COMPREHENSIVE DEVELOPMENT AGREEMENT

NORTH TARRANT EXPRESS

SEGMENTS 2 THROUGH 4

by and between

Texas Department of Transportation

and

NTE Mobility Partners Segments 2-4 LLC,
a Delaware limited liability company

Dated as of June 23, 2009

COMPREHENSIVE DEVELOPMENT AGREEMENT

NORTH TARRANT EXPRESS

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COMPREHENSIVE DEVELOPMENT AGREEMENT

North Tarrant Express Segments 2 through 4

This Comprehensive Development Agreement is entered into and effective as of June 23, 2009 by and between the Texas Department of Transportation, a public agency of the State of Texas ("**TxDOT**"), and NTE Mobility Partners Segments 2-4 LLC, a Delaware limited liability company ("**Developer**"), with reference to the definitions contained in Exhibit A hereto and the following recitals:

A. The State of Texas desires to facilitate private sector investment and participation in the development of the State's transportation system via public-private partnership agreements, and the Texas Legislature has enacted Transportation Code, Chapter 223, Subchapter E (the "Code"), and TxDOT has adopted Sections 27.1-27.9 of Title 43, Texas Administrative Code (the "Rules"), to accomplish that purpose.

B. The Code grants TxDOT the authority to enter into agreements with private entities to develop, design, construct, finance, operate and maintain transportation facilities.

C. Pursuant to the provisions of the Code and the Rules, TxDOT issued a Request for Proposals and Qualifications on December 8, 2006, as amended (the "**RFQ**").

D. TxDOT received seven responsive proposals and qualification submittals on March 15, 2007, and subsequently shortlisted four responsive proposers.

E. Pursuant to the Code, the Rules and other applicable provisions of Texas law, on March 3, 2008 TxDOT issued a Request for Proposals ("**RFP**"), soliciting competitive detailed proposals from the shortlisted teams for a public/private partnership for the North Tarrant Express Project, consisting of Segments 1, 2, 3a, 3b, 3c and 4 (each as defined in Exhibit A). The RFP required the shortlisted proposers to commit to entering into a concession Comprehensive Development Agreement (the "**Concession CDA**") to develop, design, construct, finance, operate and maintain, at a minimum, portions of Segment 1 and such other portions of Segment 2 of the North Tarrant Express Project as are set forth in the Proposal (the "Concession Facility" or the "Facility") and this Comprehensive Development Agreement for the remaining portions of the North Tarrant Express Segments 2, 3a, 3b, 3c and 4.

F. On December 1, 2008, TxDOT received responses to the RFP, including the response of NTE Mobility Partners Segments 2-4 LLC ("**Developer's Proposal**").

G. TxDOT determined that Developer's Proposal was the proposal which provided the best value to the State.

H. The Executive Director of TxDOT has been authorized to enter into this Agreement pursuant to the Code, the Rules and the Commission Minute Order #111611 dated January 29, 2009.

I. The parties intend for this Agreement to provide the framework for Developer to collaborate with TxDOT for the conceptual, preliminary and final planning along with some or all of the development, design, construction, financing, operation and maintenance, of one or more Facilities which together constitute the Project.

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

SECTION 1. CONTRACT COMPONENTS; INTERPRETATION OF CONTRACT DOCUMENTS

1.1 Certain Definitions

Exhibit A hereto contains the meaning of various terms used in the Contract Documents.

1.2 Order of Precedence

1.2.1 The term **"Contract Documents"** shall mean the documents listed in this Section 1.2. Each of the Contract Documents is an essential part of the agreement between the parties. The Contract Documents are intended to be complementary, and a requirement occurring in one is as binding as though occurring in all. In the event of any conflict among the Contract Documents, the order of precedence shall be as set forth below.

(a) For the Project:

(1) Agreement amendments;

(2) Agreement (including all Exhibits except Exhibits B and C);

(3) Technical Provisions for Concession CDAs (Book 3);

(4) Master Development Plan amendments (including amendments to the Master Financial Plan);

(5) Master Development Plan (including the Master Financial Plan and all exhibits to the Master Development Plan); and

(6) Exhibits B and C of this Agreement (Conceptual Development Plan and Conceptual Financial Plan), subject to Section 2.3.2.

(b) For Facilities prior to execution and delivery of Facility Agreements:

(1) Agreement amendments;

(2) Agreement (including all Exhibits except Exhibits B and C);

(3) Technical Provisions for concession CDAs (Book 3) or Technical Provisions for design-build CDAs, as applicable;

(4) Facility Implementation Plan amendments;

(5) Facility Implementation Plan (including all exhibits thereto);

(6) Master Development Plan amendments (including amendments to the Master Financial Plan);

(7) Master Development Plan (including the Master Financial Plan and all exhibits to the Master Development Plan); and

(8) Exhibits B and C of this Agreement (Conceptual Development Plan and Conceptual Financial Plan), subject to Section 2.3.2.

1.2.2 Additional details and more stringent requirements contained in a lower priority document will control unless the requirements of the lower priority document present an actual conflict with the requirements of the higher level document (i.e. it is not possible to comply with both requirements). In the event of a conflict among any standard or specification applicable to the Project as set forth in the applicable Technical Provisions (Book 3) to this Agreement, TxDOT shall have the right to determine, in its sole discretion, which provision applies.

1.2.3 Once one or more Facility Agreements are executed and delivered for a Facility, the Facility Agreement(s) shall exclusively govern the rights and obligations of the parties as they relate to the Facility in question.

1.3 Interpretation of Contract Documents

1.3.1 In the Contract Documents, where appropriate: the singular includes the plural and vice versa; unless otherwise indicated references to statutes or regulations include all statutory or regulatory provisions consolidating, amending or replacing the statute or regulation referred to; unless otherwise indicated references to Codes are to the codified laws of the State; the words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation"; unless otherwise indicated references to sections, exhibits or schedules are to this Agreement; words such as "herein," "hereof" and "hereunder" shall refer to the entire document in which they are contained and not to any particular provision or section; words not otherwise defined which have well-known technical or industry meanings, are used in accordance with such recognized meanings; references to Persons include their respective permitted successors and assigns and, in the case of Persons within Governmental Entities, Persons succeeding to their respective functions and capacities; and words of any gender used herein shall include each other gender where appropriate. Unless otherwise specified, lists contained in the Contract Documents defining the Project or the Work shall not be deemed all-inclusive. The provisions of this Agreement do not govern work performed under a Facility Agreement.

1.3.2 Developer acknowledges and agrees that it had the opportunity and obligation, prior to submission of its Proposal, to review the terms and conditions of the Contract Documents that existed at such time and to bring to the attention of TxDOT any conflicts or ambiguities contained therein. Developer further acknowledges and agrees that it has independently reviewed the Contract Documents with legal counsel,

and that it has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions of the Contract Documents. Accordingly, in the event of any ambiguity in or dispute regarding the interpretation of the Contract Documents, they shall not be interpreted or construed against the Person who prepared them, and, instead, other rules of interpretation and construction shall be used.

1.3.3 TxDOT's interim or final written answers to the questions posed during the Proposal process for this Agreement shall in no event be deemed part of the Contract Documents and shall not be relevant in interpreting the Contract Documents except to the extent they may clarify provisions otherwise considered ambiguous. On plans, working drawings, and standard plans, calculated dimensions shall take precedence over scaled dimensions.

1.4 Explanations; Omissions and Misdescriptions

Developer shall not take advantage of or benefit from any apparent Error in the Contract Documents. Should it appear that the Work to be done or any matter relative thereto is not sufficiently detailed or explained in the Contract Documents, Developer shall submit a written request for such further written explanations from TxDOT as may be necessary, and shall comply with the explanation provided. Developer shall promptly notify TxDOT in writing of all Errors which it may discover in the Contract Documents, and shall obtain specific instructions in writing from TxDOT regarding any such Error before proceeding with the Work affected thereby. The fact that the Contract Documents omit or misdescribe any details of any Work which are necessary to carry out the intent of the Contract Documents shall not relieve Developer from performing such omitted Work or misdescribed details of the Work.

1.5 Computation of Periods

References to "days" contained in the Contract Documents shall mean calendar days unless otherwise specified. If the last date to perform any act or give any notice specified in the Contract Documents (including the last date for performance or provision of notice "within" a specified time period) falls on a non-business day, such act or notice may be timely performed on the next succeeding day that is a business day. Notwithstanding the foregoing, requirements contained in the Contract Documents relating to actions to be taken in the event of an emergency and other requirements for which it is clear that performance is intended to occur on a non-business day, shall be required to be performed as specified, even though the date in question may fall on a non-business day. The term "business days" shall mean days on which TxDOT is officially open for business.

1.6 Standard for Approvals

In all cases where approvals or consents are required to be provided by TxDOT or Developer hereunder, such approvals or consents shall not be withheld unreasonably

except in cases where a different standard (such as sole discretion) is specified. In cases where sole discretion is specified, the decision shall not be subject to dispute resolution hereunder.

1.7 Professional Services Licensing Requirements; Good Standing

1.7.1 TxDOT does not intend to contract for, pay for, or receive any Professional Services which are in violation of any professional licensing or registration laws, and by execution of this Agreement, Developer acknowledges that TxDOT has no such intent. It is the intent of the parties that Developer is fully responsible for furnishing the Professional Services under this Agreement through itself and/or Subcontracts with licensed/registered Professional Service firm(s) as provided herein. Any references in the Contract Documents to Developer's responsibilities or obligations to "perform" the Professional Services portions of the Work shall be deemed to mean that Developer shall "furnish" the Professional Services for the Project. The terms and provisions of this Section 1.7 shall control and supersede every other provision of all Contract Documents.

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

1.7.3 Developer will remain in good standing in the State throughout the term of this Agreement and for as long thereafter as any obligations remain outstanding under the Contract Documents.

1.8 Federal Requirements

Certain Facilities may be financed in part with federal funds and, if so, will be subject to federal statutes, rules and regulations applicable to work financed with federal funds. For all portions of the Project for which federal funds are utilized, Developer shall comply with applicable federal requirements, including the federal requirements set forth in Exhibit P, Disadvantaged Business Enterprise participation, prevailing wages, Buy America, the Uniform Relocation Assistance Act and other federal requirements affecting the Work. In the event of any conflict between any applicable federal requirements and the other requirements of the Contract Documents, the federal requirements shall prevail, take precedence and be in force over and against any such conflicting provisions.

1.9 Reference Information Documents

1.9.1 TxDOT has provided and disclosed to Developer the Reference Information Documents. The Reference Information Documents are not mandatory or

binding on Developer. Developer is not entitled to rely on the Reference Information Documents as presenting a design, engineering, operating or maintenance solutions or other direction, means or methods for complying with the requirements of the Contract Documents, Governmental Approvals or Law.

1.9.2 TxDOT shall not be responsible or liable in any respect for any causes of action, claims or Losses whatsoever suffered by any Developer-Related Entity by reason of any use of information contained in, or any action or forbearance in reliance on, the Reference Information Documents.

1.9.3 TxDOT does not represent or warrant that the information contained in the Reference Information Documents is complete or accurate or that such information is in conformity with the requirements of the Contract Documents, Governmental Approvals or Laws. Developer shall have no right to additional compensation or time extension based on any incompleteness or inaccuracy in the Reference Information Documents.

SECTION 2. ESTABLISHMENT OF PUBLIC-PRIVATE TRANSACTION

2.1 General Overview of Agreement

2.1.1 This Agreement is a public-private partnership agreement setting forth the framework for the conceptual, preliminary and final planning of the Project and Facilities, and for financing, building, operating and maintaining Facilities, through collaborative efforts of TxDOT and Developer. This Agreement does not establish, and shall not be construed as, a legal partnership between TxDOT and Developer. Rather, by "public-private partnership", the parties intend and acknowledge that a highly cooperative, mutual collaboration will be pursued, under the terms of the Contract Documents, to engage Developer's innovation, private sector resources, entrepreneurial skills, risk sharing and management capabilities, and technical and financial expertise, and to engage TxDOT's governmental authority, planning capabilities, risk sharing and management capabilities, and technical and financial expertise, to bring the Project and Facilities to fruition. As such, this Agreement contemplates significant roles and responsibilities for Developer that go beyond the typical work and services provided by engineering and construction firms under contracts routinely let by TxDOT.

2.1.2 This Agreement sets forth: (a) an Initial Scope of Work for Developer, as well as Developer's ongoing obligations for the Project throughout the term of the Agreement; (b) the future range of potential roles and responsibilities of Developer in the management and performance of Facility development, acquisition, financing, design, construction, operation, repair and maintenance; and (c) procedures for negotiating and approving future plans and procuring agreements necessary for Facility development, acquisition, financing, design, construction, operation, repair and maintenance.

2.1.3 Under this Agreement, specific Facilities of the Project will be developed in phases. TxDOT anticipates entering into: (a) Facility Implementation Plans that will govern the parties' roles and responsibilities for Facility Development Work through a date determined by the mutual agreement of the parties, but no later than the Close of Finance for each Facility developed hereunder; and (b) Facility Agreements that will govern the parties' roles and responsibilities with respect to the development of individual Facilities after Close of Finance or such earlier date as is determined by the mutual agreement of the parties.

2.2 Parties to Transaction; Roles and Responsibilities

2.2.1 The major parties involved in the public-private transaction are TxDOT and Developer.

2.2.2 Developer, in accordance with this Agreement, will be responsible for:

(a) From the date of this Agreement through the execution of a Facility Agreement for the final Facility of the Project, unless earlier terminated in accordance

with this Agreement, carrying out the rights and responsibilities of Developer under this Agreement, including:

(1) Pursuing the development of the Facilities, in accordance with the Contract Documents and the Project Schedule;

(2) Providing technical support and services to TxDOT and its environmental consultants to complete the environmental documents under NEPA, in accordance with the Contract Documents;

(3) Preparing and updating a Master Development Plan for the Project, including a Master Financial Plan;

(4) Preparing, implementing and updating, as necessary, a Project Management Plan;

(5) Providing ideas, concepts, comments and technical support to TxDOT in connection with TxDOT's decisions to finalize the standards and specifications for the Project and the Facilities in accordance with the Contract Documents;

(6) At TxDOT's request, performing or causing to be performed the preliminary engineering and related studies and investigations necessary to complete the conceptual planning and master development of the Project and the Facilities in accordance with the Facility NEPA environmental documents;

(7) At TxDOT's request, preparing, for TxDOT's approval, right-of-way acquisition plans as part of the Facility Implementation Plans;

(8) Preparing Facility Implementation Plans and carrying out the Work and services identified as Developer's responsibility under TxDOT approved Facility Implementation Plans; and

(9) Preparing Facility Financial Plans for the financing of Facilities, and implementing such Plans to the extent of Developer's responsibilities thereunder; and

(b) For each Facility which is to be self-performed in whole or in part by Developer or its Affiliate, carrying out the obligations of Developer or its Affiliate set forth in the Facility Agreements to which Developer or its Affiliate is a party.

(c) Developer's Work under Sections 2.2.2(a) and 2.2.2(b) does not include the preparation of any market valuations, as such term is used in Section 228.0111 of the Code. Any and all Work performed by or on behalf of Developer or any of its Affiliates pursuant to any Contract Document will not be designated as a market valuation for any Facility under Section 228.0111 of the Code. Notwithstanding the foregoing, all such Work is TxDOT property pursuant to Section 23.5.

2.2.3 TxDOT, in accordance with this Agreement, will be responsible for:

(a) With input from Developer, finalizing the TxDOT standards and specifications for each Facility, and the basic alignment of the Project and the Facilities, in accordance with the Contract Documents;

(b) Carrying out its responsibilities as lead State agency under NEPA in connection with the proposed Facilities, including exclusive oversight of its environmental consultants, the environmental documents prepared thereby and the making of findings in connection therewith;

(c) Making available to Developer information and documents that are publicly available, are in the possession of TxDOT from time to time, are relevant to the Project and are reasonably needed by Developer for performance of the Work;

(d) Leading the negotiation and preparation of the Facility Agreements to ensure they are consistent with the Contract Documents and contain pricing and other terms and conditions satisfactory to TxDOT;

(e) Reviewing and providing comments on Deliverables in accordance with Section 9.3, as well as other contracts as required to ensure they are consistent with this Agreement;

(f) Carrying out the work and services identified as TxDOT's responsibility under TxDOT approved Facility Implementation Plans;

(g) Providing access to TxDOT-owned right-of-way in accordance with Section 11.3;

(h) Funding Developer's compensation in accordance with the terms and conditions of this Agreement and the other Contract Documents based upon satisfaction by Developer of Project and Facility Milestones; and

(i) Reviewing and auditing the books, consolidated financial statements and records of Developer to verify compliance with the terms of this Agreement.

2.3 Overall Development Process

2.3.1 Throughout the term of this Agreement, Developer shall closely coordinate and cooperate with TxDOT at both upper levels of management and at the staff level to advance the development of the Project and individual Facilities. The development of the Project will follow a process by which TxDOT and Developer will work cooperatively to create a Master Development Plan and associated Master Financial Plan that will identify Facilities and sequence the development of the identified Facilities in a manner that corresponds to projected needs, market demand and available financial resources and ensure consistent, high quality design and construction of Facilities for the benefit of the public. Developer will support and

cooperate with TxDOT in the efforts to obtain Facility Level NEPA environmental documents for Facilities and will implement innovative techniques that will allow progression of individual Facilities from conceptual design, to procurement (if any), through to final design, construction, operation and maintenance.

2.3.2 Exhibit B (Conceptual Development Plan) and Exhibit C (Conceptual Financial Plan) represent a starting point for the creation of the Master Development Plan and the Master Financial Plan. TxDOT has not provided any input into the concepts or specific contents of these Exhibits which, by their nature, will change and expand during the creation of the Master Development Plan and the Master Financial Plan. In recognition of this, it is the parties' intention that Exhibits B and C will be fully superseded by the TxDOT-approved Master Development Plan and Master Financial Plan, at which point these Exhibits will cease to be Contract Documents.

SECTION 3. TERM; DEVELOPER COMPENSATION; PAYMENT; APPROPRIATIONS

3.1 Term of Agreement

3.1.1 Initial Term

This Agreement will be effective from the date of execution until the execution and delivery of Facility Agreements and Close of Finance for all Facilities comprising the Project, up to a maximum of 10 years, and subject to an optional extension of term or earlier termination as set forth in this Agreement. Neither the expiration nor any earlier termination of this Agreement shall have any effect upon the continuing force and effect of executed and delivered Facility Agreements.

3.1.2 Extension of Term

TxDOT, at its option, in its sole discretion, shall have the right to extend the term of this Agreement for an additional five (5) years beyond the date of expiration of the initial 10-year term. Such extended term shall continue until 15 years after the date of execution of the Agreement, unless terminated earlier in accordance with the terms hereof. If TxDOT elects to exercise its term extension rights, TxDOT shall provide written notice to Developer on or before 90 Days prior to the scheduled expiration of the initial term.

3.2 Developer Compensation

3.2.1 Compensation for Initial Scope of Work

Developer's compensation for the Initial Scope of Work shall be calculated and paid in accordance with Exhibit H. Developer's compensation for preparation and submission of each of the Deliverables for the Initial Scope of Work identified in Exhibit J of this Agreement, including its proposed Master Development Plan, Master Financial Plan and Project Management Plan shall be the lump sum prices for each Milestone set forth in Exhibit J.

3.2.2 Compensation for Technical Support Services

During the Initial Scope of Work, Developer and TxDOT shall meet and negotiate the terms and conditions for Developer's performance of Technical Support Services, including the scope of the services and compensation therefor. If the parties agree that Developer should perform such services prior to completion of the Initial Scope of Work, the parties shall include the agreed upon terms and conditions for the Technical Support Services and the compensation therefor in Exhibit I, otherwise the parties shall include such terms, conditions and compensation in the Master Development Plan. Developer's compensation for Technical Support Services shall be calculated and paid in accordance with Exhibit I or the approved Master Development Plan, as applicable. Agreement by the parties on the terms of Developer's compensation for Technical

Support Services shall be a condition to Developer's obligation to perform Technical Support Services.

3.2.3 Compensation for Update Work

Developer's compensation for Update Work shall be calculated and paid in accordance with the Master Development Plan. The terms shall be negotiated between the parties as part of the process described in Section 5.2 and included in the Master Development Plan. Agreement by the parties on the terms of Developer's compensation for Update Work shall be a condition to Developer's obligation to perform Update Work.

3.2.4 Compensation for Facility Work

3.2.4.1 Compensation for Facility Work prior to Approval of a Facility Implementation Plan. Developer shall not be entitled to any additional compensation for Facility Work prior to TxDOT approval of a Facility Implementation Plan. Such services shall be at Developer's sole risk and expense. The elements of the Facility Work to be performed prior to approval of a Facility Implementation Plan include Work (i) required for determining when Facilities are Ready for Development, (ii) required for preparing written requests for authorization from TxDOT to proceed with preparation of a Facility Implementation Plan, and (iii) relating to discussions, negotiations and preparation of Facility Implementation Plans.

3.2.4.2 Compensation for Facility Development Work. Developer shall not be entitled to any additional compensation for Facility Development Work in the event TxDOT and Developer or an Affiliate enter into a Facility Agreement. The methodology and terms of compensating Developer for Facility Development Work performed if a Risk Event occurs that entitles Developer to a remedy pursuant to Section 19.6 shall be negotiated between the parties and included within the Facility Implementation Plan described in Section 7.5. In no event shall Developer be entitled to compensation for such Facility Development Work for a Facility unless (i) TxDOT shall have agreed to such compensation through an approved a Facility Implementation Plan for such Facility and (ii) a Risk Event that entitles Developer to compensation occurs.

3.2.5 Other Terms and Conditions

3.2.5.1 Developer and its Affiliates shall not be entitled to compensation for any Work hereunder unless TxDOT has issued a Notice to Proceed with such Work. A condition precedent to the issuance of a Notice to Proceed with any Work shall be agreement by the parties on the terms of Developer's or its Affiliate's compensation for such Work in the Contract Documents. In no event shall Developer or its Affiliates be entitled to compensation for any Facility Work prior to execution by TxDOT and Developer or an Affiliate of a Facility Implementation Plan for the applicable Facility.

3.2.5.2 Developer and its Affiliates shall not be entitled to any increase in the compensation for the Work or extension of any deadline except as expressly set forth in the Contract Documents.

3.2.5.3 Except as otherwise expressly provided in the Contract Documents, Developer acknowledges and agrees that the compensation for the Work described herein includes (a) all designs, equipment, materials, labor, insurance and bond premiums, home office, jobsite and all other overhead, profit and services related to Developer's performance of its obligations under the Contract Documents, including all Work, equipment, materials, labor and services provided by Subcontractors and all intellectual property rights necessary to perform the Work; (b) performance of each and every portion of the Work; (c) the cost of obtaining all applicable Governmental Approvals required for performance of the Work (excluding only such services and efforts which the Contract Documents specify will be undertaken by other Persons) and compliance with such Governmental Approvals and applicable Law; and (d) payment of any duties, taxes and other fees, costs and/or royalties imposed with respect to the Work and any equipment, materials, labor or services included therein.

3.2.5.4 The methodology and terms for compensating Developer for all or portions of the Work as set forth in the Contract Documents may require Developer to carry or absorb some or all of its costs. In the event of a Risk Event, Developer may be entitled to compensation for certain unpaid costs, if any, pursuant to Section 19.

3.3 Invoicing and Payment

3.3.1 Milestone payments, if any, for the Deliverables identified in Exhibit J to this Agreement will be made no more often than monthly and only based on complete submission and TxDOT approval of all Deliverables for a given Milestone meeting the requirements of the Contract Documents, as more particularly set forth in Exhibit J to this Agreement. Payments for other elements of the Initial Scope of Work will be made in accordance with the methodology for payment set forth in Exhibit I to this Agreement. Payments for other Work performed under this Agreement will be made in accordance with the methodology for payment agreed to by the parties and set forth in the applicable Contract Document.

