to release set forth in Section 8.5.3 of the Contract.

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

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

2. No alteration, modification or supplement to the Contract Documents or the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Surety under this Bond. Surety waives notice of any alteration, modification, supplement or extension of time.

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

_____
_____
_____

4. This Bond shall inure to the benefit of Subcontractors and Suppliers with respect to the O&M Work so as to give a right of action to such persons and their assigns in any suit brought upon this Bond.

5. In no event shall the term of this bond be beyond the [___]***[term of the bond may not be less than 5 years, except that a bond in the amount required for the last year after the Term may be for a term not less than 1 year.]*** anniversary of the execution date without the express written consent of the Surety. Surety will have no obligation to extend or replace this bond for additional periods of time. Failure of the Surety to extend this bond or failure of the Principal to file a replacement bond shall not constitute a default under this Bond.

IN WITNESS WHEREOF, Principal and Surety have caused this Bond to be executed and delivered as of _____, 201[__].

Principal: _____
By:_____
Its: _____
(Seal)

Surety: _____
By:_____
Its: _____
(Seal)

[*ADD APPROPRIATE SURETY ACKNOWLEDGMENTS*]

SURETY

By:_____
Name
Title:
Address: