

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

SEGMENTS 2 THROUGH 4

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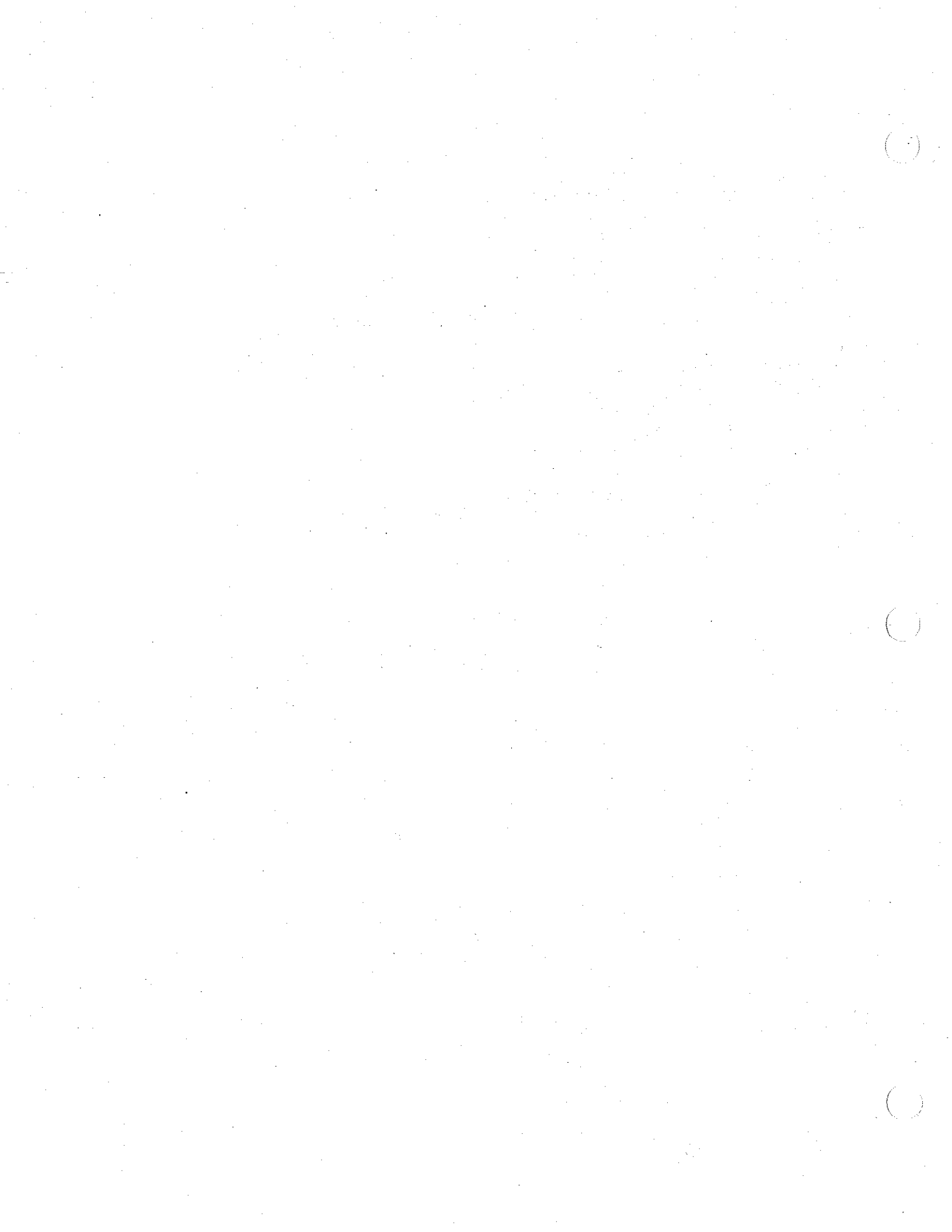
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COMPREHENSIVE DEVELOPMENT AGREEMENT

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