3.3.2 All draw requests and invoices shall be in form acceptable to TxDOT. TxDOT will process draw requests and invoices regarding compensation for the Work in accordance with its standard practices and procedures.

3.4 TxDOT Monetary Obligations

All TxDOT monetary obligations under the Contract Documents are subject to appropriation by the Texas Legislature; however, in the absence of such appropriation, such monetary obligations shall be payable solely from other unencumbered lawfully available funds of TxDOT (whether available at such time or in the future) that are not

funds appropriated by the Texas Legislature. TxDOT shall submit a request in accordance with applicable Law to obtain an appropriation from the Texas Legislature, or shall perform actions permitted by Law to obtain, designate, or use any other lawfully available funds that are not funds appropriated by the Texas Legislature. This Section 3.4 applies to all monetary obligations of TxDOT set forth in the Contract Documents, notwithstanding any contrary provisions of the Contract Documents. The Contract Documents do not create a debt under the Texas Constitution.

SECTION 4. ENVIRONMENTAL REVIEW PROCESS; REGULATORY APPROVALS

4.1 General Process

4.1.1 TxDOT has commenced the environmental process for the CDA Segments. As part of the NEPA process, TxDOT will prepare NEPA documents (e.g., EISs, environmental assessments or categorical exclusions, as appropriate) for each CDA Segment or Facility consistent with the Master Development Plan (or, prior to approval of the Master Development Plan, Exhibits B and C), including Facilities that serve a financing or connectivity purpose for the CDA Segments. Issuance of a ROD, FONSI, and/or other decision document would complete the NEPA process and NEPA-related public involvement phase of project development for the specific Facility unless: (i) changes to the project concept, design, or location trigger the need for additional environmental study; (ii) three years lapse from the date of the final Facility NEPA document without approval to undertake final design, acquisition of right-of-way, or approval of plans specifications and estimates, thus triggering a re-evaluation and/or additional environmental study; or (iii) changes in law or environmental conditions trigger the need for additional environmental study.

4.1.2 Developer shall review, comment upon, and generally support activities, including public information activities, undertaken by TxDOT in order to secure environmental approvals as part of the NEPA processes.

4.2 TxDOT's Rights and Responsibilities

4.2.1 The procurement, entry into, terms of, or performance by either party under this Agreement, shall not in any manner limit or confine the full discretion that TxDOT will exercise in conducting environmental review and preparing environmental documents for the potential Facilities, including the unfettered discretion of TxDOT and any federal agency acting as lead agency to choose a no-action alternative for any Facility. TxDOT, in conjunction with FHWA as the lead federal agency for NEPA, retains exclusive control and decision-making authority for purposes of environmental review under NEPA over the identification of preferred alternatives for Facilities.

4.2.2 Until environmental documentation is completed and a ROD, FONSI and/or other decision document is entered for a Facility, all references in this Agreement or any plan to the Project or a Facility shall be understood and deemed to mean only a potential or prospective Project or Facility.

4.2.3 TxDOT shall retain oversight to ensure that environmental mitigation commitments identified in the NEPA documents are implemented.

4.3 Developer's Rights and Responsibilities

4.3.1 As part of the NEPA process and as set forth in Exhibit I or the approved Master Development Plan, as applicable, Developer may provide engineering,

technical and support services to TxDOT and to any consultants retained by TxDOT to prepare environmental review documents and/or other services ("Technical Support Services"). Developer shall have no right or obligation to perform, and is expressly prohibited from performing, services that would violate conflict of interest rules under NEPA regarding the preparation, review, revision and decisions on scope and content of draft and final environmental review documents. All references in this Agreement, including but not limited to Section 2 and this Section 4, to Developer's involvement with NEPA environmental processes or documents shall be subject to the limitation set forth in the preceding sentence.

4.3.2 Developer shall be responsible for compliance with environmental mitigation commitments, requirements and conditions identified in the ROD, FONSI and/or other decision document, to the extent that Developer performs activities under a Facility Implementation Plan or any Facility Agreement which are subject to such environmental mitigation commitments, requirements or conditions.

4.3.3 If, after a ROD, FONSI and/or other decision document is issued for a Facility, Developer desires to change the requirements for a Facility such that an environmental reevaluation becomes necessary, then Developer shall be responsible for the costs and expenses TxDOT incurs in order to reevaluate the environmental impacts of the changes and to produce revised and/or supplemental environmental documents.

4.4 Selection of No-Action or Substantially Different Alternative

4.4.1 Developer understands and acknowledges the possibility that the NEPA process may result in a no-action alternative for a specific Facility, or a Facility alignment that differs from the alignment(s) designated in its Proposal. Nothing contained in this Agreement shall commit TxDOT or Developer to any Facility alternative or alignment.

4.4.2 In the event a NEPA document results in a no-action alternative for a Facility, then this Agreement shall remain in effect and Developer shall prepare amendments and modifications to Exhibits B and C or, as applicable, the Master Development Plan and Master Financial Plan to eliminate such Facility and make any adjustments to other Facilities and potential Facilities that are necessary or advantageous given the removal of the Facility for which the no-action alternative is chosen. Any compensation for Developer with respect to services rendered, properties acquired and work product delivered for the subject Facility will be governed by the approved Facility Implementation Plan.

4.4.3 In the event the NEPA document results in an alternative for a Facility that is substantially different from the Facility described in Exhibit B, the Master Development Plan or a Facility Implementation Plan, TxDOT and Developer shall enter into good faith negotiations for a period not to exceed 90 days concerning amendment and modification of this Agreement, Exhibit B, the Master Development Plan, Exhibit C,

the Master Financial Plan and the relevant Facility Implementation Plan (if any), as applicable, to conform them to the chosen alternative. Such 90-day negotiation period may be extended upon mutual agreement between the parties. If either party in good faith determines during or upon conclusion of such negotiations that a modified Exhibit B, modified Master Development Plan, modified Exhibit C, modified Master Financial Plan or modified Facility Implementation Plan conforming to the selected alternative is not feasible, or that it is unable to reach agreement with the other party on modifications and amendments to this Agreement, then the subject Facility shall be removed from the scope of this Agreement, and this Agreement shall remain in effect as to the balance of the Project. Developer shall prepare amendments and modifications to Exhibits B and C or the Master Development Plan and Master Financial Plan, as applicable, to account for the removal of such Facility, and Developer thereafter shall have no rights or obligations with respect to such Facility, other than to provide reasonable cooperation with TxDOT and any other developers, contractors and consultants with whom TxDOT contracts to develop, operate or maintain such Facility. Future planning of other Facilities and potential Facilities shall nevertheless accommodate and be compatible with the removed Facility, which TxDOT will be free to pursue through any other means it chooses. Any compensation for Developer with respect to services rendered, properties acquired and work product delivered for the subject Facility will be governed by the approved Facility Implementation Plan. Developer's compensation for any Update Work will be as set forth in Section 3.2.3.

4.4.4 Either party may terminate this Agreement in the event (a) a Facility is removed from the Project or Contract Documents pursuant to Section 4.4.2 or 4.4.3, (b) Developer determines that material terms and conditions of the Master Development Plan or Master Financial Plan pertaining to other Facilities are materially affected thereby and must be modified to compensate for the removal of such Facility, and (c) TxDOT and Developer, despite good faith negotiating efforts, are unable to reach agreement on such modifications within 45 days after the Facility is removed, as such time may be extended by mutual agreement of the parties. In the event Developer elects to terminate the CDA under this Section 4.4.4, Developer shall not be entitled to any compensation on account of such termination. In the event TxDOT elects to terminate the CDA under this Section 4.4.4, Developer shall be entitled to compensation to the extent described for this Risk Event ("Parties do not agree on MDP updates affecting material general terms of MDP") in the Risk Events Matrix (Exhibit L) and in Section 19.6.

SECTION 5. INITIAL SCOPE OF WORK

5.1 Notice to Proceed

5.1.1 TxDOT anticipates issuing NTP1 ("**Project NTP1**") authorizing Developer to prepare the schedule for the Initial Scope of Work, Project Management Plan and Quality Management Plan on or shortly following the occurrence of all of the following:

A. Developer's delivery to TxDOT of all documents required to be delivered with the executed Agreement pursuant to Volume I, Section 6.1.1 of the RFP;

B. Execution of this Agreement; and

C. Execution of the Concession CDA.

5.1.2 TxDOT anticipates issuing NTP2 ("**Project NTP2**") authorizing the rest of the Initial Scope of Work on or around the occurrence of all of the following:

A. TxDOT approval of the schedule for the Initial Scope of Work;

B. TxDOT approval of the Project Management Plan; and

C. TxDOT approval of the Quality Management Plan.

5.2 Preparation and Approval of Master Development Plan and Master Financial Plan

For the first 18 months after issuance of the Project NTP2, Developer shall work closely with TxDOT to prepare the Master Development Plan and the Master Financial Plan, both in compliance with the procedures set forth in the approved Project Management Plan for the Project and in accordance with the requirements of this Agreement. The Master Development Plan and the Master Financial Plan will build upon the initial Conceptual Development Plan and Conceptual Financial Plan included with Proposal. These conceptual plans are attached to this Agreement as Exhibits B and C and shall be disclosed to the public after execution of the Agreement. Developer and TxDOT may mutually agree to incorporate into the Master Development Plan, including the Master Financial Plan, components of or concepts contained in the proposals submitted by unsuccessful proposers in response to the RFP and components or concepts generated from other sources, including TxDOT, regional mobility authorities and metropolitan planning organizations. The Master Development Plan and Master Financial Plan shall be subject to TxDOT's written approval in its sole discretion. Such plans shall be integrated and consistent with each other. Agreement by the parties on the scope of and terms of Developer's compensation for Technical Support Services related to the NEPA process and Update Work, including the terms of compensation for

Developer's unpaid costs for Update Work in the event of a Risk Event, shall be a condition to approval of the Master Development Plan.

5.3 Contents of Master Development Plan and Master Financial Plan

5.3.1 Master Development Plan. The Master Development Plan shall:

(a) Set forth Developer's roles and responsibilities regarding engineering, technical and support services for the NEPA processes;

(b) Set forth the methodology and terms for compensating Developer for engineering, technical and support services for the NEPA processes;

(c) Identify potential Facilities, including any Facilities necessary for connectivity, mobility, safety and financing of the Project;

(d) Set forth the plan for phasing the development, design and construction of potential Facilities, including connecting facilities;

(e) Set forth milestones for development of the Project;

(f) Set forth milestones for development of specific Facilities (which will be subject to modification in connection with the development and approval of Facility Implementation Plans for specific Facilities);

(g) Include a Project Schedule for meeting the milestones set forth in the Master Development Plan;

(h) Include the Master Financial Plan;

(i) Set forth provisions on Developer self-performance, as further described in Section 5.6; and

(j) Comply with specific requirements for the Master Development Plan as set forth in Exhibit D to this Agreement.

5.3.2 Master Financial Plan. The Master Financial Plan shall include, on a Facility-by-Facility basis, conceptual estimates of capital costs, sources and amounts of revenues over time, sources and amounts of funds, costs of funds, operating and maintenance costs, replacement and renewal costs, assumptions and justifications supporting the reasonableness of assumptions. TxDOT has not yet identified any public funds that will be available for the Project. Specific requirements for the Master Financial Plan are set forth in Exhibit E to this Agreement.

5.4 Engineering, Technical and Support Services

5.4.1 Developer shall review and comment on documentation for the NEPA process and consult with TxDOT thereon as and when requested by TxDOT or any of its contractors responsible for preparing such documentation.

5.4.2 Pending TxDOT approval of the Master Development Plan, Developer shall perform the Technical Support Services for the NEPA process for each Facility in accordance with the terms and conditions of Exhibit I. After TxDOT's approval of the Master Development Plan, Developer shall perform such services, and shall be compensated therefor, pursuant to the Master Development Plan. Issuance of a notice to proceed with such Work shall be a condition to Developer's obligation to perform such Work.

5.5 Project Management Plan

Within 30 days after issuance of Project NTP1, Developer shall consolidate and revise the Project Management Plan and the Quality Management Plan submitted with the Proposal such that the resulting Project Management Plan meets the requirements set forth in Exhibit F that are applicable to the Initial Scope of Work. The Project Management Plan shall include all sections, Management Plans and other documentation identified in Exhibit F. During such 30-day period, TxDOT and Developer shall meet and mutually agree as to which components and concepts contained in the Project Management Plan and Quality Management Plan submitted with Developer's Proposal shall be incorporated into the revised Project Management Plan for the Project. TxDOT expects that the Project Management Plan will evolve as Facilities evolve and become Ready for Development and that development of the documents will be a collaborative effort between the parties. As a condition to approval of a Facility Implementation Plan, Developer shall revise the Project Management Plan as necessary to comply with the requirements of Exhibit F and shall obtain TxDOT's written approval of such revised plans. Further amendments shall be undertaken to incorporate the management plans of contractors/consultants, and Subcontractors where such management plans are required by and/or incorporated into one or more Facility Implementation Plans and Facility Financial Plans. At all times Developer shall perform its Work in accordance with the Project Management Plan and any amendments thereto.

5.6 Developer Self-Performance

5.6.1 TxDOT acknowledges that Developer is interested in developing Facilities pursuant to negotiated concession Facility Agreements, or having its Affiliates perform such work, and that Developer's performance of the Initial Scope of Work and preparation of Facility Implementation Plans is motivated, in part, by the potential opportunity to perform such work. TxDOT believes that it may receive certain advantages and benefits from the development of Facilities through concession agreements by Developer or its Affiliates and from the performance of such work by

Developer or its Affiliates pursuant to other negotiated Facility Agreements, in appropriate circumstances, provided that the entity performing such work is qualified to do so and has offered to perform the work for a reasonable price and on reasonable financial terms and on other terms and conditions acceptable to TxDOT. Developer acknowledges, however, that it will not have the right to self-perform work under negotiated Facility Agreements for any particular Facility, and that, subject to Section 5.6.3, TxDOT has the right to enter into Facility Agreements for one or more Facilities with contractors selected using a competitive procurement process.

5.6.2 Developer and TxDOT shall meet during the preparation and updating of the Master Development Plan to discuss Developer's and/or its Affiliate's capacity for self-performance of a concession Facility, and to identify one or more Facility(ies) that would be suitable for development through a concession Facility Agreement with Developer and/or its Affiliates under the appropriate conditions. The Master Development Plan shall identify one or more Facilities that may be the subject of negotiated concession Facility Agreements, and any other Facilities TxDOT identifies in its sole discretion that may be the subject of negotiated Facility Agreements, as well as certain terms and conditions relating to self-performed and subcontracted work that will be included in the Facility Agreement(s).

5.6.3 Subject to this Section 5.6.3 and Section 5.6.5, Developer shall have a right of first negotiation with respect to (1) any Facility(ies) identified for development through concession agreements and (2) for any other Facility(ies) TxDOT identifies in its sole discretion as suitable for self-performance as described in Section 5.6.2.

5.6.4 Upon TxDOT's approval of a Facility Implementation Plan submitted in accordance with Section 7.5 for a Facility identified in the Master Development Plan for self-performance, TxDOT and Developer or an Affiliate, as applicable, shall commence diligent, good faith negotiations in an attempt to reach agreement on the terms of a Facility Agreement for such Facility. Execution of any Facility Agreement resulting from such negotiations shall be subject to satisfaction of the conditions set forth in Section 5.6.5. If the parties have not reached agreement on the terms of the Facility Agreement(s) within 180 days after the commencement of negotiations, or such longer or shorter period as may be mutually agreed between the parties, (i) either party may withdraw from further negotiations concerning the Facility Agreement(s) without obligation or liability (except to the extent the Facility Implementation Plan provides for compensation for Facility Development Work performed); and (ii) TxDOT shall have the unrestricted right to address the Facility in any manner it deems appropriate, including procurement of the Facility by means of a competitive procurement, or by declining to proceed further with the Facility. Nothing in this Section 5.6.4 is intended or shall be construed as granting Developer or any Affiliate a right of first refusal regarding a Facility or obligating either party to accept any specific terms or conditions for a Facility Agreement.

5.6.5 Self-performance by Developer or any Affiliate will be subject to (i) the terms and conditions of this Agreement and applicable Law, (ii) terms and conditions

regarding self-performance set forth in the Master Development Plan, (iii) agreement between the parties pursuant to Section 7.1 that the Facility is Ready for Development, (iv) negotiation of and agreement on the terms of the Facility Implementation Plan and Facility Agreement(s) and the terms and conditions regarding self-performance set forth therein, (v) independent verification of price reasonableness as provided in Section 5.6.6 and (vi) if applicable, FHWA concurrence as described in Section 5.6.6. Nothing in this Agreement shall preclude TxDOT from requiring, as a condition of its approval of any Facility Implementation Plan or Facility Agreement with respect to a Facility proposed by Developer for self-performance, that Developer competitively procure services to design and build the Facility.

5.6.6 As a condition precedent to entering into any negotiated Facility Agreement with Developer or its Affiliates, TxDOT must be assured and satisfy itself, using the process described in Exhibit O and/or any other process (on an Open Book Basis) TxDOT deems appropriate, that the pricing and other financial terms for development (including design and construction), operation and maintenance of the Facility as set forth in the Facility Agreement are fair and reasonable. In addition, TxDOT and Developer recognize that, for federally-funded Facilities, project authorization must be obtained from FHWA prior to execution and delivery of a negotiated Facility Agreement, and that FHWA will require, as a critical prerequisite to issuance of project authorization, assurance that the price reasonableness process described in Exhibit O was followed and that the agreement includes appropriate terms and conditions regarding pricing, payment, change orders and audit rights, as well as assurance regarding compliance with requirements applicable to federal-aid contracts. As a further condition precedent to entering into any negotiated Facility Agreement with Developer or its Affiliates for self-performance of a Facility, Developer shall have provided such additional information as TxDOT reasonably requests and shall have otherwise cooperated with TxDOT so as to allow TxDOT to make a determination that the pricing and other financial terms of the Facility Agreement are fair and reasonable. The amount and type of information required to be provided by Developer under this Section 5.6.6 will depend upon the terms and conditions of the Facility Agreement, including whether a design-build or concession model is used.

5.6.7 TxDOT shall follow procedures reasonably acceptable to Developer to protect the confidentiality of proprietary information furnished to TxDOT under this Section 5.6.7 and under Exhibit O and to protect such information from unauthorized disclosure, subject to (a) the Public Information Act and (b) TxDOT's obligation to provide information to FHWA in connection with any price reasonableness determination required as a pre-requisite to project authorization.

SECTION 6. PLAN AND SCHEDULE UPDATES

6.1 Master Development Plan Updates

After completion of the Initial Scope of Work and approval of the Master Development Plan, Developer shall be responsible for updating the Master Development Plan at TxDOT's request, which will be no more frequent than annually. At such times, Developer shall submit a proposal for the Update Work services necessary to perform the updating of the Master Development Plan. Upon TxDOT's approval of Developer's proposal and authorization for Developer to proceed with the agreed upon update, Developer shall provide TxDOT with an update to the Master Development Plan to account for recent developments in the Project due to environmental factors, economic financial factors, Governmental Approvals, relevant changes to the regional metropolitan plan, Risk Events, or other factors in accordance with the requirements of Exhibit D, Item S and the approved Master Development Plan.

6.2 Project Management Plan Updates

Developer shall be responsible for promptly updating the approved Project Management Plan to incorporate changes in the contents of the Project Management Plan, changes that may arise due to changes in the Master Development Plan and Master Financial Plan, and new or changes in Facility Implementation Plans and Facility Financial Plans. If not required sooner due to any such changes, Developer shall update the Project Management Plan at least every two years.

6.3 Project Schedule Updates

During performance of the Initial Scope of Work, Developer shall be responsible for preparing and submitting to TxDOT monthly Schedule Updates of the approved Project Schedule for the Initial Scope of Work, as more particularly provided in Exhibit G to this Agreement. After completion of the Initial Scope of Work, Developer shall be responsible for submitting Schedule Updates on a quarterly basis.

SECTION 7. FACILITY DEVELOPMENT PLANNING WORK

7.1 Notice to Proceed with Facility Implementation Plan

7.1.1 As and when Developer determines that a Facility is Ready for Development, Developer shall deliver to TxDOT written notice setting forth in reasonable detail (1) the reasons for this determination, (2) the proposed contracting structure for the development of the Facility, and (3) a written request for authorization from TxDOT to proceed with preparation of a Facility Implementation Plan. If TxDOT concurs with Developer's assessment that the Facility is Ready for Development and the proposed contracting structure for the development of the Facility is consistent with the Master Development Plan or, if the Master Development Plan does not address contracting structure for the development of the Facility, TxDOT concurs with the proposed contracting structure for the development of the Facility, TxDOT will issue a notice to proceed ("**Facility NTP1**") authorizing preparation of the Facility Implementation Plan. If TxDOT does not respond in writing within 30 days (or such other period as may be agreed upon by the parties) to a notice from Developer pursuant to this Section, TxDOT will be deemed to have rejected that Facility as being Ready for Development.

7.1.2 As and when TxDOT determines that a Facility is Ready for Development, it may so notify Developer in writing and include a description of the proposed Facility and the proposed contracting structure for the development of the Facility in such notice. Developer shall have 30 days after receipt of such a notice to concur in writing with TxDOT. If Developer concurs in writing, TxDOT will issue a Facility NTP1. If Developer does not concur in writing before the expiration of this 30-day period (or such other period as may be agreed upon by the parties), Developer will be deemed to have rejected that Facility as being Ready for Development.

7.1.3 Developer acknowledges that any determination by TxDOT that a Facility is Ready for Development prior to completion of environmental documentation for the Facility shall be subject to the caveats in Section 4.2.2 and 4.4.1.

7.2 TxDOT Rejection That Facility Is Ready for Development

7.2.1 If Developer provides notice that a Facility is Ready for Development but TxDOT objects that the Facility is Ready for Development or, if the Master Development Plan does not address the contracting structure for the development of the Facility and TxDOT objects to the proposed contracting structure for Facility development, the parties shall promptly meet and confer in good faith in an effort to reach agreement. If and when they reach agreement, TxDOT will thereafter issue a Facility NTP1.

7.2.2 If, despite such good faith efforts, they are unable to reach agreement on whether the Facility is Ready for Development within 45 days after TxDOT delivers its notice of objection, or such longer time as may be agreed by the parties, Developer

may not again submit a written notice and request for authorization to prepare a Facility Implementation Plan for the Facility until three months have elapsed from the date of the prior written notice and request; provided, however, that Developer may submit a notice and request sooner than the three month period described above if Developer demonstrates that a significant change in circumstances has occurred since the last such notice and request. If Developer submits four such notices and requests and a total of no less than twelve months have elapsed since the first such notice and request, each objected to by TxDOT, then Developer shall have the right to terminate this Agreement. Developer shall not be entitled to any compensation on account of such termination.

7.2.3 If, despite the good faith efforts required in Section 7.2.1, TxDOT and Developer are unable to reach agreement on the proposed contracting structure for development of the Facility within 45 days after TxDOT delivers its notice of objection, or such longer time as is agreed by the parties, then TxDOT shall have the right to remove the subject Facility from the scope of this Agreement.

7.2.4 In the event the subject Facility is removed from the scope of this Agreement at the election of TxDOT pursuant to Section 7.2.3, then: (i) this Agreement shall remain in effect as to the balance of the Project; (ii) Developer shall prepare amendments and modifications to the Master Development Plan and Master Financial Plan to account for the removal of such Facility; (iii) Developer thereafter shall have no rights or obligations with respect to such Facility, other than to provide reasonable cooperation with TxDOT and any developers, contractors and consultants with whom TxDOT contracts to develop, operate or maintain such Facility; and (iv) Developer shall not be entitled to any compensation for any Work performed in connection with such Facility. Developer's compensation for any Update Work required as a result of removal of the Facility, if any, shall be in accordance with Section 3.2.3. Future planning of other Facilities and potential Facilities shall nevertheless accommodate and be compatible with the removed Facility, which TxDOT will be free to pursue through any other means it chooses.

7.2.5 Developer is hereby prohibited from participating, directly or indirectly, as an equity investor, consultant or subcontractor, in or with any third Person that submits an Unsolicited Proposal to TxDOT for development of any Facility or other improvements of or for the Project.

7.3 Developer Rejection That Facility Is Ready for Development

7.3.1 If TxDOT gives notice that a Facility is Ready for Development in accordance with Section 7.1.2 but Developer objects or fails to provide written concurrence within 30 days, the parties shall promptly meet and confer in good faith in an effort to reach agreement. If and when they reach agreement, TxDOT will thereafter issue a Facility NTP1.

7.3.2 If, despite such good faith efforts, they are unable to reach agreement on whether the Facility is Ready for Development or the proposed contracting structure for the development of the Facility within 45 days after Developer delivers its notice of objection, or such longer time as is agreed by the parties, then TxDOT shall have the right to remove the subject Facility from the scope of this Agreement.

7.3.3 In the event the subject Facility is removed from the scope of this Agreement at the election of TxDOT pursuant to Section 7.3.2, then: (i) this Agreement shall remain in effect as to the balance of the Project; (ii) Developer shall prepare amendments and modifications to the Master Development Plan and Master Financial Plan to account for the removal of such Facility; (iii) Developer thereafter shall have no rights or obligations with respect to such Facility, other than to provide reasonable cooperation with TxDOT and any developers, contractors and consultants with whom TxDOT contracts to develop, operate or maintain such Facility; and (iv) Developer shall not be entitled to any compensation for any Work performed in connection with such Facility. Developer's compensation for any Update Work required as a result of removal of the Facility, if any, shall be in accordance with Section 3.2.3. Future planning of other Facilities and potential Facilities shall nevertheless accommodate and be compatible with the removed Facility, which TxDOT will be free to pursue through any other means it chooses.

7.3.4 Either party may terminate this Agreement in the event (a) a Facility is removed from the Project or Contract Documents pursuant to Section 7.3.2, (b) Developer determines that material terms and conditions of the Master Development Plan or Master Financial Plan pertaining to other Facilities are materially affected thereby and must be modified to compensate for the removal of such Facility, and (c) TxDOT and Developer, despite good faith negotiating efforts, are unable to reach agreement on such modifications within 45 days after the Facility is removed, as such time may be extended by mutual agreement of the parties. In the event Developer elects to terminate the CDA under this Section 7.3.4, Developer shall not be entitled to any compensation on account of such termination. In the event TxDOT elects to terminate the CDA under this Section 7.3.4, Developer shall be entitled to compensation to the extent described for this Risk Event ("Parties do not agree on MDP updates affecting material general terms of MDP") in the Risk Events Matrix (Exhibit L) and in Section 19.6.

7.4 Facility Implementation Plan Preparation Schedule

From and after the date on which TxDOT issues Facility NTP1 to Developer, Developer shall work diligently to prepare a Facility Implementation Plan for the Facility. Developer shall prepare and submit a proposed Facility Implementation Plan no later than 120 days after issuance of Facility NTP1.

7.5 Contents of Facility Implementation Plan

7.5.1 If agreed to by the parties, Developer may designate an Affiliate (subject to TxDOT approval in its sole discretion) to enter into an agreement with TxDOT, or assume the obligations of Developer hereunder, to implement the Facility Implementation Plan. In such event the references to Developer in the provisions hereof relating to the Facility Implementation Plan shall be deemed references to the approved Affiliate, as appropriate. The terms of the CDA shall be specifically incorporated into and govern any such agreement, and such agreement shall be cross-defaulted with the CDA.

7.5.2 Each Facility Implementation Plan shall include and address the following, including the parties' roles and responsibilities with respect thereto, to the extent reasonably practicable taking into consideration the status of the NEPA process:

(a) A proposed detailed scope of work, Facility Schedule (including Facility Milestones) and budget for carrying out all activities and tasks and preparing all agreements and documents necessary to achieve the Close of Finance for the Facility in question, as well as a definition of and procedures for determining excusable delay in the Facility Schedule, based on the Risk Events regarding delay set forth in the Risk Events Matrix;

(b) A proposed organizational and contracting structure for management, finance, design, construction, operation and maintenance of the Facility including the general scope and pricing method for the Facility Agreement(s) and an identification of whether Developer or its Affiliates are proposed contracting parties. The description shall include any recommended guarantees to secure the obligations of the Facility Agreement;

(c) If agreed by the parties, the methodology and terms for determining whether and to what extent Developer or its Affiliate is to be reimbursed unpaid costs if a Risk Event occurs and the remedy for such Risk Event is identified in the Risk Events Matrix (Exhibit L) as being set forth in the Facility Implementation Plan. Except as provided otherwise in Section 20 and except upon a termination due to material breach by TxDOT, in no event shall the methodology and terms for such reimbursement require payment beyond reasonable costs and expenses incurred plus reasonable markups for overhead and profit. Reasonableness of costs, expenses, overhead and profit shall be determined in accordance with the provisions of the Federal Acquisition Regulation, including restrictions therein on eligibility and allowability, unless otherwise agreed by the parties;

(d) Developer's and Affiliates' roles and responsibilities regarding engineering, technical and support services for the NEPA process for the proposed Facility, if not yet completed, and in such circumstances, a plan for compliance with the NEPA process, which may include identification of Work that may be performed prior to

completion of the NEPA process and Work that must be deferred until after NEPA approval for the Facility is obtained;

(e) Identification of third party contractors, consultants and Subcontractors, including but not limited to surveyors, appraisers, engineers, architects, geotechnical consultants, financial advisors, investment bankers, underwriters, bond counsel, traffic and revenue consultants and others, to be retained to perform the tasks and activities enumerated in the Facility Implementation Plan, showing the area of expertise needed, and the qualifications of the identified firms;

(f) Those specific tasks and activities that Developer, its Affiliate or TxDOT believes are appropriate to be performed by TxDOT rather than by or through Developer or its Affiliate, together with an explanation and budget therefor;

(g) Description of proposed preliminary engineering and design work to be performed prior to Close of Finance, which shall be limited to that which is considered reasonably necessary to achieve Close of Finance and obtain a firm fixed price for design and construction of the Facility;

(h) Description of a right-of-way acquisition plan, if needed, including preliminary identification of right-of-way, acquisition procedures and acquisition schedule, together with a description of preliminary right-of-way acquisition work, if any, proposed to be performed prior to the Close of Finance and the proposed sources and amount of funds therefor;

(i) Identification of all environmental and other major Governmental Approvals to be obtained prior to and after Close of Finance, and environmental mitigation to be required pursuant thereto, to the extent then known or reasonably anticipated;

(j) Identification of all necessary or desirable agreements anticipated with third parties, whether public or private entities, and an enumeration of those agreements proposed to be negotiated and obtained prior to Close of Finance;

(k) Identification, through a detailed risk matrix for the Facility in accordance with the requirements set forth in Exhibit D, Item Q, of Facility-specific risks as well as strategies for managing and mitigating those Facility risks over the term of any Facility Agreement;

(l) Description of cost estimation work to be performed;

(m) Description of investment grade traffic and revenue (or ridership and revenue) studies to be performed;

(n) Description of insurance, risk management and surety bond programs and requirements recommended for the design, construction, operation and

maintenance of the Facility and any security required from Developer to secure performance of its obligations in connection with the Close of Finance;

(o) Description of recommended due diligence activities (such as utility investigations, geotechnical testing and baseline reporting, land surveys, archeological and historic site surveys, and Hazardous Materials surveys);

(p) Description of the recommended roles and responsibilities of Developer and Affiliates regarding any public information program for the Facility to be carried out up to the Close of Finance;

(q) Description of the proposed Facility Financial Plan, building upon the elements of the Master Financial Plan applicable to the Facility and setting forth general estimates of capital costs, sources, amounts and uses of revenues over time, sources, amounts and uses of funds, costs of funds, operating and maintenance costs, replacement and renewal costs, and major assumptions. Major assumptions shall include, as applicable, toll rate and construction cost escalation methodology, toll rates and Facility expansion. Such assumptions shall also include an assumed schedule of funding from TxDOT in accordance with a maximum schedule of payments from TxDOT for the Facility, which maximum schedule TxDOT shall provide to Developer or its Affiliate during preparation of the Facility Implementation Plan. If the Facility Financial Plan calls for public funds or for use of a finance authority or other Governmental Entity to issue debt and loan proceeds for the Project, such structure shall be described in detail. The Facility Financial Plan shall include an assumed schedule of funding from all sources;

(r) Description of the process to be followed in establishing pricing and other financial terms, including identification of deliverables to be provided, including any affidavits, and other requirements to be met by Developer in connection with pricing and financial terms and identification of a tentative schedule for implementation of the process;

(s) Description of technical reports, if any, recommended in order to achieve Close of Finance for the Facility;

(t) Description of any changes in law recommended to be obtained or litigation to be pursued or defended to facilitate or enable Facility development;

(u) Description of any conditions in and mitigation measures required by Governmental Approvals and a commitment to comply with such conditions and implement the required mitigation measures (as well as a commitment to fulfill any conditions or mitigation requirements that may be required by Governmental Approvals not yet received);

(v) Description of Developer's Small Business Mentoring Program and job training program;

(w) Description of the subcontracting plan to be prepared for the Facility, to the extent required under Section 13.4.2;

(x) Terms and provisions for collocation (if any) of Developer's, Affiliates' and TxDOT's personnel who will be involved in the Facility Development Work;

(y) Any other activities, studies, reports, documents and other matters necessary or advisable to achieve Close of Finance for the Facility;

(z) The remedies available to TxDOT and Developer or Affiliate, as applicable, in the event that, during the Facility Development Work: (i) the NEPA process is delayed or results in a substantially different Facility from that contemplated; (ii) the parties are unable to obtain or are substantially delayed in obtaining necessary third party approvals; (iii) conditions are imposed by such third party approvals that substantially affect the viability of the Facility; (iv) the parties are unable to achieve or are delayed in achieving Close of Finance; (v) a lawsuit is filed and pending, or judgment is entered in a lawsuit, challenging the Project, this Agreement or the subject Facility; (vi) a Change in Law occurs that frustrates the purpose of this Agreement or the Facility Implementation Plan, delays Close of Finance or otherwise substantially affects the Facility or the Facility Implementation Plan; and (vii) an event occurs, such as a major catastrophe, causing other excusable delay; and

(aa) Any other items and matters called for or contemplated by this Agreement.

SECTION 8. FACILITY DEVELOPMENT WORK

8.1 Approval and Performance of Facility Implementation Plan

8.1.1 Each Facility Implementation Plan shall be subject to the approval of TxDOT in its sole discretion. TxDOT shall respond in writing within 60 days to any proposed Facility Implementation Plan submitted by Developer or its Affiliate. In the event TxDOT disapproves a proposed Facility Implementation Plan, it shall state the reasons therefor. Developer or its Affiliate shall revise the portions to which TxDOT objects and submit a revised Facility Implementation Plan as promptly as possible, and in any event within 30 days (or such period as may be agreed to by the parties), after receiving TxDOT's comments. The parties shall continue such process until either the Facility Implementation Plan is completed and accepted or the parties are unable to reach agreement on the Facility Implementation Plan for the Facility. In such event, TxDOT shall have the right to remove the subject Facility from the scope of this Agreement.

8.1.2 In the event the subject Facility is removed from the scope of this Agreement at TxDOT's election, then: (i) Developer or its Affiliate shall be entitled to compensation to the extent described for such Risk Event in the Risk Events Matrix; (ii) this Agreement shall remain in effect as to the balance of the Project; (iii) Developer shall prepare amendments and modifications to the Master Development Plan and Master Financial Plan to account for the removal of such Facility; and (iv) Developer thereafter shall have no rights or obligations with respect to such Facility, other than to provide reasonable cooperation with TxDOT and any developers, contractors and consultants with whom TxDOT contracts to develop, operate or maintain such Facility. Future planning of other Facilities and potential Facilities shall nevertheless accommodate and be compatible with the removed Facility, which TxDOT will be free to pursue through any other means it chooses.

8.1.3 Either party may terminate this Agreement in the event (a) a Facility is removed from the Project or Contract Documents pursuant to Section 8.1.1 and 8.1.2, (b) Developer determines that material terms and conditions of the Master Development Plan or Master Financial Plan pertaining to other Facilities are materially affected thereby and must be modified to compensate for the removal of such Facility, and (c) TxDOT and Developer, despite good faith negotiating efforts, are unable to reach agreement on such modifications within 45 days after the Facility is removed, as such time may be extended by mutual agreement of the parties. In the event of a termination under this Section 8.1.3, Developer shall be entitled to compensation to the extent described for this Risk Event ("Parties do not agree on MDP updates affecting material general terms of MDP") in the Risk Events Matrix (Exhibit L).

8.1.4 Upon approval of the Facility Implementation Plan by TxDOT (including agreement of the parties on the provisions for Developer's or its Affiliate's compensation for performance of the Facility Development Work), TxDOT expects to issue an

additional notice to proceed ("**Facility NTP2**"), which will authorize Developer or Affiliate to proceed with Developer's or Affiliate's responsibilities set forth in the approved Facility Implementation Plan for completion of the Facility Development Work prior to Close of Finance.

8.2 Contracting and Procurement Structures for Facility Implementation Plan

8.2.1 Each Facility Implementation Plan shall describe the basic contracting structure(s) and procurement method(s) for the delivery, design, construction, operation and maintenance of the Facility. Such structures may include, among others, Design-Bid-Build, Design-Build, Design-Build-Maintain, Design-Build-Operate-Maintain, Design-Build-Finance-Operate, Design-Build-Finance-Operate-Maintain, Build-Operate-Transfer (subject to Agreement §11), Build-Transfer-Operate (subject to Agreement §11), Build-Lease-Transfer (subject to Agreement §11), Construction Manager at Risk, General Contractor/Construction Manager Alliance Contracting, or other variations, including any of the above or other contracting/procurement structure provided through relevant local or State entities or partnership with these.

8.2.2 Any Facility Implementation Plan that contemplates the use of federal funds will be subject to review by FHWA for conformance with applicable federal requirements.

8.2.3 All negotiations between TxDOT and Developer or its Affiliate with respect to Facility Agreements for which Developer has a right of first negotiation shall be conducted in good faith. TxDOT also shall have the right to participate directly in negotiations of, and the right to prior approval of, any other Facility Agreement to which TxDOT is not a party to the extent it is intended under the contracting structure set forth in the Facility Implementation Plan that TxDOT be a third party beneficiary thereof or to otherwise have direct rights of enforcement, or that the Facility Agreement be assigned to TxDOT.

8.2.4 Each concession Facility Agreement shall include terms and conditions based on those set forth in the form of the Concession CDA, with such amendments as are agreed to by TxDOT as necessary to accommodate the specific Facility, including the physical characteristics of the Facility and site, Governmental Approvals, technical provisions and the Facility Financial Plan.

8.2.5 Each Facility Agreement shall set forth the rights and responsibilities of Developer or its Affiliate and TxDOT or other party thereto consistent with the contracting structure adopted in the Facility Implementation Plan.

8.2.6 In the event TxDOT elects to procure Facility Agreements through a request for proposals, invitation for bids or similar competitive procurement (but not a request for interest, request for qualifications or similar requests, to which this provision

shall not apply), and Developer or an Affiliate desires to submit a bid or proposal for any Facility Agreement, then:

(a) TxDOT and its consultants shall control the preparation, form and substance of all the procurement documents, including instructions to proposers and Facility Agreements, that will be the subject of the competitive procurement; and

(b) If to do so will not disqualify Developer or an Affiliate from competing for the procurement, Developer or Affiliate, as applicable, shall prepare at TxDOT's request and direction supporting design, engineering and other technical documents and information.

8.3 Performance of Facility Financial Plan

8.3.1 In the course of performance of a Facility Implementation Plan, Developer or its Affiliate shall refine the Facility Financial Plan and take all actions necessary to obtain commitments for, underwrite and prepare for issuance of the debt and/or placement of the equity identified as Developer's responsibility in the Facility Financial Plan.

8.3.2 Subject to such rights of participation and control of TxDOT as may be set forth in the Facility Financial Plan, and unless otherwise specified in the Facility Financial Plan as TxDOT's responsibility, Developer's or Affiliate's efforts shall include, as applicable:

(a) Retaining or causing to be retained underwriters, investment advisors, bond counsel and underwriter's counsel;

(b) If contemplated by the Facility Financial Plan, organizing a single purpose entity to serve as issuer of debt, including filing articles of organization, adopting bylaws, obtaining tax-exempt status, appointing and electing directors (other than directors, if any, that the Facility Financial Plan indicate will be appointed by TxDOT), arranging insurance and such other acts as may be necessary for the entity to function and fulfill the role assigned to it;

(c) Refining capital cost, revenue, operating cost and other estimates necessary for issuance of the debt, including completion and updating of an investment grade traffic or ridership and revenue study for the Facility;

(d) Preparing preliminary official statements and official statements;

(e) Marketing or causing the marketing of the intended debt;

(f) Working with bond insurers and rating agencies;

(g) Preparing or causing to be prepared, and negotiating or causing to be negotiated, all financing documents, including, as necessary, loan applications,

indentures, loan agreements, equipment leases, bond insurer guarantees and agreements, investment agreements, certificates, affidavits and the like;

(h) Arranging for opinions of legal counsel;

(i) Selecting indenture trustees and bank depositories; and

(j) Arranging all logistics for Close of Finance.

8.4 Close of Finance

8.4.1 Upon completion of all of the Facility Development Work and other Work set forth in the Facility Implementation Plan for any Facility that requires Developer or its Affiliate(s) to provide all or a portion of the financing for the Facility, Developer or its Affiliate shall request authorization to proceed with the Close of Finance for the Facility. TxDOT will respond to such authorization request within 30 days after receipt or such other time frame as may be agreed to by the parties. If TxDOT concurs that all conditions required for the Close of Finance have been satisfied, including all requisite approvals under the NEPA process, negotiation of a Facility Agreement, Developer's provision of any required security, and TxDOT approval of any terms of financing at variance from the Facility Financial Plan, TxDOT will issue to Developer a notice to proceed authorizing the Close of Finance for the Facility ("**Facility NTP3**"). Developer or its Affiliate shall diligently pursue all activities necessary or desirable to achieve Close of Finance in accordance with the approved Facility Implementation Plan and Facility Financial Plan and shall achieve close of finance within 45 days after the date on which TxDOT issues the Facility NTP3. In the event Developer fails to achieve Close of Finance within such 45-day period, TxDOT's remedy shall be as set forth in the Facility Implementation Plan, which may include Developer's forfeiture of any security provided to TxDOT. Issuance of further notices to proceed with design, construction, operation and maintenance of the Facility shall be governed by the terms and conditions with respect thereto set forth in the Facility Agreement.

8.4.2 TxDOT may elect not to issue a Facility NTP3 or Certificate of Facility Implementation Plan Completion if any condition precedent thereto set forth in or contemplated by the Facility Implementation Plan has not been satisfied. Without limiting the foregoing, TxDOT may elect not to issue a Facility NTP3 where it is intended that a Facility Agreement be entered into or approved by TxDOT, but the parties are unable to reach agreement on the terms and conditions, including price, of any such Facility Agreement within such period of time as may be established in the schedule under the Facility Implementation Plan (as such schedule may be extended by mutual agreement of the parties).

8.4.3 If a circumstance as described in Section 8.4.2 occurs, unless such occurrence is due to any failure to perform or default of Developer under the Contract Documents, then: (i) such Facility shall be removed from the Master Development Plan

and this Agreement; (ii) Developer or its Affiliate shall be entitled to compensation to the extent described for this Risk Event in the Risk Events Matrix; (iii) this Agreement shall remain in effect as to the balance of the Project; (iv) Developer shall prepare amendments and modifications to the Master Development Plan and Master Financial Plan to account for the removal of such Facility; and (v) Developer thereafter shall have no rights or obligations with respect to such Facility, other than a potential opportunity, subject to Section 8.5, to compete in any subsequent competitive procurement of Facility Agreements for such Facility. Despite the removal of a Facility as described above, Developer shall remain obligated to provide reasonable cooperation with TxDOT and any developers, contractors and consultants with whom TxDOT contracts to develop, operate or maintain such Facility. Future planning of other Facilities and potential Facilities shall nevertheless accommodate and be compatible with the removed Facility, which TxDOT will be free to pursue through any other means it chooses.

8.4.4 Either party may terminate this Agreement in the event (a) a Facility is removed from the Project or Contract Documents pursuant to Section 8.4.3, (b) Developer determines that material terms and conditions of the Master Development Plan or Master Financial Plan pertaining to other Facilities are materially affected thereby and must be modified to compensate for the removal of such Facility, and (c) TxDOT and Developer, despite good faith negotiating efforts, are unable to reach agreement on such modifications within 45 days after the Facility is removed, as such time may be extended by mutual agreement of the parties. In the event Developer elects to terminate the CDA under this Section 8.4.4, Developer shall not be entitled to any compensation on account of such termination. In the event TxDOT elects to terminate the CDA under this Section 8.4.4, Developer shall be entitled to compensation to the extent described for this Risk Event ("Parties do not agree on MDP updates affecting material general terms of MDP") in the Risk Events Matrix (Exhibit L) and in Section 19.6.

8.5 Potential Disqualification for Removed Facilities

8.5.1 Following any removal of a Facility from this Agreement in accordance with this Agreement, TxDOT may elect to procure agreements to develop the Facility through a request for proposals, invitation for bids or similar competitive procurement. Developer and its Affiliates may participate in any competitive procurement by TxDOT with respect to a removed Facility, except that TxDOT shall have the right to disqualify Developer and its Affiliates from any such competitive procurement if: (i) in TxDOT's good faith judgment, the work Developer performed under the Facility Implementation Plan, or any special information, knowledge or insight Developer gained regarding the Facility, its procurement or TxDOT's strategies, tactics, objectives or issues of concern regarding the Facility, would give Developer or its Affiliates an unfair competitive advantage in such procurement; (ii) TxDOT receives advice of legal counsel to the effect that there is an undue risk that the procurement would be invalid if Developer or its Affiliates were allowed to compete; or (iii) TxDOT determines, in its good faith

judgment, that participation by Developer or its Affiliates would materially suppress competition.

8.5.2 In making any determination as described in Section 8.5.1, TxDOT may consider a variety of factors and circumstances, including: (i) whether and to what extent Developer has obtained special information, knowledge and insight relevant to the competitive procurement; (ii) whether other competitors can reasonably and feasibly obtain and synthesize the same information and knowledge within the time period TxDOT establishes for the competitive procurement; (iii) to what extent the contracting methodology and agreements TxDOT decides to use for the competitive procurement are similar to those negotiated under the Facility Implementation Plan; (iv) to what extent Developer performed preliminary engineering and design that will be adopted for the competitive procurement and, if so, whether TxDOT owns the same or has the right to make the same available to other competitors; and (v) such other considerations TxDOT deems in its good faith discretion to be relevant. At Developer's request, TxDOT will meet and confer from time to time with Developer to discuss such factors and circumstances and examine whether measures can be taken by Developer and/or TxDOT, without compromising Developer's Work effort and Work product, to enable Developer or its affiliates to fairly compete in any such competitive procurement. The decision of TxDOT, so long as made in good faith, shall be final, binding and not subject to dispute resolution.

SECTION 9. DEVELOPER DELIVERABLES

9.1 Developer Responsibility for Submission of Deliverables

Developer shall be responsible for the coordination and submission of all Deliverables. Developer shall submit Deliverables to TxDOT as required under the terms of this Agreement for review and approval by TxDOT. Developer shall be responsible for ensuring that all draft, revised and final Deliverables are accurate, complete and in a form and to a level of detail that satisfy the requirements of the Contract Documents and comply with applicable Laws and Governmental Approvals. Pursuant to the approved Project Management Plan, Developer shall collaborate on Deliverables with TxDOT prior to the formal submission of a Deliverable.

9.2 Submission Procedures and Standards

9.2.1 Wherever Deliverables are required hereunder, Developer shall furnish to TxDOT and TxDOT's Authorized Representative one hard copy with original signatures of each Deliverable and one electronic copy on a CD.

9.2.2 A transmittal form acceptable to TxDOT shall accompany all Deliverables. Any Deliverables not accompanied by such a form will be returned for resubmittal. Partially completed transmittal forms will also result in the return of the Deliverable for resubmittal.

9.2.3 Each Deliverable shall be assigned a unique number. Deliverables shall be numbered sequentially. The Deliverable numbers shall be clearly noted on the transmittal. Original Deliverables shall be assigned a numeric deliverables number. Resubmittals shall bear an alpha-numeric designation which consists of the number assigned to the original Deliverable for that item followed by a letter of the alphabet to represent that it is a subsequent Deliverable of the original. For example, if Deliverable 25 requires a resubmittal, the first resubmittal will bear the designation "25-A" and the second resubmittal will bear the designation "25-B" and so on.

9.2.4 Any changes made on a resubmittal, other than those made or requested by TxDOT, shall be identified and flagged on the resubmittal.

9.3 TxDOT Review and Comments

9.3.1 Except as may otherwise be indicated herein, TxDOT will return each Deliverable to Developer, with its comments noted thereon, within 28 days following its receipt by TxDOT. TxDOT will work with Developer to accommodate reasonable requests for expedited reviews taking into consideration its staff limitations.

9.3.2 TxDOT shall return the Deliverable marked "NO EXCEPTIONS TAKEN," "AMEND-RESUBMIT," "REJECTED-RESUBMIT" or "NOT REVIEWED-INCOMPLETE."

9.3.2.1 If a Deliverable is returned to Developer marked "NO EXCEPTIONS TAKEN," formal revision and resubmission of the Deliverable will not be required. TxDOT will not unreasonably withhold such marking if only minor modifications are needed that may be undertaken at a later date. In such case, TxDOT will identify the modifications required and Developer shall expeditiously make such modifications and submit the relevant Deliverable to TxDOT for its records, with no further action required unless the minor modifications identified in the previous submittal were not corrected to TxDOT's satisfaction.

9.3.2.2 If a Deliverable is returned to Developer marked "AMEND-RESUBMIT," Developer shall revise the Deliverable and resubmit the required number of copies as often as and to the extent necessary until the same is returned reflecting the comments appended thereto. Resubmittal of portions of multi-page Deliverables will not be allowed unless TxDOT otherwise agrees in writing. For example, if a Deliverable that consists of ten sections contains only one section that needs to be amended and resubmitted, the Deliverable as a whole is deemed as "AMEND-RESUBMIT", and all sections of the Deliverable are required to be resubmitted.

9.3.2.3 If a Deliverable is returned to Developer marked "REJECTED-RESUBMIT," Developer shall revise the Deliverable and resubmit the required number of copies as often as and to the extent necessary until the same is not rejected. Resubmittal of portions of multi-page Deliverables will not be allowed. For example, if a Deliverable that consists of ten sections contains only one section that is rejected and needs to be resubmitted, the Deliverable as a whole is deemed as "REJECTED-RESUBMIT," and all sections of the Deliverable are required to be resubmitted.

9.3.2.4 If Developer submits a disorganized or incomplete Deliverable, TxDOT may mark it "NOT REVIEWED-INCOMPLETE" and return the Deliverable without review. A complete and organized Deliverable shall contain sufficient data, in a logical and orderly presentation, to demonstrate that the items contained therein comply with the minimum requirements for Deliverables as described in the Contract Documents, and include all corrections as required from previous Deliverables.

9.3.3 If any draft or revised Deliverable is not so returned by TxDOT within 28 days of receipt, or such extended period as TxDOT may reasonably require by written notice to Developer, it shall be deemed to have been returned marked as "NO EXCEPTIONS TAKEN". TxDOT may call for such further or other draft or revised Deliverables as may be reasonably necessary. TxDOT may raise comments or objections in relation to any draft or revised Deliverable or substitution or any course of action detailed therein on the grounds that: (i) it is not to a standard equal to or better than the requirements of the Contract Documents; (ii) it is not in accordance with good engineering and operating practice; (iii) Developer has not provided all information required in respect of such Deliverable; or (iv) the adoption of such Deliverable or proposed course of action would result in a conflict with or violation of any Law or

Governmental Approval. The foregoing provisions of this Section 9.3.3 shall not apply to a Deliverable that is an agreement or contract between the parties, including the Master Development Plan, the Master Financial Plan, Facility Implementation Plans or Facility Agreements, which shall require TxDOT's affirmative written indication of "NO EXCEPTIONS TAKEN" or TxDOT's written approval to be effective.

9.3.4 If Developer disagrees with TxDOT's comments or objections regarding the content of the Deliverable, it shall notify TxDOT to that effect in writing within fifteen days of receiving those comments or objections; and the parties shall attempt in good faith for a period of seven days, or such longer time as is agreed by the parties, to resolve that dispute.

9.3.5 This Agreement requires the parties to agree on the terms of certain documents, including the Master Development Plan and Facility Implementation Plans. To the extent a particular Deliverable falls within this category and either party in good faith determines during or upon conclusion of the negotiations described in Section 9.3.4 that it is unable to reach agreement with the other party on the contents of the Deliverable, then such party may exercise its remedy in accordance with the Risk Events Matrix and this Agreement. For any other Deliverable that the parties disagree upon, TxDOT shall have authority to control the contents of the Deliverable in its good faith discretion, and to direct Developer to perform in accordance with its written directive to do so. Except in the case where the Deliverable relates to schedule recovery associated with Developer-caused delay for which TxDOT's ultimate remedy is termination for default, if Developer disagrees with TxDOT's directive, it shall nevertheless proceed in accordance with TxDOT's directive while retaining the right to resolve the dispute with reference to the Dispute Resolution provisions of Section 22.

9.4 Developer Responses to TxDOT Comments

9.4.1 In cases where the resubmittal of a Deliverable is required by the provisions of Section 9.3, Developer shall resubmit to TxDOT a revised and amended Deliverable within 30 days after Developer received such Deliverable from TxDOT. Developer shall thoroughly address and respond to each of TxDOT's comments and objections in each resubmitted Deliverable.

9.4.2 Developer shall complete the processing of a Deliverable and obtain a "NO EXCEPTIONS TAKEN" designation for the Deliverable within 90 days after the first receipt of the comments or objections from TxDOT, unless the parties agree upon a later period or unless TxDOT raises new comments or objections unrelated to prior comments and objections.

9.4.3 Developer shall periodically update submitted Deliverables during the term of this Agreement and maintain them in such detail as will enable TxDOT to facilitate the planning, development, design, construction, operation and maintenance of the Project and Facilities in the event of termination of this Agreement.

9.4.4 The submission of Deliverables to TxDOT, review thereof by or on behalf of TxDOT and the making of any comments thereon (including any approvals) or objections thereto shall not relieve Developer of any of its obligations under this Agreement.

SECTION 10. SCHEDULE AND DELAY

10.1 Time of Essence; Notice of Delay

10.1.1 Time is of the essence of this Agreement.

10.1.2 Developer shall promptly notify TxDOT in writing of any occurrence of a delay event and of the steps that Developer intends to implement to mitigate the delays arising therefrom.

10.2 Schedule for Initial Scope of Work

10.2.1 Developer will be required to provide a schedule for the Initial Scope of Work within 60 days after issuance of Project NTP1. The schedule shall conform to the guidelines set forth in Exhibit G to this Agreement. The schedule shall include, at a minimum, Developer Milestones set forth in Exhibit J to this Agreement, as well as deadlines therefor as preliminarily set forth in the Proposal. The deadline for Milestone 1 is 60 days after issuance of Project NTP1. The deadlines for the other milestones associated with the Initial Scope of Work will ultimately be determined as a part of Developer's submittal, and TxDOT's approval, of the schedule for the Initial Scope of Work (as part of Milestone 1).

10.2.2 The deadlines associated with milestones for the Initial Scope of Work, including completion of the Master Development Plan, shall be presented relative to the date of issuance of the Project NTP2. Developer shall achieve such milestones by the deadlines indicated. These milestones shall be considered achieved upon review and approval of all pertinent Deliverables by TxDOT.

10.2.3 Deadlines for accomplishing the milestones associated with the Initial Scope of Work are subject to extension, to the extent set forth in this Agreement, due to excusable delay under Section 10.4.2.

10.2.4 Developer shall submit a complete list of Deliverables for the Initial Scope of Work at the same time it submits the schedule for Initial Scope of Work. The milestone dates for such Deliverables shall be updated whenever such schedule is updated. Any additional Deliverables identified shall be included in the updates.

10.3 Schedule for Facility Development Work

10.3.1 Milestones and deadlines applicable to completion of the Facility Development Work for each Facility will be set forth in the Facility Implementation Plan for that Facility. Developer shall achieve the milestones by the dates set forth in the applicable Facility Implementation Plan.

10.3.2 Deadlines for accomplishing such milestones and the deadline for completion of the Facility Implementation Plan set forth in Section 7.4 are subject to

extension, to the extent set forth in this Agreement, due to excusable delay under Section 10.4.2.

10.3.3 Developer shall not be entitled to any additional compensation for Facility Development Work on account of any such delay. Each Facility Implementation Plan shall set forth under what circumstances each of Developer and TxDOT will be entitled to terminate Facility Development Work and elect to remove the Facility from this Agreement on account of any delays for which the Risk Events Matrix (Exhibit L) indicates the remedy is as set forth in the applicable Facility Implementation Plan. The parties intend that such rights to termination and removal should arise only in the event such delay is continual and substantial, except as provided in Section 10.4.

10.4 Delays Identified in Risk Events Matrix; Excusable Delay

10.4.1 The Risk Events Matrix identifies certain Risk Events which will result in delay in the achievement of identified work or milestones, including NEPA delays, delays in obtaining FHWA or other third party approvals or resulting from the terms and conditions of such approvals, delays due to injunctions or other court orders, Close of Finance delays, delays due to Change in Law, delays due to Major Catastrophe, delays in right-of-way acquisition, and delays or failures by either party to meet milestones for the Initial Scope of Work, Project Milestones or other milestones or deadlines as set forth in this Agreement, the Master Development Plan, or a Facility Implementation Plan. Except as may be otherwise set forth in the Master Development Plan or a Facility Implementation Plan, the grounds for a claim for remedies for delay by either party shall be limited to those Risk Events set forth in the Risk Events Matrix that expressly allow such additional remedies. If any such Risk Event occurs, the parties shall follow the provisions regarding such Risk Event in the Risk Events Matrix to determine their respective rights and remedies, including rights to extend schedules, to remove a Facility from this Agreement, to terminate this Agreement and to receive reimbursement for unpaid costs in accordance with Section 19.6, as applicable.

10.4.2 As soon as practicable and within 14 days of the commencement of any Risk Event giving rise to a claim for excusable delay, the Party suffering the delay shall provide the other Party written notice identifying the cause of delay, estimated impacts and measures that will be taken to mitigate the impacts, and shall follow up with periodic reports regarding continuing impacts and mitigation measures as requested by the other Party. Within 14 days of the cessation of the event causing delay, the parties shall ascertain the total excusable delay and document the time extension.

10.5 Conditions to Relief for Delay

Developer's entitlement to extensions of time for delay to any milestone contained in this Agreement, the Master Development Plan or a Facility Implementation Plan, and to other relief on account of delay, including compensation and termination rights, shall be subject to the following terms and conditions:

10.5.1 It must be demonstrated to TxDOT's reasonable satisfaction that the delay is not due to, nor concurrent with a Critical Path delay that is due to any breach of the Contract Documents or fault or negligence, or culpable act or failure to act of Developer, Subcontractors or any other Persons for whom Developer is legally or contractually responsible;

10.5.2 It must be demonstrated to TxDOT's reasonable satisfaction that the delay could not reasonably have been avoided by Developer, Subcontractors or any other Persons for whom Developer is legally or contractually responsible;

10.5.3 The delay must be related to an activity on the Critical Path of the schedule under which a time extension is being sought (after consumption of all available float);

10.5.4 Developer's schedule showing a delay to the Critical Path must in fact set forth a reasonable method for completion of the affected Work;

10.5.5 Developer shall provide to TxDOT an impacted delay analysis in a form reasonably satisfactory to TxDOT indicating all activities affected by the event or circumstance, showing activity sequencing, durations, predecessor and successor activities, and resources, including available float and cost, and including a narrative report; and

10.5.6 It must be demonstrated to TxDOT's reasonable satisfaction that the event or circumstance for which delay is claimed has caused or will cause an identifiable and measurable delay or disruption of the Work.

10.6 Schedule Recovery

10.6.1 Subject to Section 10.6.2, if Developer's actual physical progress on any Critical Path item is delayed for a period which exceeds 30 days, Developer shall include with the next Schedule Update(s) a Recovery Schedule demonstrating the proposed plan to regain lost Project Schedule progress and to achieve the specified Milestones. Each Recovery Schedule shall be subject to TxDOT's written approval. All costs incurred by Developer in preparing and achieving the Recovery Schedule shall be borne by Developer and shall not result in a change to Developer's compensation or price. Prior to exercising any remedy of termination under Section 21, TxDOT shall provide Developer with a reasonable opportunity to develop a Recovery Schedule to make-up the delay. Developer shall diligently carry out all Recovery Schedules approved by TxDOT. If a Recovery Schedule is required under this Section 10.6.1, Developer shall have the right to receive only 75% of the amount of each milestone payment, if any, until such time as Developer has prepared and TxDOT has approved such Recovery Schedule. Developer may invoice TxDOT for any amounts withheld pursuant to this Section 10.6.1 at any time after approval of a Recovery Schedule by TxDOT.

10.6.2 If a delay occurs for which Developer is entitled to a time extension, TxDOT may nevertheless require Developer to submit a Recovery Schedule and to implement it, provided that Developer shall be entitled to compensation for preparation and implementation of such Recovery Schedule. Developer shall submit such Recovery Schedule within ten days after receipt of written notice from TxDOT requesting a delay Recovery Schedule pursuant to this Section 10.6.2. Developer shall diligently carry out all Recovery Schedules approved by TxDOT. In the absence of prior agreement on such compensation, TxDOT shall have the right to direct Developer to implement the Recovery Schedule, in which case the amount of compensation to be paid to Developer shall equal Developer's reasonable additional costs attributable to the accelerated Work, which amount may be submitted to dispute resolution.

10.6.3 If Developer fails to perform or delays the performance of any Work as the result of a Developer-caused delay, or fails to implement a Recovery Schedule, then TxDOT shall have the right, but not the obligation, to cause third parties to perform such Work, and, in such event, the cost of such Work shall be deducted from Developer's compensation. TxDOT shall take such action only after three days have passed from written notice to Developer during which time Developer has failed to initiate diligent performance of its obligations under Section 10.6.1 or 10.6.2.

10.7 Suspension of Work

10.7.1 TxDOT may order Developer in writing to suspend, delay, or interrupt all or any part of the Work, as TxDOT may determine to be appropriate for the convenience of TxDOT. Developer shall have the right to demobilize after 120 days of such continuous suspension of all of the Work. Developer's remedy for any suspension for convenience in excess of 24 hours which results in a delay to the Critical Path shall be as set forth for the Risk Event ("TxDOT suspends work under CDA 10.7.1") in the Risk Events Matrix (Exhibit L) and in this Section 10.7.1.

10.7.1.1 Notice. Should TxDOT desire to suspend the Work but not terminate the Agreement, TxDOT may verbally notify Developer followed by written confirmation, giving thirty (30) days notice. Both parties may waive the thirty-day notice in writing.

10.7.1.2 Reinstatement. The Work may be reinstated and resumed in full force and effect within sixty (60) days of receipt of written notice from TxDOT to resume the Work. Both parties may waive the sixty-day notice in writing.

10.7.1.3 Contract Period Not Affected. If TxDOT suspends the Work, the term of the Agreement is not affected, and the Agreement will terminate on the date specified unless the Agreement is amended to authorize additional time.

10.7.1.4 Limitation of Liability. Except for reasonable demobilization and remobilization costs expressly authorized pursuant to the Contract Documents, TxDOT assumes no liability for Work performed or costs incurred prior to the date

authorized by TxDOT to begin Work, during periods when the Work is suspended, or after the term of the Agreement.

10.7.2 TxDOT has the authority to suspend the Work wholly or in part for such period as TxDOT deems necessary because of the failure on the part of any Developer-Related Entity to perform any requirements of the Contract Documents, the Governmental Approvals or applicable Law. Developer shall promptly comply with the written order of TxDOT to suspend the Work wholly or in part. The suspended Work shall be resumed when corrective action satisfactory to TxDOT has been taken.

SECTION 11. RIGHT-OF-WAY

11.1 Title to Right-of-Way

TxDOT shall hold title to all Project right-of-way. Developer and other third parties may obtain leasehold or other real property rights (such as easements) for Project right-of-way or portions thereof acquired for a Facility as set forth in an approved Facility Implementation Plan or Facility Financial Plan. TxDOT shall have no obligation to acquire any Project right-of-way until such time as TxDOT agrees to acquire right-of-way as set forth in an approved Facility Implementation Plan. Project right-of-way shall be acquired in accordance with applicable Law.

11.2 Title to Improvements

Except to the extent otherwise agreed in writing by TxDOT in its sole discretion, TxDOT shall receive and hold fee title to all structures, road surfaces, rail lines and other improvements constituting a Facility and located anywhere within Project right-of-way. Developer and other third parties may obtain leasehold or other real property rights (such as easements) for a Facility as set forth in an approved Facility Implementation Plan or Facility Financial Plan.

11.3 Developer Access Rights

TxDOT shall grant access to Developer on TxDOT right-of-way for the purpose of performing investigations and preliminary development work, subject to reasonable permit restrictions relating to safety and operation of existing State highways and the rights of other affected property owners and the public. Developer rights of possession, use and access for purposes of construction, operation and maintenance shall be as set forth in applicable Facility Agreements.

11.4 Developer Disclosure of Real Property Interests

At all times, Developer shall disclose to TxDOT any real property interests held by any Developer-Related Entity within the potential right of way for the Project.

SECTION 12. DESIGN; ENVIRONMENTAL COMPLIANCE

12.1 Design Standards

12.1.1 Minimum design criteria and guidelines for the Work are set forth in the Technical Provisions for concession CDAs (as updated); provided however, minimum design criteria and guidelines for Facility Development Work for design-build Facilities are set forth in the Technical Provisions for design-build CDAs (as updated). Periodically, TxDOT will update such design criteria and guidelines and issue revised Technical Provisions.

12.1.2 After approval of a Facility Implementation Plan for a Facility and issuance of Facility NTP2 for that Facility, TxDOT and Developer will establish detailed criteria and standards for the applicable scope of work on a Facility-specific basis to complement the applicable Technical Provisions.

12.1.3 References in the Technical Provisions (as updated) to manuals or other publications shall be construed as references to the most recent editions thereof in effect at the time of TxDOT's approval of the Facility Implementation Plan; provided that Facility Agreements may provide that references shall be to more recent editions thereof.

12.1.4 Deviations from the design criteria and guidelines set forth in the applicable Technical Provisions will require TxDOT approval, in its sole discretion.

12.2 Interpretive Decisions

12.2.1 Developer may from time to time request in writing that TxDOT provide information, clarifications and interpretations of ambiguous or uncertain requirements set forth in the Contract Documents (an "**Interpretive Decision**"). Developer shall clearly and concisely set forth the issue for which interpretation is sought and why a response is needed from TxDOT. Developer also shall set forth its own interpretation and understanding of the requirement along with reasons why it has reached such an understanding.

12.2.2 TxDOT may elect not to issue an Interpretive Decision if it determines that the requirement is not ambiguous or uncertain or that Developer's request in effect seeks to change the requirement. In all other cases, TxDOT may: (i) issue a written approval of Developer's proposed Interpretive Decision (if any); (ii) issue its own Interpretive Decision or may disapprove any Interpretive Decision Developer proposes.

12.2.3 TxDOT shall respond in writing to any such application for an Interpretive Decision, including explanation of any disapproval of such application or any differing interpretation; provided that: (i) no presumption of approval or disapproval shall arise by reason of TxDOT's delay in issuing its written determination; and (ii) no Interpretive Decision by TxDOT shall constitute a change in or amendment of any terms

or provisions of this Agreement or any agreement or plan delivered under this Agreement, unless TxDOT expressly provides otherwise in writing.

12.2.4 If Developer disputes TxDOT's disposition of its request for an Interpretive Decision, such dispute shall be subject to resolution in accordance with this Agreement.

SECTION 13. DISADVANTAGED BUSINESS ENTERPRISE; CIVIL RIGHTS; KEY PERSONNEL; SUBCONTRACTORS

13.1 DBE/HUB Requirements

13.1.1 TxDOT's Disadvantaged Business Enterprise (DBE) Program is applicable to the Initial Scope of Work and Update Work as referenced in Exhibit K to this Agreement. TxDOT's rules and regulations regarding DBE and HUB programs and utilization are set forth in 43 Tex. Admin. Code §§ 9.50 through 9.57 (the "**DBE Rules**"). Developer shall comply with all provisions of TxDOT's Disadvantaged Business Enterprise (DBE) Program, including the DBE Special Provisions set forth in Exhibit K, 49 CFR Part 26, and the DBE Rules, in connection with the Initial Scope of Work and Update Work. The percentage goal for DBE participation in the Initial Scope of Work is 12.12% of the contract amount for the Initial Scope of Work, and with respect to the Update Work, the percentage goal for DBE participation is 12.12%. TxDOT reserves the right to establish and require Developer to comply with a Historically Underutilized Business (HUB) Program in lieu of the DBE Program in connection with the Initial Scope of Work and Update Work, if TxDOT determines that only State funds will be used to fund such Work. The purpose of the DBE Program and HUB Program is to ensure that DBEs and HUBs have an equal opportunity to participate in the performance of contracts financed in whole or in part with federal or State funds. In the event of any conflict between 49 CFR Part 26 and TxDOT DBE Rules, the former shall prevail. In the event TxDOT determines that a HUB Program is applicable to the Initial Scope of Work and the Update Work, the parties shall negotiate for up to 30 days or such longer time as agreed by the parties, changes to the terms of the Contract Documents (including Developer's compensation) to accommodate the change in subprovider requirements. If, upon the conclusion of good faith negotiations, the parties are unable to agree to such terms, either party may terminate the Agreement and Developer's compensation, if any, shall be as set forth for such Risk Event in the Risk Events Matrix (Exhibit L).

13.1.2 DBE Program terms and conditions and contract goals shall apply to the Facility Development Work funded in whole or in part with federal funds for each Facility and shall be set forth in the Facility Implementation Plan. TxDOT will take into account its DBE (or HUB, if the Facility Development Work is funded in whole or in part with State funds and with no federal funds) annual goal, work site location, dollar value of the Facility Development Work, type of Work specified or contemplated, funding sources and availability of qualified DBEs and HUBs and set the DBE/HUB goals for Facility Development Work before approval of the Facility Implementation Plan. Concurrently with its preparation and submission of the Facility Implementation Plan for a Facility, Developer shall prepare for TxDOT's review and approval a DBE Performance Plan or HUB Performance Plan, as applicable, with respect to the Facility Development Work. The DBE Performance Plan or HUB Performance Plan, as applicable, shall be consistent with the requirements of 49 CFR Part 26, DBE Rules and the DBE/HUB program terms and conditions and contract goals. Developer shall

comply with all the provisions of the DBE/HUB program terms and conditions, 49 CFR Part 26, the DBE Rules and the DBE Performance Plan or HUB Performance Plan, as applicable, respecting the subject Facility Development Work. In the event of any conflict between 49 CFR Part 26 and TxDOT DBE Rules, the former shall prevail.

13.1.3 Separate Facility DBE or HUB program terms and conditions and contract goals for design and construction work under Facility Agreements funded in whole or in part with federal funds or funded in whole or in part with State funds and with no federal funds, respectively, will be adopted by TxDOT for each Facility and shall be set forth in the Facility Agreement(s) for the Facility. TxDOT will take into account its DBE/HUB annual goal, work site location, dollar value of the Facility Agreements, type of Work specified or contemplated in the Facility Agreements, funding sources and availability of qualified DBEs and HUBs and set the DBE/HUB goals for Facility Agreements before the execution of each Facility Agreement. The Facility Agreements shall require Developer or its Affiliate or other party thereto to prepare for TxDOT's review and approval a DBE Performance Plan or HUB Performance Plan, as applicable, with respect to the work under the Facility Agreement. The DBE Performance Plan or HUB Performance Plan, as applicable, shall be consistent with 49 CFR Part 26; the DBE Rules and the DBE/HUB program terms, conditions and contract goals set forth in the Facility Agreements for the Facility. As used herein, the term "construction work" shall mean work performed under Facility Agreements other than design services. Each Facility Agreement will include the obligation to comply with all the provisions of the DBE/HUB program terms and conditions, the DBE Rules and the DBE Performance Plan or HUB Performance Plan, as applicable, for the subject Facility. In the event of any conflict between 49 CFR Part 26 and TxDOT DBE Rules, the former shall prevail.

13.1.4 Developer shall include provisions to effectuate this Section 13.1 and TxDOT's Disadvantaged Business Enterprise (DBE) Program or other applicable DBE/HUB program terms and conditions in every Subcontract (including purchase orders and in every Subcontract of any Developer-Related Entity for Work performed in connection with this Agreement), and shall require that they be included in all Subcontracts at all tiers, so that such provisions will be binding upon each Subcontractor.

13.2 Civil Rights; Equal Employment Opportunity

13.2.1 Developer, with regard to the Work performed by it under the Contract Documents, 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. Developer shall not participate either directly or indirectly in the discrimination prohibited by of 49 CFR 21.5.

13.2.2 Developer, subrecipients or Subcontractors shall not discriminate on the basis of race, color, national origin or sex in the performance of the Work under the Contract Documents. Developer shall carry out, and shall cause the Subcontractors to carry out, applicable requirements of 49 CFR Part 26 in the award and administration of

FHWA-assisted agreements. Failure by Developer to carry out these requirements is a material breach of this Agreement, which may result in the termination of the Contract Documents or such other remedy as TxDOT deems appropriate.

13.2.3 Developer shall include Sections 13.2.1 and 13.2.2 in every Subcontract (including purchase orders and in every Subcontract of any Developer-Related Entity member for Work), and shall require that they be included in all Subcontracts at lower tiers, so that such provisions will be binding upon each Subcontractor.

13.2.4 Developer confirms for itself and all Subcontractors that Developer and each Subcontractor has an equal employment opportunity policy ensuring equal employment opportunity without regard to race, color, national origin, sex, age, religion or handicap; and that neither Developer nor Subcontractor maintains employee facilities segregated on the basis of race, color, national origin, sex, age, religion or handicap.

13.3 Key Personnel; Qualifications of Employees

13.3.1 The Project Management Plan will identify certain job categories of Key Personnel for the Initial Scope of Work. The Master Development Plan will identify certain additional job categories of Key Personnel for future Work and services relating to the Project. Facility Implementation Plans will identify further additional job categories of Key Personnel for Facility Development Work.

13.3.2 The selection and replacement of individuals to fill Key Personnel positions shall be subject to the prior written approval of TxDOT, which TxDOT will not unreasonably withhold or delay. Developer shall promptly submit to TxDOT thorough information on the qualifications, character, expertise and experience of each individual that Developer proposes to fill a Key Personnel position from time to time, including individuals employed by Subcontractors. At TxDOT's request, Developer shall arrange for TxDOT to interview the candidates for Key Personnel positions. Developer shall promptly notify TxDOT in writing of any resignation, removal, termination or death of any Key Personnel and of proposed changes in any Key Personnel.

13.3.3 All individuals performing Work under this Agreement or any agreement or plan arising from this Agreement shall have the skill and experience and any licenses required to perform the Work assigned to them. If TxDOT determines, in its sole discretion, that any individual employed by Developer or any Subcontractor is not performing the Work in a proper, desirable and skillful manner or is detrimental to the progress of the Work under this Agreement and/or the Project generally, then, at the written request of TxDOT, Developer shall remove such individual from his or her involvement on the Project and such individual shall not be reemployed on the Project without the prior written approval of TxDOT in its sole discretion. If such individual is not removed or if Developer fails to ensure that skilled and experienced personnel are furnished for the proper performance of the Work, then TxDOT may suspend the affected portion of the Work by delivery of written notice of such suspension to

Developer. Such suspension shall in no way relieve Developer of any obligation contained in the Contract Documents, including its obligation to meet applicable milestones and deadlines. Once compliance is achieved, TxDOT will notify Developer and Developer shall be entitled to and shall promptly resume the Work. During the period of any such suspension, Developer shall not be entitled to the payment of any compensation hereunder.

13.3.4 Developer shall designate in writing who shall have authority to represent and act for Developer. Developer shall provide phone and pager numbers for all Key Personnel. TxDOT requires the ability to contact these key individuals 24 hours per day, seven days per week.

13.3.5 Developer acknowledges and agrees that the award of this Agreement by TxDOT to Developer was based, in large part, on the qualifications and experience of the Key Personnel listed in the Proposal and Developer's commitment that such individuals would be available to undertake and perform the Initial Scope of Work. Developer represents, warrants and covenants that, except in the event of resignation of employment by, termination of employment or death of Key Personnel, such individuals are available for and will fulfill the roles identified for them in the Proposal in connection with the Initial Scope of Work.

13.4 Subcontractors and Subcontracts

13.4.1 Developer shall notify TxDOT prior to making any additions or changes to Developer's team performing the Initial Scope of Work of this Agreement and shall provide TxDOT with such information regarding the proposed change as may be requested.

13.4.2 Developer shall prepare a subcontracting plan for each Facility Agreement. The subcontracting plan shall be subject to TxDOT's approval prior to execution of the Facility Agreement and must include any subcontractor procurement and any subcontracting provisions required by TxDOT. Each Facility Agreement between TxDOT and Developer and/or Developer's Affiliate shall require Developer and its Affiliates to comply with the approved subcontracting plan for the applicable Facility.

13.4.3 Developer shall submit for TxDOT's approval a list of all proposed Major Subcontractors prior to entering into a Subcontract with any Major Subcontractor to perform portions of the Work required by the Contract Documents. Developer shall enter into such Major Subcontracts only with Major Subcontractors that TxDOT has previously approved in writing.

13.4.4 Developer shall: (i) allow TxDOT access to all Subcontracts and records regarding Subcontracts; (ii) deliver to TxDOT, within ten days after execution, copies of all Subcontracts, which shall be set forth in or translated into the English language; and (iii) within ten days after receipt of a request from TxDOT, copies of all other agreements or documents as may be requested. Developer may request TxDOT's

prior written approval to deviate from the requirements set forth in this Section 13.4.4, which approval shall be in TxDOT's sole discretion.

13.4.5 The retention of Subcontractors by Developer to perform portions of the Work required by the Contract Documents will not relieve Developer of its responsibilities hereunder. If TxDOT makes reasonable objection to the use or continued use of a Subcontractor, the Subcontractor shall be replaced at the request of TxDOT and shall not again be employed on the Project. Developer shall not be entitled to any increase in compensation and/or time extension as a result of such removal and/or replacement. Developer will at all times be held fully responsible to TxDOT for the actions, omissions, negligence, willful misconduct, or breach of applicable Law, agreement, plan or contract by its Subcontractors and persons employed by them, and no Subcontract entered into by Developer will impose any obligation or liability upon TxDOT to any such Subcontractor or any of its employees. Nothing in this Agreement creates any contractual relationship between TxDOT and any Subcontractor of Developer.

13.4.6 The following requirements shall apply to Subcontracts for the performance of Work required by the Contract Documents:

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

(b) Each Subcontract shall include terms and conditions sufficient to ensure compliance by the Subcontractor with the requirements of the Contract Documents, and shall include those terms that are specifically required by the Contract Documents to be included therein.

(c) All Subcontracts shall incorporate terms substantially similar to the applicable terms contained in this Agreement, specifically including an agreement by the Subcontractor to participate in any dispute resolution proceedings pursuant to Section 22.3(c), if such participation is requested by either TxDOT or Developer, and a requirement to allow audits by TxDOT on the same terms and conditions as TxDOT is entitled to audit Developer under this Agreement.

13.4.7 Except as otherwise approved by TxDOT in writing, each Subcontract also shall:

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

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

applicable requirements of the applicable subcontracting plan and DBE/HUB Performance Plan;

(c) Include a covenant to maintain all licenses required by applicable Law, and set forth warranties, guaranties and liability provisions of the contracting party in accordance with good commercial practice for work of similar scope and scale;

(d) Expressly provide that (i) the rights of Developer under such instrument, including the benefit of all Subcontractor warranties, indemnities, guarantees and professional responsibility, are assigned to TxDOT contingent only upon delivery of written request from TxDOT or its successor or assign following default by Developer or termination or expiration of this Agreement; and (ii) TxDOT is entitled to assume the benefit of Developer's rights with liability only for those remaining obligations of Developer accruing after the date of assumption by TxDOT. No such assignment shall release or relieve Developer from its obligations or liabilities under the assigned Subcontract;

(e) Expressly include requirements that the Subcontractor: (i) will maintain usual and customary books and records for the type and scope of operations of business in which it is engaged; (ii) permit audit thereof by Developer; and (iii) provide progress reports to Developer appropriate for the type of work it is performing sufficient to enable Developer to provide the reports it is required to furnish TxDOT under this Agreement or the other Contract Documents;

(f) Not be assignable by the Subcontractor without Developer's prior written consent;

(g) With respect to any Subcontract which, when aggregated with all Subcontracts between Developer and such Subcontractor for the same fiscal year, is in excess of $250,000: (i) be terminable by the Subcontractor only for cause; and (ii) include an indemnity from the Subcontractor in favor of Developer and the Indemnified Parties against any and all losses arising out of, related to or associated with, the actions, omissions, negligence, willful misconduct, or breach of applicable Law or contract by the Subcontractor or any of its officers, employees, agents or representatives;

(h) Expressly provide that all warranties (express and implied) under such Subcontract shall inure to the benefit of TxDOT;

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

(j) Expressly provide that any liens, claims and charges of the Subcontractor and its subcontractors at any time shall not attach to any interest of TxDOT in the Project or any Facility; and

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

13.4.8 Developer shall not amend any Subcontract with respect to any of the foregoing matters without the prior written consent of TxDOT. All Subcontracts with Affiliates shall be on terms no less favorable (as reasonably determined by TxDOT) to Developer than Subcontracts with non-Affiliates for the same Work. Developer shall not enter into any Subcontracts with any Person then debarred or suspended from submitting bids by any agency of the State.

13.5 Payment to Subcontractors

13.5.1 No later than ten days after receipt of payment from TxDOT, Developer shall promptly pay each Subcontractor, out of the amount paid to Developer on account of such Subcontractor's portion of the Work, the amount to which such Subcontractor is entitled, less any retainage provided for in the Subcontract and any other offsets and deductions provided in the Subcontract or by Law. No later than ten days after satisfactory completion of all Work to be performed by a Subcontractor, including provision of appropriate releases, certificates and other evidence of the Subcontractor's compliance with all applicable requirements of the Contract Documents, Developer shall pay and disburse all moneys withheld in retention from the Subcontractor. Such payment shall be made promptly following satisfaction of the foregoing requirements, even if Work to be performed by Developer or other Subcontractors is not completed and has not been accepted. Each Subcontract shall require the Subcontractor to make payments to sub-subcontractors and sub-suppliers in a similar manner. TxDOT may impose appropriate sanctions, including withholding progress payments, for failure to promptly pay Subcontractors who have performed satisfactory work or for failure to promptly pay retainage to Subcontractors that have satisfactorily performed all work under their respective Subcontracts.

13.5.2 For the purpose of this Section 13.5, satisfactory completion shall have been accomplished when:

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

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

13.5.3 The inspection and approval of a Subcontractor's work does not affect Developer's overall responsibility for the Work. Any delay or postponement of payments to Subcontractors from the above-referenced time frames may occur only for good cause following written approval by TxDOT. TxDOT shall have no obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by Law. Developer and Subcontractors of all tiers may be audited to verify prompt payment for progress and retainage payments. Interest on late payments to Subcontractors shall be Developer's responsibility, and shall not be a part of Developer's compensation under this Agreement, or any agreement or plan arising out of this Agreement.

13.6 Responsibility for Persons Performing Work

13.6.1 Developer shall supervise and be responsible for the actions, omissions, negligence, willful misconduct, or breach of applicable Law or contract by any of Developer's employees, agents, officers and Subcontractors and other Persons performing portions of the Work, as though Developer directly employed all such Persons.

13.6.2 Developer shall maintain and shall cause its Subcontractors to maintain, throughout the term of this Agreement, all required authority, license status, professional ability, skills and capacity to perform the Work, and shall do so in accordance with the requirements contained in the Contract Documents.

13.7 Collocation

Developer shall, during the performance of the Initial Scope of Work, collocate its Key Personnel and staff engaged to perform the Work under the Agreement with the key personnel and staff engaged to perform the Work under the Concession CDA and TxDOT's general engineering team for the Project in facilities with location, space needs, and layout to be approved by TxDOT. Collocation requirements after the Initial Scope of Work will be governed by the terms of any applicable Facility Implementation Plans or Facility Agreements.

SECTION 14. REPRESENTATIONS AND WARRANTIES

14.1 Developer Representations and Warranties

Developer represents, warrants and covenants that:

14.1.1 Developer and its Subcontractor(s) have maintained all required authority, license status, professional ability, skills and capacity to perform the Work, and shall do so in accordance with the requirements contained in the Contract Documents.

14.1.2 Developer has evaluated the feasibility of performing the Initial Scope of Work and Technical Support Services and completing all associated milestones within the milestone deadlines and for the compensation provided for in this Agreement, accounting for constraints affecting the Initial Scope of Work and Technical Support Services, and has reasonable grounds for believing and does believe that such performance is feasible and practicable.

14.1.3 Developer acknowledges and agrees that it has familiarized itself with the requirements of any and all applicable Laws and the conditions of any required Governmental Approvals prior to entering into this Agreement.

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

14.1.5 Developer shall at all times schedule and direct its Work to provide an orderly progression of the Work to meet applicable milestone deadlines and in accordance with the approved schedule for the Initial Scope of Work and Project Schedule.

14.1.6 Developer is a limited liability company duly organized and validly existing under the laws of the State of Delaware, with all requisite power to own its properties and assets and carry on its business as now conducted or proposed to be conducted. Developer is duly qualified to do business, and is in good standing, in the State. Cintra Concesiones de Infraestructuras de Transporte, S.A. is a Guarantor of Developer's obligations and a corporation duly organized and validly existing under the laws of Spain. Meridiam Infrastructure (SCA) SICAR is a Guarantor of Developer's obligations and a corporation duly organized and validly existing under the laws of Luxembourg.

14.1.7 The execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action of Developer, and this Agreement has been duly executed and delivered by Developer.

14.1.8 All required approvals have been obtained with respect to the execution, delivery and performance of this Agreement, and performance of this Agreement will not result in a breach of or a default under Developer's organizational documents or any indenture or loan or credit agreement or other material agreement or instrument to which Developer is a party or by which its properties and assets may be bound or affected.

14.1.9 This Agreement constitutes the legal, valid and binding obligation of Developer, enforceable against Developer and, if applicable, each member of Developer, in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

14.1.10 Each Guaranty has been duly authorized by all necessary corporate action, has been duly executed and delivered by the applicable Guarantor, and constitutes the legal, valid and binding obligation of the applicable Guarantor, enforceable in accordance with its terms.

14.2 TxDOT Representations and Warranties

TxDOT hereby represents and warrants to Developer as follows:

14.2.1 Each person executing this Agreement on behalf of TxDOT has been (or at the time of execution will be) duly authorized to execute and deliver the Agreement on behalf of TxDOT; and this Agreement has been (or will be) duly executed and delivered by TxDOT.

14.2.2 As of the Effective Date, this Agreement constitutes the legal, valid and binding obligation of TxDOT, enforceable against TxDOT in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

14.2.3 The execution and delivery by TxDOT of this Agreement will not result, at the time of execution, in a default under any other agreement or instrument to which it is a party or by which it is bound.

SECTION 15. ASSURANCES OF PERFORMANCE

15.1 Material Adverse Change in Financial Condition

Developer, each entity having a ten percent equity interest in or beneficial ownership of Developer, and each Guarantor issuing a Guaranty at the inception of this Agreement or thereafter, shall be referred to as a **"Financially Responsible Entity"**. In instances where a material adverse change in a Financially Responsible Entity's financial condition in any accounting period for which the entity is required to report financial statements after submission of the Proposal has occurred, Developer shall provide from the affected Financially Responsible Entity a statement describing each material adverse change in detail, the likelihood that the developments will continue during the period of performance by Developer under this Agreement, and a projection of the full extent of the changes which are likely to be experienced and the related impact in the periods ahead.

15.1.1 Material adverse changes, can include, but are not limited to, the following:

(a) A sale, merger or acquisition exceeding ten percent of the value of shareholder, joint venturer, partner or member equity prior to the sale, merger or acquisition which has a material adverse impact on the affected Financially Responsible Entity;

(b) Inability to meet conditions of loan or debt covenants by the affected Financially Responsible Entity or parent corporation of the affected Financially Responsible Entity which has required or will require a waiver or modification of agreed financial ratios, coverage factors or other loan stipulations, or additional credit support from shareholders, joint venturers, partners, members or other third parties;

(c) A downward change in credit rating, if available, for the affected Financially Responsible Entity or parent corporation of the affected Financially Responsible Entity; or

(d) The affected Financially Responsible Entity or the parent corporation of the affected Financially Responsible Entity sustained charges exceeding 10% of the then shareholder, joint venturer, partner or member equity due to claims, changes in accounting, write-offs or business restructuring since the previous year's audited financial statements.

15.2 Guarantees and Other Security

15.2.1 Developer delivered to TxDOT security in the amount of $10 million in the form of a Guaranty in the amount of $7,500,000 and a separate Guaranty in the amount of $2,500,000, in accordance with the terms of the RFP. At all times during the term of this Agreement, Developer shall maintain such security in full force and effect

(or replacement security meeting the requirements of Section 15.2.3), provided that the amount of such security shall be subject to adjustment in accordance with Sections 15.2.2 and 15.2.3.

15.2.2 TxDOT shall have the right to require Developer to provide additional security for the payment and performance of Developer's obligations in connection with any Facility Implementation Plan. Developer shall deliver such additional security to TxDOT within 30 days after receipt of TxDOT's written notice requesting the additional security.

15.2.3 Prior to approval of the Master Development Plan, the security required under Section 15.2.2 and this Section 15.2.3 shall be in the amount of (a) $10 million, plus (b) the aggregate amount of the caps on liability set forth in all Facility Implementation Plans. After the approval of the Master Development Plan, the security required hereunder shall be in the amount of (a) the greater of (i) $5 million or (ii) the estimated cost of the Technical Support Services and the Update Work required for the remainder of the Term, plus (b) the aggregate amount of the caps on liability set forth in all Facility Implementation Plans. Security required under this Agreement may include one or a combination of the following, as selected by Developer with the prior written approval of TxDOT, which as to subsections (a) through (c) below will not be unreasonably withheld:

(a) One or more Guarantees (or additional Guarantees, as the case may be). Each such Guaranty shall be in the form of Form T to the RFP. Each Guaranty must be provided by a parent corporation, or a shareholder of the Financially Responsible Entity or of a joint venturer, partner or equity member of Developer. The Guarantor must be acceptable to TxDOT. Changes of or additions to the shareholders, joint venturers, partners or equity members of Developer may be made in order to provide the required Guarantees, provided that the same does not constitute a material adverse change in Developer's financial condition;

(b) Pledge and delivery to TxDOT of certificates of deposit, cash and/or marketable securities as security for performance on such terms and conditions as are acceptable to TxDOT in its sole discretion, which may include the obligation to replace or add to marketable securities due to reduction in market value;

(c) Delivery to TxDOT of an irrevocable standby letter of credit, provided that the letter of credit shall (i) be a direct pay letter of credit payable immediately upon presentation by TxDOT, (ii) be issued by a financial institution approved by TxDOT in its sole discretion with an office in Austin, Texas at which the letter of credit can be presented for payment, (iii) be in form approved by TxDOT in its sole discretion, (iv) be conditioned only on written presentation from TxDOT to the issuer stating (A) that Developer is in breach of the Contract Documents or (B) TxDOT is making the draw within 30 days prior to the expiration date and has received no new or replacement letter of credit required from Developer, (v) provide an expiration date not earlier than one year from date of issue, (vi) allow for multiple draws and (vii) name TxDOT payee.

TxDOT shall have the right to draw on the letter of credit, without prior notice, if Developer for any reason fails to deliver to the TxDOT a new or replacement letter of credit, on the same terms, or at least a one year extension of the expiration date of the existing letter of credit, by not later than 30 days before such expiration date. For all other draws, TxDOT will deliver to Developer five days' prior written notice of intent to draw, setting forth the amount of and reason for the draw; provided that no such notice shall be required if it would preclude draw before the expiration date of the letter of credit. Draw on the letter of credit shall not be conditional on prior resort to any other security or to Developer. Developer covenants not to commence or pursue any legal proceeding seeking, and irrevocably waives and relinquishes any right, to enjoin, restrain, prevent, stop or delay any draw on any such letter of credit.

(d) A bond that responds to damages in the event of default of Developer and on such additional terms and conditions as are acceptable to TxDOT in its sole discretion; and/or

(e) Other forms of security in amount and on terms and conditions acceptable to TxDOT in its sole discretion.

15.2.4 If at any time during the course of this Agreement a material adverse change in a Guarantor's financial condition in any accounting period for which the entity is required to report financial statements after submission of the Proposal has occurred, then the Developer shall provide replacement security meeting the requirements of Section 15.2.3; provided that the amount of the replacement security shall be in the amount of the affected Guarantee.

15.2.5 With TxDOT's prior written approval, Developer may replace any Guaranty provided hereunder with a Guaranty in the same amount meeting the requirements of Section 15.2.3(a).

15.3 Financial Prerequisites for Facility NTPs

15.3.1 TxDOT shall have no obligation to issue a Facility NTP1 or Facility NTP2 if the security requirements set forth in Section 15.2 are not satisfied in full as of the date TxDOT would otherwise be prepared to issue the same. At the time for issuance of each Facility NTP1 or Facility NTP2, the amount of the security provided hereunder shall be adjusted to reflect any adjustments to the limitation of liability and any additional security required pursuant to the agreed Facility Implementation Plan.

15.4 Payment and Performance Bonds

TxDOT expects that surety bond requirements in relation to the Facility Development Work for, and/or development of, specific Facilities will be addressed as part of the Facility Implementation Plan for the Facility in question.

SECTION 16. INSURANCE

16.1 Obligation to Maintain Insurance

At all times during the term of this Agreement, Developer shall maintain in full force and effect the following policies of insurance with the indicated minimum limits:

(a) Professional Liability: $1,000,000 per claim/annual aggregate. The professional liability policy shall give Developer an irrevocable right to purchase tail coverage extending for a minimum of five years after the end of the last claims made policy purchased from any professional liability insurer, and Developer covenants to purchase such tail coverage prior to the date of expiration or termination of the policy;

(b) General Liability: $1,000,000 per occurrence/$2,000,000 aggregate of primary coverage;

(c) Worker's Compensation: Statutory limits;

(d) Automobile Liability: $1,000,000 combined single limit per policy period;

(e) Employer's Liability: $500,000 each occurrence;

(f) If Developer's Work will involve subsurface investigation (such as soil samples, core drilling, test well, etc.), Developer shall maintain Contractor's Pollution Liability Insurance, including bodily injury, property damage and cleanup costs, with limits of not less than $1,000,000 per occurrence and aggregate; and

(g) Excess Liability: $10 Million per occurrence/aggregate, covering the same occurrences as the general liability, employer's liability and automobile liability coverages.

All policies shall be purchased on an annual basis or on a multi-year basis with annual reinstatement of limits.

16.2 General Insurance Requirements

16.2.1 Insurers

All insurance required hereunder shall be procured from insurance or indemnity companies with an A.M. Best and Company rating level of A- or better, Class VIII or better, or as otherwise approved by TxDOT and authorized or approved to do business in the State.

16.2.2 Review and Adjustment of Limits

At least once every year during the term of this Agreement, and as part of any Facility Implementation Plan negotiations, TxDOT and Developer, in consultation with their respective insurance and risk management advisors, together shall review relevant risk factors, the adequacy of the policy coverages and limits described above in light of applicable risk factors. Developer shall adjust the policy coverages and limits in accordance with the results of such review; provided that in no event shall the policy coverages or limits be less than the scope of coverage and amounts set forth above without TxDOT's approval, in its sole discretion.

16.2.3 Premiums, Deductibles and Self-Insured Retentions

Developer shall timely pay the premiums for all insurance required under this Section 16. Developer agrees that for each claim, suit or action made against insurance provided hereunder, Developer shall be solely responsible for all deductibles, self-insured retentions and, as respects all matters for which Developer is responsible under this Agreement, amounts in excess of the coverage provided. Subject to the other terms of this Agreement, TxDOT shall remain fully responsible for amounts in excess of the coverage provided as respects matters for which TxDOT is responsible hereunder.

16.2.4 Verification of Coverage

16.2.4.1 Policies. Concurrently with Developer's execution hereof, Developer will deliver to TxDOT (i) a certificate(s) of insurance with respect to each policy required to be provided by Developer under this Section 16 and (ii) copies of all endorsements to the policies that set forth the required additional insureds and other amendments to the policy forms. The required certificates must include original signatures by the authorized representative of the insurance company shown on the certificate with proof that he/she is an authorized representative thereof and is authorized to bind such insurance company to the coverage, limits and termination provisions shown thereon. TxDOT shall have no duty to pay or perform under this Agreement, and Developer shall not commence any Work under this Agreement, until such certificate(s) and endorsements, in compliance with all requirements of this Section 16, have been provided. Upon TxDOT's request, certified, true and exact copies of each of the insurance policies (including renewal policies) required under this Section 16 shall be provided to TxDOT.

16.2.4.2 Renewal Policies. Developer shall promptly deliver to TxDOT a certificate of insurance and copies of all endorsements with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverages for the terms specified herein. Such certificate shall be delivered not later than 30 Days prior to the expiration date of any policy and shall be accompanied by proof of payment of the premium therefor. If requested by TxDOT from time to time, certified duplicate copies of the renewal policy shall also be provided.

16.2.5 Subcontractor Insurance Requirements

Developer shall cause each Subcontractor to provide insurance, prior to performing Work under its Subcontract, that complies with requirements for Developer-provided insurance set forth in this Section 16 in circumstances where the Subcontractor is not covered by Developer-provided insurance; provided that Subcontractors are not required to maintain any types of coverages that are not applicable to their Work; and provided that Developer shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors, which determination shall be made in accordance with reasonable and prudent business practices considering the Subcontractor's scope of work under the Subcontract. Developer shall cause each such Subcontractor to include each of the Indemnified Parties as additional insureds under such Subcontractor's general liability and motorized vehicle liability insurance policies. Developer shall require each such Subcontractor to require that its insurer agree to waive any subrogation rights the insurers may have against the Indemnified Parties. If requested by TxDOT, Developer shall promptly provide certificates of insurance evidencing coverage for each Subcontractor. TxDOT shall have the right to contact the Subcontractors directly in order to verify the above coverage.

16.2.6 Project-Specific Insurance

All insurance coverage required to be provided by Developer hereunder shall be purchased specifically and exclusively for the Project with coverage limits devoted solely to the Project. All such insurance coverage shall be written as new business although such new business may be under a new policy or policies of blanket insurance.

16.2.7 Endorsements and Waivers

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

(a) TxDOT and all Indemnified Parties shall be named as additional insureds on the insurance policies, other than the professional liability policy;

(b) For claims covered by the insurance specified herein, said insurance coverage shall be primary insurance with respect to the insureds, additional insureds, and their respective members, directors, officers, employees, agents and consultants, and shall include completed operations coverage. Any insurance or self-insurance beyond that specified in this Agreement that is maintained by an insured or additional insured shall be excess of such insurance and shall not contribute with it;

(c) A severability of interests of insureds clause effectively providing that the insurance shall apply separately to each insured and additional insured against whom a claim is made or suit is brought, except with respect to the aggregate limits of

the insurer's liability, together with such clarifications and/or related endorsements as TxDOT accepts to reflect the intent of this clause(c);

(d) Each policy shall provide that coverage shall not be suspended, voided, canceled, modified or reduced in coverage or in limits (other than as a result of payment of claims) except after 30 days' prior written notice (or after ten days' prior written notice in the case of cancellation due to non-payment of premium), preferably given by certified mail, return receipt requested, has been given to TxDOT. Such endorsement shall not include any limitation of liability of the insurer for failure to provide such notice;

(e) All endorsements adding additional insureds to required policies shall be on form CG-20-10 (1985 edition) or an equivalent form reasonably acceptable to TxDOT;

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

(g) The commercial general liability insurance policy shall not exclude coverage for Subcontractor employees; and

(h) The automobile liability insurance policy shall be endorsed to include Motor Carrier Act Endorsement-Hazardous materials clean up (MCS-90).

16.2.8 Waivers of Subrogation

TxDOT and Developer waive all rights against each other, against each of their agents and employees and against Subcontractors and their respective members, directors, officers, employees, agents and consultants for any claims, but only to the extent covered by insurance obtained pursuant to this Section 16, except such rights as they may have to the proceeds of such insurance, and provided further that Developer shall not be entitled to additional compensation or time extension under this Agreement to the extent compensated by any insurance specified herein. Developer shall require all Subcontractors to provide similar waivers in writing each in favor of all other parties enumerated above. Each policy, including workers' compensation, shall include a waiver of any right of subrogation against TxDOT and the Indemnified Parties.

16.2.9 Changes in Requirements

TxDOT shall notify Developer in writing of any changes in the requirements applicable to insurance required to be provided by Developer. If TxDOT directs Developer to procure additional insurance or to increase the limits of existing insurance coverage, Developer shall promptly comply with such direction. If TxDOT desires a reduction in the insurance requirements then in force, the parties shall negotiate in good faith the terms of such reduction, failing which the insurance requirements shall remain unchanged. Compensation to Developer for the Initial Scope of Work shall be adjusted upwards or downwards to reflect any such changes required during the Initial Scope of

Work. Compensation adjustments, if any, due to TxDOT required changes to insurance for Facility Development Work shall be as set forth in the applicable Facility Implementation Plan.

16.2.10 No Recourse

There shall be no recourse against TxDOT for payment of premiums or other amounts with respect to the insurance required to be provided by Developer hereunder, except to the extent of increased premium costs recoverable under Section 16.2.9.

16.2.11 Support of Indemnifications

The insurance coverage provided hereunder by Developer is not intended to limit Developer's indemnification obligations under Section 17.

16.3 Prosecution of Claims

Unless otherwise directed by TxDOT in writing, Developer shall be responsible for reporting and processing all potential claims by TxDOT or Developer against the insurance required to be provided under this Section 16. Developer agrees to report timely to the insurer(s) any and all matters which may give rise to an insurance claim and to promptly and diligently pursue any and all insurance claims on behalf of TxDOT, whether for defense or indemnity or both. TxDOT agrees to promptly notify Developer of TxDOT's incidents, potential claims, and matters which may give rise to an insurance claim by TxDOT, to tender its defense or the claim to Developer, and to cooperate with Developer as necessary for Developer to fulfill its duties hereunder.

16.4 Commencement of Work

Developer shall not commence the Initial Scope of Work under this Agreement until it has obtained the insurance required under this Section 16, has furnished original certificates of insurance evidencing the required coverage as required under Section 16.2.4 and such insurance has been approved in writing by TxDOT, nor shall Developer allow any Subcontractor (or shall such Subcontractor be entitled) to commence work under its Subcontract until the insurance required of the Subcontractor has been obtained and approved by Developer.

16.5 TxDOT's Right to Remedy Breach by Developer

If Developer or any Subcontractor fails to provide insurance as required herein, TxDOT shall have the right, but not the obligation, to purchase such insurance or to suspend Developer's right to proceed until proper evidence of insurance is provided. Any amounts paid by TxDOT shall, at TxDOT's sole option, be deducted from amounts payable to Developer or reimbursed by Developer upon demand, with interest thereon from the date of payment by TxDOT to the reimbursement date, at the maximum rate allowable under applicable Law. Nothing herein shall preclude TxDOT from exercising

its rights and remedies under Section 21 as a result of the failure of Developer or any Subcontractor to satisfy the obligations of this Section 16.

16.6 Disclaimer

Developer and each Subcontractor have the responsibility to make sure that their insurance programs fit their particular needs, and it is their responsibility to arrange for and secure any insurance coverage which they deem advisable, regardless of whether specified herein.

SECTION 17. RELIANCE, RELEASE AND INDEMNIFICATION

17.1 Limitations on Right to Rely

17.1.1 Developer expressly acknowledges and agrees that TXDOT's rights under this Agreement to: (i) review, comment on, approve, disapprove, monitor, inspect and/or accept the Master Development Plan, the Master Financial Plan, the Project Management Plan, Facility Implementation Plans and any conceptual or detailed designs, plans, specifications, work plans and the like, and (ii) review and comment on qualifications and performance of, and to communicate with, Subcontractors or other consultants of Developer:

(a) Exist solely for the benefit and protection of TxDOT;

(b) Do not create or impose upon TxDOT any standard or duty of care toward any Subcontractor or Developer-Related Entity, all of which are hereby disclaimed;

(c) Shall not release Developer from any requirement of the Contract Documents nor constitute a waiver of any such requirements (except as expressly waived as a deviation by TxDOT in accordance with Section 17.1.4(d)); and

(d) May not be asserted, nor may TxDOT's exercise or failure to exercise any such rights be asserted, against TxDOT by Developer as a defense, legal or equitable, to Developer's obligation to fulfill such standards and requirements.

17.1.2 To the maximum extent permitted by law, Developer hereby releases and discharges TxDOT from any and all duty and obligation to cause the Master Development Plan, the Master Financial Plan, the Project Management Plan, and the Facility Implementation Plans to satisfy the standards and requirements set forth in this Agreement.

17.1.3 No rights of TxDOT described in Section 17.1.1, nor exercise or failure to exercise such rights, no failure of TxDOT to meet any particular standard of care in the exercise of such rights and no acceptance of any plans or entering into any Agreements as contemplated in this Agreement shall:

(a) Relieve Developer of its responsibility for the selection and the competent performance of Subcontractors and other consultants (except those hired by TxDOT and except that the foregoing does not affect TxDOT's right and obligation to control the work of any NEPA consultant);

(b) Relieve Developer of any obligations or liabilities under Section 17.2;

(c) Be deemed or construed to waive any of TXDOT's rights and remedies or any of Developer's obligations under this Agreement or the Facility Agreements; or

(d) Be deemed or construed as any kind of warranty, express or implied, by TXDOT.

17.1.4 Notwithstanding Sections 17.1, 17.2 and 17.3:

(a) TxDOT is not relieved from performance of its express responsibilities under this Agreement;

(b) TxDOT is not relieved from any liability arising out of a knowing, intentional misrepresentation contained in any written statement TXDOT delivers pursuant to this Agreement;

(c) Section 1.6 shall govern the applicable standards for any TxDOT approval or consent required under the Contract Documents; and

(d) Developer shall be entitled to rely on any express and specific deviations from requirements of the Contract Documents provided by TxDOT in writing.

17.2 Indemnification by Developer

Developer shall (i) pay the reasonable defense costs (including attorneys' fees and expenses, costs and associated expert and witness fees and expenses) incurred by TxDOT, the State, the Commission and their respective agents, employees, representatives, successors and assigns (the "Indemnified Parties") in connection with any third party claims (including any charges, demands, investigations, legal or administrative proceedings, actions, suits, claims and judgments) arising out of, relating to or caused in whole or in part by any of the events described in Sections 17.2.1 through 17.2.6, (ii) protect, indemnify and hold harmless the Indemnified Parties from and against all loss, damage, liability, cost, expense, fee, penalty, fine or sanction incurred by the Indemnified Parties as a result of such third party claims arising out of, relating to or caused in whole or in part by any of the events described in Sections 17.2.1 through 17.2.6, and (iii) protect, indemnify and hold harmless the Indemnified Parties from and against all fees, costs and expenses (including attorneys' fees and expenses, costs and associated expert and witness fees and expenses) incurred in connection with the enforcement of this indemnity:

17.2.1 The alleged negligent acts, negligent omissions, recklessness, willful misconduct or breach of contract by Developer or a Developer-Related Entity;

17.2.2 Breach of this Agreement by Developer;

17.2.3 Failure to comply with applicable Laws or Governmental Approvals by Developer or any Developer-Related Entity;

17.2.4 Developer's or any Developer-Related Entity's patent or copyright infringement or other misappropriation of trade secrets;

17.2.5 Release of Hazardous Materials on any real property due to acts, omissions, negligence, willful misconduct, recklessness or breach by Developer or any Developer-Related Entity; and

17.2.6 Any and all claims by any Governmental Entity or taxing authority claiming taxes based on gross receipts of, purchases or sales by, the use of any property by, or income of Developer or any Developer-Related Entity.

17.3 Restrictions

Subject to the releases and disclaimers in Section 17.1, Developer's indemnity obligations hereunder shall not extend to any Losses incurred by an Indemnified Party to the extent caused by:

17.3.1 The negligence, reckless or willful misconduct, bad faith or fraud of such Indemnified Party, or

17.3.2 TxDOT's material breach of any of its obligations under the Contract Documents.

SECTION 18. COORDINATION WITH OTHER TRANSPORTATION FACILITIES

TxDOT shall have the right at any time (and without liability to Developer for any damages Developer may suffer), to modify or reroute existing transportation facilities, to construct new transportation facilities adjacent to, near or affecting the Project or any Facility, including additional access and capacity improvements, and to perform planned and emergency maintenance, renewal and replacement and repair activities on existing and new facilities adjacent to, near or affecting the Project or any Facility, and to enter upon the Project or any portion thereof to the extent reasonably necessary for carrying out the foregoing activities, regardless of the impact of such activities on the Project or any Facility, provided that:

(a) TxDOT shall use its diligent efforts to keep Developer informed of any such activities to be performed in the ordinary course on such facilities which might reasonably be expected to adversely impact activities on the Project or any Facility;

(b) TxDOT shall use reasonable efforts consistent with TxDOT's budgetary and work force constraints to coordinate such activities with Developer in order to reduce or eliminate such adverse impact; and

(c) The foregoing rights shall be subject to any covenant regarding competing facilities that may be entered into in connection with the development and operation of a Facility.

SECTION 19. CERTAIN RISK ALLOCATIONS AND REMEDIES

19.1 General

Attached to this Agreement as Exhibit L is a Risk Events Matrix. The Risk Events Matrix identifies Risk Events that could affect the performance of the Work, the Project or any Facility prior to execution of Facility Agreements, including risks associated with TxDOT and Developer being unable to reach agreements that are prerequisites to proceeding with various stages of the Work. The Risk Events Matrix also summarizes the remedies available to the parties upon occurrence of a Risk Event. The parties may identify, and agree upon the remedies for, additional risk events which shall be added to the Risk Events Matrix or set forth in other Contract Documents as they are prepared and negotiated. This Agreement includes provisions elaborating upon the Risk Events and the remedies set forth in the Risk Events Matrix. This Agreement also sets forth rights and remedies upon occurrence of events of default under any of the Contract Documents. Developer shall not have the right to terminate the Agreement, nor any portion thereof, except as expressly provided under the Contract Documents. In the event of an actual conflict between the provisions of the Risk Events Matrix and the Agreement, the Agreement shall take precedence.

19.2 Risk Events Resulting in Termination of Agreement

The Risk Events Matrix identifies certain Risk Events which will result in termination of this Agreement or the right of either party to terminate this Agreement. Risk Events and remedies that are described with more particularity in other sections of the Agreement include:

19.2.1 Failure to reach agreement on terms of Master Development Plan or Master Development Plan updates affecting material general terms of Master Development Plan (as more particularly described in Section 9.3);

19.2.2 Developer believes a Facility is Ready for Development but TxDOT does not (as more particularly described in Section 7.2.4);

19.2.3 TxDOT terminates the Agreement without cause (for convenience) (as more particularly described in Section 20);

19.2.4 Material breach, including material breach of Developer or Affiliate under Facility Agreement and bankruptcy of Developer or any equity member, surety or Guarantor (as more particularly described in Section 21);

19.2.5 Suspensions of more than 12 months (as more particularly described in Section 10.7);

19.2.6 Failure to agree on the terms of the Master Development Plan after removal of a Facility from this Agreement (as more particularly described in Sections 4.4.4, 7.2.2, 7.3.4, and 8.4.4);

19.2.7 Developer fails to meet Initial Scope of Work milestones (as more particularly described in Sections 10 and 21); and

19.2.8 Other failure of the parties to agree on changes to the terms of the Master Development Plan (as more particularly described in this Section 19.2.8). If a Risk Event occurs and the Risk Events Matrix provides that the parties shall negotiate required changes to the terms of the Master Development Plan, the parties shall negotiate in good faith for a period of 45 days, as such time may be extended by mutual agreement of the parties. If either party in good faith determines upon conclusion of the negotiations described above that it is unable to reach agreement with the other party on required changes to the Master Development Plan, then such party may exercise the remedies set forth in Risk Events Matrix for the Risk Event titled "Parties do not agree on MDP Terms" or "Parties do not agree on MDP updates affecting material general terms of MDP", as applicable.

19.3 Risk Events Resulting in Removal of a Facility from Agreement

The Risk Events Matrix identifies certain Risk Events which will result in removal of a Facility from this Agreement or the right of either party to remove such Facility from this Agreement. The parties' rights and remedies in the event a Risk Event occurs between issuance of a Facility NTP2 and Close of Finance for a Facility, including any termination rights (except as provided in Section 20 and in the event of a material breach of this Agreement), shall be governed by the applicable Facility Implementation Plan. Risk Events identified in the Risk Events Matrix which will result in removal of a Facility from this Agreement or the right of either party to remove such Facility from this Agreement that are described with more particularity in other sections of the Agreement include:

19.3.1 Failure to Reach Agreement on the terms of Facility Implementation Plan (as more particularly described in Section 8.1.1);

19.3.2 TxDOT believes Facility Ready for Development/Developer does not (as more particularly described in Section 7.3;

19.3.3 NEPA no-action for a Facility (as more particularly described in Section 4.4.2);

19.3.4 NEPA approval for a Facility substantially different from proposal/MDP/FIP and parties do not agree on changes to Master Development Plan (as more particularly described in Section 4.4.3);

19.3.5 TxDOT terminates Facility without cause (for convenience) (as more particularly described in Section 20);

19.3.6 Developer fails to meet CDA/MDP milestones re Facilities and/or Facility Implementation Plan milestones (as more particularly described in Sections 10 and 21);

19.3.7 Parties do not agree on MDP updates affecting a Facility (as more particularly described in Section 9.3.5);

19.3.8 Failure to reach Close of Finance (as more particularly described in Section 8.4.3);

19.3.9 Failure to reach agreement on changes to terms of Facility Implementation Plan (as more particularly described in this Section 19.3.9). If a Risk Event occurs and the Risk Events Matrix provides that the Parties shall negotiate required changes to the terms of the Facility Implementation Plan, the parties shall negotiate in good faith for a period of 45 days, as such time may be extended by mutual agreement of the parties. If upon conclusion of the negotiations described above the parties are unable to reach agreement on required changes to the Facility Implementation Plan, TxDOT shall have the right to remove the subject Facility from the scope of this Agreement. In such event, the parties shall have such further rights and remedies as are set forth in Sections 8.4.4 through 8.5.

19.4 Delay Risk Events

Delays under the Risk Events Matrix are addressed in Section 10.4.

19.5 Responsibility of the Parties in the Event of Risk Event

19.5.1 Each party shall promptly provide written notice to the other party upon discovery of the occurrence of a Risk Event.

19.5.2 No termination or partial termination of this Agreement shall be effective until written notice of such termination is provided by the terminating party to the other party.

19.5.3 In the event this Agreement is terminated, in whole or in part, due to a Risk Event, and except as otherwise directed by TxDOT, Developer shall immediately: (i) stop work on the terminated Work; (ii) communicate such notice to all affected Subcontractors and terminate all affected Subcontracts; (iii) place no further Subcontracts except as necessary to complete any continued portion of the Work, if any, or for mitigation of damages; (iv) settle outstanding liabilities and claims arising out of such termination of Subcontracts, with the approval of TxDOT as required; and (v) take all action that may be necessary, or that TxDOT may direct, for the protection and preservation of the Project, any Facility and affected Deliverables not yet in TxDOT's possession.

19.5.4 In exercising the remedies under this Agreement, TxDOT and Developer shall each act reasonably to mitigate their damages and costs in accordance with applicable Law.

19.6 Developer Compensation in the Event of a Risk Event

Except to the extent set forth in the Risk Events Matrix, Developer shall not be entitled to any compensation for costs incurred as a result of a Risk Event.

19.6.1 In the event a Risk Event occurs and the Risk Events Matrix (Exhibit L) provides that the parties may renegotiate the terms of Developer's compensation for an element of the Work, the parties shall negotiate in good faith for a period of 45 days, as such time may be extended by mutual agreement of the parties. If either party in good faith determines upon conclusion of the negotiations described above that it is unable to reach agreement with the other party on the terms of such compensation, then that party may terminate this Agreement. In the event of such termination of the Agreement, Developer shall be entitled to compensation to the extent provided in the Risk Events Matrix (i) for the Risk Event titled "Parties do not agree on MDP Terms" for failure to reach agreement on new terms for compensation for the Initial Scope of Work, (ii) for the Risk Event titled "Parties do not agree on FIP Terms" for failure to reach agreement on new terms for compensation for Facility Development Work, and (iii) for the Risk Event titled "Parties do not agree on MDP updates affecting material general terms of MDP" for failure to reach agreement on new terms for MDP updates, as applicable.

19.6.2 If this Agreement is terminated due to occurrence of a Risk Event, and if the methodology and terms of Developer compensation for services previously performed provide for Developer to absorb or carry some or all of its costs until Close of Finance or some other event, the parties shall follow the provisions regarding such Risk Event in the Risk Events Matrix to determine whether and to what extent Developer is entitled to reimbursement for such unpaid costs. Where the Risk Events Matrix provides that Developer shall be compensated for unpaid Initial Scope of Work costs per Exhibit H, Developer shall be entitled to payment for completed milestones in accordance with Exhibit H. Developer shall be entitled to payment for any partially completed milestone in an amount equal to its unpaid costs and expenses incurred for such partially completed milestone up to and not to exceed the amount allocable to such milestone on Exhibit H. Except as provided otherwise in Section 20 and except upon a termination due to material breach by TxDOT, in no event shall the methodology and terms for such reimbursement require payment beyond reasonable costs and expenses incurred, plus reasonable markups for overhead and profit. Reasonableness of costs, expenses, overhead and profit shall be determined in accordance with the provisions of the Federal Acquisition Regulation, including restrictions therein on eligibility and allowability, unless otherwise agreed by the parties.

SECTION 20. TERMINATION FOR CONVENIENCE

20.1 TxDOT Right to Terminate

TxDOT may at any time, in its sole discretion, terminate this Agreement, in its entirety or as to a specific Facility or Facilities (a partial termination for convenience), when TxDOT determines that such termination is in the best interests of the State. No termination of this Agreement shall constitute a termination for convenience unless the circumstances of such termination qualify as a termination for convenience under the express terms of this Agreement. Without limiting the foregoing, termination pursuant to Risk Events (other than termination for convenience) set forth in the Risk Events Matrix shall not entitle Developer to any of the compensation or other remedies under this Section 20, and instead other relevant provisions of the Contract Documents shall control.

20.2 Developer's Responsibilities After Receipt of Notice of Termination

After receipt of a notice by TxDOT of termination for convenience or partial termination for convenience, Developer shall proceed in accordance with Section 19.5.3.

20.3 Developer's Compensation Upon Termination for Convenience

20.3.1 In the event TxDOT terminates this Agreement in its entirety, the parties shall negotiate in good faith for 60 days to reach agreement on a settlement amount payable to Developer as compensation for services rendered.

20.3.2 In the event the parties are unable to reach agreement on a settlement amount, Developer shall be compensated in the sum equal to:

(a) Funds sufficient for Developer to pay any amounts, charges, penalties or damages owing by Developer under any Subcontracts related to the Project that are not terminable without charge, penalty or damage on or prior to the effective date of termination; plus

(b) All reasonable and eligible costs Developer actually incurs for performance of the Initial Scope of Work, Update Work and Technical Support Services, from and after the execution of this Agreement up to the effective date of termination, based on an audit of Developer's records, except for such costs previously paid or reimbursed to Developer, provided that no payment for Developer's costs to perform the Initial Scope of Work shall be due if the effective date of termination occurs after the Close of Finance for any Facility that includes a Facility Agreement for self-performance of work by Developer or any Affiliate; plus

(c) A reasonable profit on the costs under item (b) above, except for profit previously paid thereon; plus

(d) If such termination occurs on or after the approval of a Facility Implementation Plan for a Facility but before the Close of Finance for such Facility, then the compensation due with respect to such Facility upon termination for convenience as set forth in the applicable Facility Implementation Plan; plus

(e) All reasonable and eligible costs Developer actually incurs to demobilize after the effective date of termination, based on an audit of Developer's records.

20.3.3 Notwithstanding anything to the contrary contained herein,

(a) if the termination occurs prior to completion of the Initial Scope of Work and approval of the Master Development Plan, the total amount to be paid to Developer under Sections 20.3.2 (a), (b), (c), and (e) may not exceed the amount set forth in Exhibit H applicable to milestones actually completed as of the date of termination, plus expenditures by Developer for partially completed milestones up to the amount set forth in Exhibit H applicable to such partially completed milestones; less the amount of payments therefor previously made by TxDOT;

(b) if the termination occurs during the performance of Update Work, the total amount to be paid to Developer under Sections 20.3.2 (a), (b), (c), and (e) may not exceed the price agreed upon by the Parties for the Update Work for the most recent Update less the amount of any payments therefor previously made by TxDOT; and

(c) the total amount to be paid to Developer under Section 20.3.2 (e) may not exceed the amount agreed upon by the parties in the applicable Facility Implementation Plan. Furthermore, in the event that any refund is payable with respect to insurance premiums for insurance required under this Agreement, deposits or similar items which were previously paid by TxDOT directly or indirectly, such refund shall be credited to TxDOT.

20.4 Developer's Compensation Upon Partial Termination for Convenience

20.4.1 In the event TxDOT partially terminates this Agreement for convenience and such termination occurs on or after the approval of a Facility Implementation Plan for the affected Facility but before Close of Finance for such Facility, then Developer shall be compensated as set forth for a termination for convenience in the applicable Facility Implementation Plan.

20.4.2 After any partial termination for convenience, TxDOT and Developer shall update the Master Development Plan and Master Financial Plan to account for the removal of the Facility or Facilities subject to the partial termination for convenience, and Developer shall be compensated for such Update Work in accordance with Section 3.2.3. Either party may terminate this Agreement in the event (a) a Facility is removed from the Project or Contract Documents pursuant to a partial termination for convenience, (b) Developer determines that material terms and conditions of the Master Development Plan or Master Financial Plan pertaining to other Facilities are materially

affected thereby and must be modified to compensate for the removal of such Facility, and (c) TxDOT and Developer, despite good faith negotiating efforts, are unable to reach agreement on such modifications within 45 days after the Facility is removed, as such time may be extended by mutual agreement of the parties. In the event of a termination of this Agreement under this Section 20.4.2, Developer shall be entitled to compensation to the extent described in Section 20.3.

20.5 Eligible Costs

Costs that are eligible for payment under this Section 20 consist of Developer's out-of-pocket expenses, the fully burdened wages and salaries of Developer's or its Affiliate's employees who have performed Work, based on the hours devoted to the Work, and Developer's reasonable overhead for Developer's Project office, in all cases excluding costs that are not compensable under the provisions of the Federal Acquisition Regulation, unless otherwise agreed by the parties.

SECTION 21. DEFAULT AND DEFAULT REMEDIES

21.1 Events and Conditions Constituting Default by Developer

Developer shall be in default under this Agreement upon the occurrence of any one or more of the following events or conditions:

(a) Developer fails promptly to begin the authorized scope of work under the Contract Documents following issuance of Project NTP1 or Project NTP2, fails to promptly begin preparation of a Facility Implementation Plan following issuance of the Facility NTP1, or fails to promptly begin performance of Developer's responsibilities for completion of Facility Development Work following issuance of a Facility NTP2; or

(b) Developer fails to resume performance of Work that has been suspended or stopped, within a reasonable time after receipt of notice from TxDOT to do so or (if applicable) after cessation of the event preventing performance; or

(c) Developer fails to perform the Work in accordance with the Contract Documents, including conforming to applicable standards set forth therein; or

(d) Developer suspends, ceases, stops or abandons the Work or persistently fails to continuously and diligently prosecute the Work; or

(e) Developer fails to obtain, provide and maintain any insurance, bonds, guarantees, letters of credit or other performance security as and when required under this Agreement for the benefit of relevant parties, or fails to comply with any requirement of this Agreement pertaining to the amount, terms or coverage of the same; or

(f) Developer makes or attempts to make or suffers a voluntary or involuntary assignment or transfer of all or any portion of any right or interest in this Agreement or in any of the Contract Documents, except as expressly permitted under Section 24.4; or

(g) Any representation or warranty in the Contract Documents made by Developer or any Guarantor, or any certificate, schedule, report, instrument or other document delivered by or on behalf of Developer to TxDOT pursuant to the Contract Documents is false or materially misleading or inaccurate in any material respect when made or omits material information when made; or

(h) Developer materially fails to timely observe or perform or cause to be observed or performed any other material covenant, agreement, obligation, term or condition required to be observed or performed by Developer under the Contract Documents; or

(i) Developer or any Guarantor fails to discharge or obtain a stay within 30 days of any final judgment(s) or order for the payment of money against it in excess

of $250,000 in the aggregate (provided that for purposes hereof, posting of a bond in the amount of 125% of such judgment or order shall be deemed an effective stay); or

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

(k) Developer commences a voluntary case seeking liquidation, reorganization or other relief with respect to itself or its debts under any U.S. or foreign bankruptcy, insolvency or other similar Law now or hereafter in effect, seeks the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets; becomes insolvent, or generally does not pay its debts as they become due; admits in writing its inability to pay its debts; makes an assignment for the benefit of creditors; or takes any action to authorize any of the foregoing; or

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

(m) Any voluntary or involuntary case or other act or event described in paragraphs (k) and (l) above shall occur (and in the case of an involuntary case shall not be contested in good faith or shall remain undismissed and unstayed for a period of 60 days) with respect to (i) any member of Developer with a material financial obligation owing to Developer for equity or shareholder loan contributions, (ii) any member of Developer for whom transfer of ownership would constitute a Change of Control, or (iii) any Guarantor of material Developer obligations to TxDOT under the Contract Documents, unless another Guarantor of the same material Developer obligations then exists, is solvent, is not and has not been the debtor in any such voluntary or involuntary case, has not repudiated its guaranty and is not in breach of its guaranty; or

(n) After exhaustion of all rights of appeal, there occurs any suspension or debarment (distinguished from ineligibility due to lack of financial qualifications) of any managing member, general partner or controlling investor of Developer, from bidding, proposing or contracting with any federal or State department or agency; or

(o) TxDOT has declared an Event of Default under any agreement to implement a Facility Implementation Plan between TxDOT and an Affiliate; or

(p) Developer or any Affiliate commits a breach under the Concession CDA or any Facility Agreement.

21.2 Notice and Opportunity to Cure

Developer and surety (if any) shall be entitled to 15 days written notice and opportunity to cure any breach before an Event of Default is declared under clauses (a) through (d) and clauses (h), (i) and (m)(iii) of Section 21.1. If a breach is capable of cure but, by its nature, cannot be cured within 15 days, as determined by TxDOT, such additional period of time shall be allowed as may be reasonably necessary to cure the breach so long as Developer commences such cure within such 15-day period and thereafter diligently prosecutes such cure to completion; provided, however, that in no event shall such cure period exceed 60 days in total. No such notice and opportunity to cure is required for TxDOT to declare an Event of Default due to any breach described in clauses (e) through (g) and clauses (j), (k), (l), (m)(i), (m)(ii) or (n) of Section 21.1, and any breach described in clause (k), (l), (m)(i) or (m)(ii) of Section 21.1 shall automatically constitute an Event of Default upon its occurrence, without notice. In the event of a breach under clause (o) or (p) of Section 21.1, Developer shall only be entitled to notice and an opportunity to cure if and to the extent provided in the applicable approved Facility Implementation Plan or Facility Agreement. Failure to provide notice to any Guarantor or surety shall not preclude TxDOT from exercising its remedies against Developer.

21.3 Remedies

21.3.1 Where required hereby, the declaration of an Event of Default shall be in writing and be given to Developer and each Guarantor and surety (if any). At any time following an Event of Default and any required declaration thereof, TxDOT may notify and order Developer to discontinue the Work or any portion thereof. In addition to all other rights and remedies provided by law or equity and such rights and remedies as are otherwise available under the Contract Documents, if an Event of Default shall occur, TxDOT shall have the following rights without further notice and without waiving or releasing Developer from any obligations and Developer shall have the following obligations (as applicable):

(a) TxDOT may terminate this Agreement or a portion thereof, including removal of one or more Facilities from this Agreement and the Master Development Plan and Developer's rights of entry upon, possession, control and operation of any portion of the Project or a Facility (except for any Facility for which Close of Finance has occurred);

(b) If and as directed by TxDOT, Developer shall vacate and surrender its Project office and any areas in which it is collocated with TxDOT or its consultants, and shall remove materials, equipment, tools and instruments used by, and any debris or waste materials generated by, any Developer-Related Entity in the performance of the Work;

(c) Developer shall deliver to TxDOT possession of any or all Deliverables and all other completed or partially completed drawings (including plans, elevations,

sections, details and diagrams), specifications, records, information, schedules, samples, shop drawings, electronic files and other documents and facilities related to the Project or a Facility (except any Facility for which Close of Finance has occurred) that TxDOT deems necessary for completion of the Work or a Facility;

(d) Developer shall confirm the assignment to TxDOT of the Subcontracts requested by TxDOT and Developer shall terminate, at its sole cost, all other Subcontracts;

(e) TxDOT may deduct from any amounts payable by TxDOT to Developer (other than with respect to any Facility for which Close of Finance has occurred) such amounts payable by Developer to TxDOT, including reimbursements owing, liquidated damages or other damages that TxDOT has determined are or may be payable to TxDOT under the Contract Documents; and

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

21.3.2 Subject to the limitations of liability set forth in Sections 21.5 and 21.6, if an Event of Default shall have occurred and as a result thereof TxDOT terminated this Agreement, Developer shall be liable to TxDOT (in addition to any other damages under the Contract Documents, including damages covered by insurance proceeds and damages for which TxDOT is indemnified under Section 17.2) for the following damages:

(a) If the Event of Default occurs during performance of the Initial Scope of Work, the sum of (i) the costs incurred by TxDOT (including amounts paid to its consultants) for the procurement of this Agreement, plus (ii) 10% of the amount of all payments for work product TxDOT paid to unsuccessful proposers under the RFP, plus (iii) all fees paid to Developer under this Agreement for Work (excluding, however, Facility Development Work as to any Facility for which TxDOT makes the election of remedies set forth in subsection (c) below), to the extent such fees exceed the value of such Work that is readily useful to TxDOT in developing the Project or subject Facility, as applicable, plus (iv) all costs and expenses TxDOT incurred, including fees paid to TxDOT's consultants, in connection with collaborating with Developer and reviewing and overseeing the Work of Developer (excluding, however, Facility Development Work as to any Facility for which TxDOT makes the election of remedies set forth in subsection (c) below), to the extent such costs and expenses are throw away costs,

were for services rendered useless to TxDOT due to Developer's default or were incurred as a result of Developer's default, as applicable, plus (v) any other out-of-pocket costs and expenses TxDOT incurred in connection with the Contract Documents or performance of TxDOT's responsibilities thereunder, plus (vi) interest on the foregoing amounts, from the date of Developer's breach until recovered from Developer, at the maximum rate allowable under applicable Law.

(b) If the Event of Default occurs after completion of the Initial Scope of Work, the sum of (i) all fees paid to Developer under this Agreement for Work (excluding, however, Facility Development Work as to any Facility for which TxDOT makes the election of remedies set forth in subsection (c) below), to the extent such fees exceed the value of such Work that is readily useful to TxDOT in developing the Project or subject Facility, as applicable, plus (ii) all costs and expenses TxDOT incurred, including fees paid to TxDOT's consultants, in connection with collaborating with Developer and reviewing and overseeing the Work of Developer (excluding, however, Facility Development Work as to any Facility for which TxDOT makes the election of remedies set forth in subsection (c) below), to the extent such costs and expenses are throw away costs, were for services rendered useless to TxDOT due to Developer's default or were incurred as a result of Developer's default, as applicable, plus (iii) any other out-of-pocket costs and expenses TxDOT incurred in connection with the Contract Documents or performance of TxDOT's responsibilities thereunder, plus (iv) interest on the foregoing amounts, from the date of Developer's breach until recovered from Developer, at the maximum rate allowable under applicable Law.

(c) With respect only to Facilities for which there is an approved Facility Implementation Plan and as to which TxDOT terminates Developer's rights under this Agreement due to an Event of Default, at TxDOT's election TxDOT shall be entitled to recover, instead of the measure of damages for prior Facility Development Work on such Facilities under subsections (a)(iii) and (iv), and (b)(i) and (ii) above (but in addition to recovery of sums under subsections (a)(i), (ii) and (v) and (b)(iii) and (iv) above), the excess, if any, of (i) the sum of all costs reasonably incurred by TxDOT or any party acting on TxDOT's behalf in pursuing completion of the Facility Development Work for such Facilities (regardless of whether completed) or having another Person pursue completion of such Facility Development Work (regardless of whether completed), including any re-procurement costs, throw away costs for unused portions of Deliverables, attorneys', accountants' and expert witness fees and costs, and increased financing costs, over (ii) the portion of the compensation for Developer agreed to or reasonably expected under the Contract Documents for such Facility Development Work not paid by TxDOT to Developer. If at the time of such termination there are sums due to Developer but unpaid for Facility Development Work performed prior to the effective date of termination of the subject Facility, TxDOT shall not be obligated to pay such sums to Developer until TxDOT, through its own forces, through consultants or through a substitute developer, completes such Work or so much thereof as TxDOT elects to complete. Following the date on which TxDOT determines the total cost of all Facility Development Work undertaken after the effective date of termination, TxDOT shall determine the amount of damages under this subsection (c), reduce such amount

by the foregoing sums, if any, due Developer and then notify Developer, its surety (if any) and each Guarantor in writing of the amount, if any, that Developer, its surety and each Guarantor owes to TxDOT. Developer and its surety(ies) and each Guarantor shall be liable and shall pay to TxDOT, within ten days after receipt of such notice, such amount together with interest thereon, from the date TxDOT incurred the excess until recovered from Developer, at the maximum rate allowable under applicable Law.

(d) A breach under this Agreement does not automatically constitute a breach under any Facility Agreement or the Concession CDA, each of which is governed independently by its own terms and conditions, including default and remedies for default.

21.3.3 If the methodology and terms for compensating Developer for any portion of the Work provide for Developer to absorb or carry some or all of its costs until Close of Finance or some other subsequent event and due to an Event of Default TxDOT terminates this Agreement either in whole or as to such Facility prior to Close of Finance or such other event, Developer shall not be entitled to receive such compensation, regardless of whether TxDOT is able to achieve Close of Finance or such other event subsequent to termination. In addition, Developer shall have no right to receive compensation for any portion of the Work remaining to be performed following a termination of this Agreement due to an Event of Default, or for any portion of Facility Development Work remaining to be performed following a partial termination of this Agreement as to the subject Facility due to an Event of Default.

21.3.4 Developer acknowledges that if a default under Section 21.1(k), (l) or (m) occurs, such event could impair or frustrate Developer's performance of the Work. Accordingly, Developer agrees that upon the occurrence of any such event, TxDOT shall be entitled to request of Developer, or its successor in interest, adequate assurance of future performance in accordance with the terms and conditions hereof. Failure to comply with such request within ten days of delivery of the request shall entitle TxDOT to terminate this Agreement and to the accompanying rights set forth above. Pending receipt of adequate assurance of performance and actual performance in accordance therewith, TxDOT shall be entitled to proceed with the Work with its own forces or with other consultants, the cost of which will be credited against and deducted from TxDOT's payment obligations hereunder. The foregoing shall be in addition to all other rights and remedies provided by law or equity and such rights and remedies as are otherwise available under this Agreement.

21.3.5 In lieu of the provisions of this Section 21.3 for terminating this Agreement and completing the Work, TxDOT may pay Developer for the parts already done according to the provisions of the Contract Documents and may treat the parts remaining undone as if they had never been included or contemplated by this Agreement. No claim under this provision will be allowed for prospective profits on, or any other compensation relating to, Work uncompleted by Developer.

21.3.6 If this Agreement is terminated for grounds which are later determined not to justify a termination for default, such termination shall be deemed to constitute a termination for convenience pursuant to Section 20.

21.3.7 The exercise or beginning of the exercise by TxDOT of any one or more rights or remedies under this Section 21.3 shall not preclude the simultaneous or later exercise by TxDOT of any or all other such rights or remedies, each of which shall be cumulative.

21.3.8 If TxDOT suffers damages as a result of Developer's breach or failure to perform an obligation under the Contract Documents, then, subject to the limitations on liability set forth in Sections 21.5 and 21.6, TxDOT shall be entitled to recovery of such damages from Developer regardless of whether the breach or failure that gives rise to the damages ripens into an Event of Default. If TxDOT does not elect to terminate this Agreement as a result of an Event of Default, then subject to the limitations on liability set forth in Sections 21.5 and 21.6, TxDOT shall be entitled to damages as provided by law.

21.4 Default by TxDOT and Failure by TxDOT to Make Undisputed Payment

21.4.1 Upon the occurrence of a material breach of the Agreement by TxDOT, Developer may exercise any rights and remedies available to Developer under this Agreement or the other Contract Documents or as are otherwise available to Developer at law; provided however:

(a) In no event shall Developer be entitled to recover an amount greater than that which it could recover upon a termination for convenience under Section 20;

(b) Notwithstanding anything herein to the contrary, the recovery of claims against TxDOT shall be subject to the Texas Tort Claims Act, Chapter 101, Texas Civil Practice & Remedies Code; and

(c) TxDOT's payment of any monetary damages or other compensation or award hereunder shall be conditioned upon (i) compliance with the provisions of Section 22; (ii) express legislative permission to sue TxDOT, pursuant to Chapter 107, Texas Civil Practice & Remedies Code; and (iii) express legislative authorization and appropriation of the payment to Developer of such damages, compensation or award.

21.4.2 Developer shall have the right to stop Work if TxDOT fails to make an undisputed payment due hereunder within 30 days after TxDOT's receipt of notice of nonpayment from Developer. Developer shall not have the right to terminate this Agreement for default as the result of any failure by TxDOT to make an undisputed payment due hereunder, but Developer shall have the right to deem and declare such non-payment a termination for convenience under Section 20 by delivering to TxDOT a written notice specifying the effective date of the termination for convenience, if such nonpayment continues for more than 180 days.

21.4.3 No failure by TxDOT to make an undisputed payment under this Agreement shall constitute a breach or default by TxDOT under any Facility Agreement to which any Developer-Related Entity is a party; and no failure by TxDOT to make an undisputed payment under any Facility Agreement to which any Developer-Related Entity is a party shall constitute a breach or default by TxDOT under this Agreement.

21.5 Limitation of Developer's Liability

21.5.1 Covenant Not to Sue.

21.5.1.1 Notwithstanding any other provision of the Contract Documents and except as set forth in Sections 21.5.1.2 and 21.5.2, TxDOT covenants not to sue for or otherwise seek recovery of damages, whether arising out of breach of this Agreement, negligence, tort or any other theory of liability, in excess of the sum of (a) $10 million, plus (b) the aggregate amount of the caps on liability set forth in all approved Facility Implementation Plans. The cap on liability set forth in each Facility Implementation Plan shall apply only to damages arising out of Developer's performance of Facility Work for the Facility to which the Facility Implementation Plan relates. The $10,000,000 amount described in (a) is a separate cap that applies solely to damages incurred by TxDOT arising out of Developer's performance of the Initial Scope of Work, Technical Support Services and Update Work.

21.5.1.2 Notwithstanding the foregoing, the limitation on liability shall not limit Developer's liability for (a) any damage or loss to the extent it is covered by the proceeds of insurance (i) required to be carried pursuant to Section 16, or (ii) actually carried by Developer under Project-specific policies for which the premiums were paid either directly or indirectly by TxDOT, regardless of whether required to be carried pursuant to Section 16, and (b) all losses, liabilities, costs and expenses incurred by any Indemnified Party after completion of the Initial Scope of Work for which Developer is liable under the indemnities set forth elsewhere in this Agreement or the other Contract Documents.

21.5.2 Exclusions from Covenant Not to Sue. Excluded from the covenant not to sue or seek recovery under Section 21.5.1 are any liability, obligation, loss, damage, cost or expense arising out of (i) illegal activities, fraud, criminal conduct, gross negligence or intentional misconduct on the part of any Developer-Related Entity or (ii) any Facility Agreement or any act or omission of any Developer-Related Entity regarding any Facility occurring after the Close of Finance for such Facility, as to which the provisions of the applicable Facility Agreements shall exclusively govern Developer-Related Entities' liabilities and any limits thereon or any covenants not to sue thereunder.

21.6 Waiver of Consequential Damages

21.6.1 Liability Waived. Notwithstanding any other provision of the Contract Documents and except as set forth in Section 21.6.2, in no event shall either TxDOT or

a Developer-Related Entity be liable to the other party for any "consequential damages", whether arising out of breach of this Agreement, negligence, tort or any other theory of liability, and each party waives all rights and claims thereto. The term "consequential damages" shall mean those special, indirect or incidental damages of TxDOT or Developer which flow naturally and inevitably from a breach, such as revenue losses, loss of use, cost of capital, debt service, loss of anticipatory or unearned profits, loss of profit on related contracts, loss of business opportunity, loss of reputation, claims of taxpayers and other indirect damage within the contemplation of the parties at the time of execution of this Agreement.

21.6.2 Exceptions to Waiver. The exclusion of consequential damages set forth in Section 21.6.1 shall not exclude or affect:

(a) Any liability for any type of damage or loss to the extent it is covered by the proceeds of insurance (i) required to be carried pursuant to Section 16, or (ii) actually carried by Developer under policies solely with respect to the Project and the Work, regardless of whether required to be carried pursuant to Section 16;

(b) Any liability, obligation, loss, damage, cost or expense arising out of illegal activities, fraud, criminal conduct, gross negligence or intentional misconduct on the part of TxDOT or any Developer-Related Entity;

(c) Developer's liability respecting indemnities set forth elsewhere in this Agreement or the other Contract Documents;

(d) Developer's obligation to pay any liquidated damages expressly provided for in the Contract Documents;

(e) Liability for other damages expressly provided for in the Contract Documents; and

(f) Any liability, obligation, loss, damage, cost or expense arising out of any Facility Agreement or any act or omission of any Developer-Related Entity or TxDOT regarding any Facility occurring after the Close of Finance for such Facility, as to which the provisions of the applicable Facility Agreements shall exclusively govern Developer-Related Entities' and TxDOT's respective liabilities for consequential damages and any limits thereon or waivers thereof.

SECTION 22. PARTNERING AND DISPUTE RESOLUTION

22.1 Partnering Process and Objectives

Developer and TxDOT, as well as those Subcontractors as may be selected from time to time, shall participate in partnering sessions at strategic points throughout the progress of the Project. The objectives of the partnering process are: (i) to identify potential problem areas early; (ii) to develop and implement procedures for resolving them in order to prevent them from becoming disputes; (iii) to achieve effective and efficient Project completion in accordance with the Project Milestones and Contract Documents; and (iv) to create mutual trust and respect for each party's respective roles in the Work process while recognizing the respective risks inherent in those roles. Early in the progress of the Work, specific interface issues, scope of work boundaries, division of responsibilities, communication channels, and application of alternative resolution principles shall be included in the partnering sessions. Later in the progress of the Work, the issues to be included in partnering sessions will be determined as needed.

22.1.1 Partnering Charter

Within 60 days after Project NTP1 is issued, TxDOT and Developer shall negotiate and sign a mutually acceptable partnering charter to govern the process of partnering for the Project. The charter shall include rules and guidelines for engagement in free and open communications, discussions and partnering meetings between them, in order to further the goals of the partnering process. The charter also shall include rules and guidelines on whether and under what circumstances to select and use the services of a facilitator, where and when to conduct partnering meetings, who should attend such meetings, and admissibility into evidence of statements, materials and communications exchanged during partnering meetings. Partnering will be encouraged in preference to formal dispute resolution mechanisms.

22.1.2 Confidentiality

Subject to the requirements of the Public Information Act, neither the language of this Section 22.1.2 nor any statements made or materials prepared during or relating to partnering meetings, including any statements made or documents prepared by any facilitator, shall be admissible or discoverable in any judicial or other dispute resolution proceeding.

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

22.2.1 Dispute Resolution Procedures. If partnering fails to resolve an issue and either party elects to pursue a formal Dispute with the other party, the Dispute shall be resolved pursuant to Texas Transportation Code Section 201.112, the TxDOT contract claims rules (43 TAC Section 9.2) and the applicable Dispute Resolution Procedures established thereunder, as the same may be amended from time to time. The Dispute Resolution Procedures are set forth in Exhibit M to this Agreement.

Section 9.6 of TxDOT's contract claims rules shall not apply to this Agreement or claims or Disputes arising hereunder.

22.2.2 Matters Ineligible for Dispute Resolution Procedures. Section 22 shall not apply to: (i) claims that are not actionable against TxDOT by Developer on its own behalf or on behalf of any of its Subcontractors in accordance with Section 22.3; (ii) claims arising solely in tort; (iii) claims for indemnity under Section 17; (iv) claims for injunctive relief; (v) claims against insurance companies, including any Subcontractor Dispute that is covered by insurance; (vi) any Dispute based on remedies expressly created by statute; (vii) any Dispute that is actionable only against a bonding company; or (viii) any claim or Dispute for which Developer may seek mandamus pursuant to Texas Transportation Code Section 223.208.

22.2.3 Dispute Resolution Procedures for Facility Agreements. Disputes arising under any Facility Agreements shall be governed by the dispute resolution procedures negotiated by the parties to, and set forth in the Facility Agreement.

22.3 Dispute Resolution: Additional Requirements for Subcontractor Disputes

For purposes of this Section 22, a "**Subcontractor Dispute**" shall include any Dispute by a Subcontractor, including also any pass-through claims by a lower tier Subcontractor, against Developer that is actionable by Developer against TxDOT, arises from the Work and is provided for under the Contract Documents. If Developer determines to pursue a Dispute against TxDOT that includes a Subcontractor Dispute, the following additional conditions shall apply:

(a) Developer shall identify clearly in all submissions pursuant to this Section 22, that portion of the Dispute that involves a Subcontractor Dispute.

(b) Failure of Developer to assert a Subcontractor Dispute on behalf of any Subcontractor at the time of submission of a related claim by Developer shall constitute a release and discharge of TxDOT by Developer on account of, and with respect to, such Subcontractor Dispute.

(c) Developer shall require in all Subcontracts that all Subcontractors of any tier: (i) agree to submit Subcontractor Disputes to Developer in a proper form and in sufficient time to allow processing by Developer in accordance with this Section 22; (ii) agree to be bound by the terms of this Section 22 to the extent applicable to Subcontractor Disputes; (iii) agree that, to the extent a Subcontractor Dispute is involved, completion of all steps required under this Section 22 shall be a condition precedent to pursuit by the Subcontractor of any other remedies permitted by law, including institution of a lawsuit against Developer; and (iv) agree that the existence of a dispute resolution process for Disputes involving Subcontractor Disputes shall not be deemed to create any claim, right or cause of action by any Subcontractor against

TxDOT. The Subcontractors shall, at all times, have rights and remedies only against Developer.

22.4 Mediation or Other Alternative Dispute Resolution

Developer and TxDOT, by mutual agreement, may at any time refer the Dispute to mediation or any other form of alternative dispute resolution that is acceptable to all parties to the Dispute.

22.5 Subsequent Proceedings

22.5.1 Exclusive Jurisdiction and Venue

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

22.5.2 Admissibility of Disputes Resolution Proceedings

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

22.6 Continuation of Work

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

22.7 Records Related to Dispute

Throughout the course of any Work that is the subject of any Dispute, Developer shall keep separate and complete records as required by Section 23.2. These records shall be retained for a period of not less than five years from the date of resolution of the Dispute.

SECTION 23. DOCUMENTS AND RECORDS

23.1 Delivery of Financial Information

23.1.1 Developer shall deliver to TxDOT financial and narrative reports, statements, certifications, budgets and information as and when required under this Agreement or the other Contract Documents.

23.1.2 Developer shall furnish, or cause to be furnished, to TxDOT such information and statements as TxDOT may reasonably request from time to time for any purpose related to the Project, this Agreement or the other Contract Documents. In addition, Developer shall deliver to TxDOT, at the times specified below, the financial statements described in Sections 23.1.2.1 through 23.1.2.4, stated in United States Dollars and prepared in accordance with U.S. GAAP, for each Financially Responsible Entity. If the Financially Responsible Entity is a foreign corporation, joint venture, limited liability corporation or similar enterprise, then it can use either U.S. GAAP, home country GAAP, or international standards, such as International Financial Reporting Standards (IFRS), in the preparation of their financial statements and other such financial information. However, if the Financially Responsible Entity uses its home country GAAP or international standards, then it must reconcile its submitted financial statements and other such information with U.S. GAAP.

23.1.2.1 Within 30 days after the end of each accounting period for which the entity is required to report financial statements, a statement of each Financially Responsible Entity's Tangible Net Assets, executed by either the Chief Financial Officer or the certified public accountant for the Financially Responsible Entity and certified to be true and correct to the best knowledge and belief of the party signing;

23.1.2.2 Within 60 days after the end of each accounting period for which the entity is required to report financial statements, duplicate copies of the consolidated statement of earnings, balance sheet, and cash flow statement of the Financially Responsible Entity and its consolidated subsidiaries for such period, setting forth in comparative form the figures for the corresponding periods during the previous fiscal year, all in reasonable detail and certified as complete and correct, subject to changes resulting from year-end adjustments, by the chief financial officer of the Financially Responsible Entity;

23.1.2.3 Within 120 days after the end of each fiscal year, duplicate copies of the balance sheet and a consolidated statement of financial condition of the Financially Responsible Entity and its consolidated subsidiaries at the end of such year, and statements of earnings, changes in financial position of the Financially Responsible Entity and its consolidated subsidiaries for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and accompanied by an opinion thereon of an independent public accountant of recognized national standing selected by the Financially Responsible Entity, which opinion shall

state that such financial statements have been prepared or reconciled in accordance with U.S. GAAP, as required under Section 23.1.2, consistently applied (except for changes in application in which such accountants concur), and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards; and

23.1.2.4 Upon request of TxDOT for particular fiscal periods, copies of all reports filed by the Reporting Entity with the Securities Exchange Commission under Sections 13, 14 or 15(d) of the Securities Exchange Act of 1934, codified at 15 U.S.C. § 78a *et seq.*, as amended, to be provided to TxDOT as soon as practicable after filing such reports with the Securities and Exchange Commission.

23.1.3 Developer shall cooperate and provide, and shall cause the Subcontractors to cooperate and provide, such information as determined necessary or desirable by TxDOT in connection with any financing for the Project or Facilities. Without limiting the generality of the foregoing, Developer shall provide such information deemed necessary or desirable by TxDOT for inclusion in TxDOT's securities disclosure documents and in order to comply with Securities and Exchange Commission Rule 15c2-12 regarding certain periodic information and notice of material events. Developer shall provide customary representations and warranties to TxDOT and the capital markets as to the correctness, completeness and accuracy of any Developer information furnished.

23.1.4 Developer shall cooperate and provide, and shall cause the Subcontractors to cooperate and provide, such information as is necessary or requested by TxDOT to assist or facilitate the submission by TxDOT of any documentation, reports or analysis required by the State, USDOT, FHWA and/or any other Governmental Entity with jurisdiction over the Project.

23.1.5 All reports and information delivered by Developer under this Section 23.1 shall also be delivered electronically, to the extent electronic files exist, and be suitable for posting on the web.

23.2 Maintenance of, Access to and Audit of Records

23.2.1 Developer shall maintain at a Project administration office in Tarrant County, Texas a complete set of all books and records prepared or employed by Developer in connection with the Work and the Project. Developer shall grant to TxDOT such audit rights and shall allow TxDOT such access to and the right to copy such books and records as TxDOT reasonably deems necessary for purposes of verifying compliance with this Agreement and applicable Law.

23.2.2 Where the payment method for any Work is on a time and materials basis, such examination and audit rights shall include all books, records, documents and other evidence and accounting principles and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and

anticipated to be incurred for the performance of such Work. If an audit indicates Developer has been overpaid under a previous or progress payment, the excess payment will be credited against current progress payments.

23.2.3 All claims filed against TxDOT shall be subject to audit at any time following the filing of the claim. The audit may be performed by employees of TxDOT or by an auditor under contract with TxDOT. No notice is required before commencing any audit before 60 days after the expiration of the term of this Agreement. Thereafter, TxDOT shall provide 20 days notice to Developer, any Subcontractors or their respective agents before commencing an audit. Developer, Subcontractors or their agents shall provide adequate facilities, acceptable to TxDOT, for the audit during normal business hours. Developer, Subcontractors or their agents shall cooperate with the auditors. Failure of Developer, Subcontractors or their agents to maintain and retain sufficient records to allow the auditors to verify all or a portion of the claim or to permit the auditor access to the books and records of Developer, Subcontractors or their agents shall constitute a waiver of the claim and shall bar any recovery thereunder.

23.2.4 At a minimum, the auditors shall have available to them the following documents:

(a) Daily time sheets and supervisor's daily reports;

(b) Union agreements;

(c) Insurance, welfare, and benefits records;

(d) Payroll registers;

(e) Earnings records;

(f) Payroll tax forms;

(g) Material invoices and requisitions;

(h) Material cost distribution work sheet;

(i) Equipment records (list of company equipment, rates, etc.);

(j) Subcontractors' (including suppliers) invoices;

(k) Subcontractors' and agents' payment certificates;

(l) Canceled checks (payroll and suppliers);

(m) Job cost report;

(n) Job payroll ledger;

(o) General ledger;

(p) Cash disbursements journal;

(q) All documents that relate to each and every claim together with all documents that support the amount of damages as to each claim; and

(r) Work sheets used to prepare the claim establishing the cost components for items of the claim including labor, benefits and insurance, materials, equipment, Subcontractors, all documents that establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals.

23.2.5 Full compliance by Developer with the provisions of this Section 23.2 is a contractual condition precedent to Developer's right to seek relief under Section 22.

23.2.6 Developer represents and warrants the completeness and accuracy of all information it or its agents provides in connection with Section 23.1 and this Section 23.2 and shall cause all Subcontractors to warrant the completeness and accuracy of all information such Subcontractors provide in connection with Sections 23.1 and 23.2.

23.3 Retention of Records

Developer shall maintain in Tarrant County, Texas all records and documents relating to the Work, including copies of all original documents delivered to TxDOT until five years after the expiration of the term of this Agreement or the termination of this Agreement, whichever is applicable. Developer shall notify TxDOT where such records and documents are kept. Notwithstanding the foregoing, all records which relate to Disputes being processed or actions brought under the dispute resolution provisions hereof shall be retained and made available until such actions and Disputes have been finally resolved. Records to be retained include all books, electronic information and files and other evidence bearing on Developer's costs under the Contract Documents. Developer shall make these records and documents available for audit and inspection to TxDOT, at Developer's offices in Tarrant County, Texas, at all reasonable times, without charge, and shall allow such Persons to make copies of such documents, at no expense to Developer. If approved by TxDOT, photographs, microphotographs or other authentic reproductions may be maintained instead of original records and documents.

23.4 Public Information Act

23.4.1 Developer acknowledges and agrees that, except as provided by Section 223.204 of the Texas Transportation Code, all Deliverables, records, documents, drawings, plans, specifications and other materials in TxDOT's possession, including materials submitted by Developer, are subject to the provisions of the Public Information Act. If Developer believes information or materials submitted to TxDOT constitute trade secrets, proprietary information or other information that is not subject to the Public Information Act pursuant to Section 223.204 of the Code or is excepted from disclosure under the Public Information Act, Developer shall be solely responsible

for specifically and conspicuously designating that information by placing "CONFIDENTIAL" in the center header of each such page affected, as it determines to be appropriate. Any specific proprietary information, trade secrets or confidential commercial and financial information shall be clearly identified as such, and shall be accompanied by a concise statement of reasons supporting the claim. Nothing contained in this Section 23.4 shall modify or amend requirements and obligations imposed on TxDOT by the Public Information Act or other applicable Law, and the provisions of the Public Information Act or other Laws shall control in the event of a conflict between the procedures described above and the applicable Law. Developer is advised to contact legal counsel concerning such Law and its application to Developer.

23.4.2 If TxDOT receives a request for public disclosure of materials marked "CONFIDENTIAL," TxDOT will use reasonable efforts to notify Developer of the request and give Developer an opportunity to assert, in writing and at its sole expense, a claimed exception under the Public Information Act or other applicable Law within the time period specified in the notice issued by TxDOT and allowed under the Public Information Act. Under no circumstances, however, will TxDOT be responsible or liable to Developer or any other Person for the disclosure of any such labeled materials, whether the disclosure is required by Law, or court order, or occurs through inadvertence, mistake or negligence on the part of TxDOT or its officers, employees, contractors or consultants.

23.4.3 In the event of any proceeding or litigation concerning the disclosure of any material submitted by Developer to TxDOT, TxDOT's sole involvement will be as a stakeholder retaining the material until otherwise ordered by a court or such other authority having jurisdiction with respect thereto, and Developer shall be fully responsible for otherwise prosecuting or defending any action concerning the materials at its sole cost and risk; provided, however, that TxDOT reserves the right, in its sole discretion, to intervene or participate in the litigation in such manner as it deems necessary or desirable. Except in the case of TxDOT's voluntary intervention or participation in litigation, Developer shall pay and reimburse TxDOT within 30 days after receipt of written demand and reasonable supporting documentation for all costs and fees, including attorneys' fees and costs, incurred by TxDOT in connection with any litigation, proceeding or request for disclosure.

23.5 Ownership and Use of Documents

All Deliverables, data, sketches, charts, calculations, plans, specifications, electronic files, correspondence and other documents created or collected under the terms of the Contract Documents shall be considered "works made for hire" for which TxDOT owns the copyright. Deliverables shall become TxDOT's property upon preparation; and other documents prepared or obtained by Developer in connection with the performance of its obligations under the Contract Documents shall become the property of TxDOT upon Developer's preparation or receipt thereof. Copies of all Deliverables shall be furnished to TxDOT upon preparation or receipt thereof by Developer. Developer shall maintain all other documents described in this Section 23.5 in accordance with the

requirements of Section 23.3 and shall deliver copies to TxDOT as required by the Contract Documents or upon request if not otherwise required to be delivered.

SECTION 24. MISCELLANEOUS PROVISIONS

24.1 Amendments

The Contract Documents may be amended only by a written instrument duly executed by the parties or their respective successors or assigns.

24.2 Waiver

Either party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of the Contract Documents at any time shall not in any way limit or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision, any course of dealing or custom of the trade notwithstanding. Furthermore, if the parties make and implement any interpretation of the Contract Documents without documenting such interpretation by an instrument in writing signed by both parties, such interpretation and implementation thereof will not be binding in the event of any future disputes.

24.3 Independent Contractor

Developer is an independent contractor, and nothing contained in the Contract Documents shall be construed as constituting any relationship with TxDOT other than that of Project developer and independent contractor. In no event shall the relationship between TxDOT and Developer be construed as creating any relationship whatsoever between TxDOT and Developer's employees. Neither Developer nor any of its employees is or shall be deemed to be an employee of TxDOT. Except as otherwise specified in the Contract Documents, Developer has sole authority and responsibility to employ, discharge and otherwise control its employees and has complete and sole responsibility as a principal for its agents, for all Subcontractors and for all other Persons that Developer or any Subcontractor hires to perform or assist in performing the Work.

24.4 Successors and Assigns

24.4.1 The Contract Documents shall be binding upon and inure to the benefit of TxDOT and Developer and their permitted successors, assigns and legal representatives.

24.4.2 TxDOT may assign all or part of its right, title and interest in and to any Contract Documents, to (a) any public agency or public entity; (b) any bond trustee as security; and (c) others with the prior written consent of Developer.

24.4.3 Neither Developer nor any of its members or partners may, without the prior written consent of TxDOT in its sole discretion, voluntarily or involuntarily assign, convey, transfer, pledge, mortgage or otherwise encumber its rights or interests under the Contract Documents. No partner, joint venturer, member or shareholder of

Developer may assign, convey, transfer, pledge, mortgage or otherwise encumber its ownership interest in Developer without the prior written consent of TxDOT, which consent may be granted or withheld in TxDOT's sole discretion. Developer shall not change the legal form of its organization without the prior written consent of TxDOT, which consent may be granted or withheld in TxDOT's sole discretion.

24.5 Designation of Representatives; Cooperation with Representatives

24.5.1 TxDOT and Developer shall each designate an individual or individuals who shall be authorized to make decisions and bind the parties on matters relating to the Contract Documents ("**Authorized Representative**"). Exhibit N to this Agreement provides the initial Authorized Representative designations. Such designations may be changed by a subsequent writing delivered to the other party in accordance with Section 24.10.

24.5.2 Developer shall cooperate with TxDOT and all representatives of TxDOT designated as described above.

24.6 Survival

Developer's representations and warranties, the dispute resolution provisions contained in Section 22, the indemnifications and releases contained in Section 17, and all other provisions which by their inherent character should survive termination of this Agreement and/or completion of the Work under this Agreement, shall survive the termination of this Agreement and/or the completion of the Work under this Agreement.

24.7 Limitation on Third Party Beneficiaries

It is not intended by any of the provisions of the Contract Documents to create any third party beneficiary hereunder or to authorize anyone not a party hereto to maintain a suit for personal injury or property damage pursuant to the terms or provisions hereof, except to the extent that specific provisions (such as the warranty and indemnity provisions) identify third parties and state that they are entitled to benefits hereunder. Except as otherwise provided in this Section 24.7, the duties, obligations and responsibilities of the parties to the Contract Documents with respect to third parties shall remain as imposed by Law. The Contract Documents shall not be construed to create a contractual relationship of any kind between TxDOT and a Subcontractor or any Person other than Developer.

24.8 Personal Liability of TxDOT Employees; No Tort Liability

24.8.1 TxDOT's Authorized Representatives are acting solely as agents and representatives of TxDOT when carrying out the provisions of or exercising the power or authority granted to them under this Agreement. They shall not be liable either personally or as employees of TxDOT for actions in their ordinary course of employment.

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

24.8.3 In no event shall TxDOT be liable for injury, damage, or death sustained by reason of the actions, omissions, negligence, willful misconduct, or breach of applicable Law or contract by any Developer-Related Entity.

24.9 Governing Law

The Contract Documents shall be governed by and construed in accordance with the laws of the State.

24.10 Notices and Communications

24.10.1 Notices under the Contract Documents shall be in writing and: (i) delivered personally; (ii) sent by certified mail, return receipt requested; (iii) sent by a recognized overnight mail or courier service, with delivery receipt requested, or (iv) sent by facsimile or email communication followed by a hard copy and with receipt confirmed by telephone, to the following addresses (or to such other address as may from time to time be specified in writing by such Person):

All notices, correspondence and other communications to Developer shall be delivered to the following address or as otherwise directed by Developer's Authorized Representative:

Attn: Carlos Ugarte
7700 Chevy Chase Drive, Bldg. One, Suite 500C
Austin, Texas 78752-1562
Telephone: (512) 637-8545
Facsimile: (512) 637-1498
E-mail: cugarte@cintra.us.com

All notices, correspondence and other communications to TxDOT shall be marked as regarding the North Tarrant Express Project Segments 2 Through 4 and shall be delivered to the following address or as otherwise directed by TxDOT's Authorized Representative:

Texas Department of Transportation
125 E. 11th Street
Austin, TX 78701-2483
Attn: Mr. Edward Pensock
Telephone: (512) 936-0960
Facsimile: (512) 936-0970
E-mail: epensoc@dot.state.tx.us

In addition, copies of all notices regarding Disputes, and termination and default notices shall be delivered to the following person:

Texas Department of Transportation
Office of General Counsel
125 East 11th Street
Austin, Texas 78701
Attn: Office of General Counsel
Telephone: (512) 463-8630
Facsimile: (512) 475-3070
E-mail: jingram@dot.state.tx.us

24.10.2 Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U. S. Postal Service, private carrier or other Person making the delivery. Notwithstanding the foregoing, notices sent by facsimile after 4:00 p.m. Central Standard or Daylight Time (as applicable) and all other notices received after 5:00 p.m. shall be deemed received on the first business day following delivery (that is, in order for a fax to be deemed received on the same day, at least the first page of the fax must have been received before 4:00 p.m.). Any technical or other communications pertaining to the Work shall be conducted by Developer's Authorized Representative and technical representatives designated by TxDOT. Developer's representatives shall be available at all reasonable times for consultation. Except as otherwise provided in Section 24.5.1, each party's representative shall be authorized to act on behalf of such party in matters concerning the Work.

24.10.3 Developer shall copy TxDOT on all written correspondence pertaining to the Project between Developer and any Person other than Developer's Subcontractors, consultants and attorneys.

24.11 Severability

If any clause, provision, section or part of this Agreement is ruled invalid by a court having proper jurisdiction, then the parties shall: (i) promptly meet and negotiate a substitute for such clause, provision, section or part, which shall, to the greatest extent legally permissible, effect the original intent of the parties, including an equitable adjustment to Developer's compensation to account for any change in the Work resulting from such invalidated portion; and (ii) if necessary or desirable, apply to the court or other decision maker (as applicable) which declared such invalidity for an interpretation of the invalidated portion to guide the negotiations. The invalidity or unenforceability of any such clause, provision, section or part shall not affect the validity or enforceability of the balance of this Agreement, which shall be construed and enforced as if this Agreement did not contain such invalid or unenforceable clause, provision, section or part.

24.12 Headings

The captions of the sections of this Agreement are for convenience only and shall not be deemed part of this Agreement or considered in construing this Agreement.

24.13 Entire Agreement

The Contract Documents contain the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements, understandings, statements, representations and negotiations between the parties with respect to its subject matter.

24.14 Counterparts

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

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have executed this Agreement as of the date first written above.

Developer

NTE Mobility Partners Segments 2-4 LLC

By: _____
Name: Carlos Ugarte
Title: Authorized Representative

By: _____
Name: Joseph Aiello
Title: Authorized Representative

TxDOT

Texas Department of Transportation

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