Comprehensive Development Agreement
State Highway 288 Toll Lanes in Harris County

Between
Texas Department of Transportation
and
Blueridge Transportation Group, LLC

Dated March 4, 2016

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COMPREHENSIVE DEVELOPMENT AGREEMENT
STATE HIGHWAY 288 TOLL LANES IN HARRIS COUNTY

This Comprehensive Development Agreement (together with its exhibits and as amended from time to time, the "**Agreement**") is entered into and effective as of March 4, 2016, by and between the Texas Department of Transportation, a public agency of the State of Texas ("**TxDOT**"), and Blueridge Transportation Group, LLC, a Delaware limited liability company ("**Developer**").

RECITALS

A. The State of Texas (the "**State**") desires to facilitate private sector investment and participation in the development of the State's transportation system via public-private partnership agreements, and has enacted Texas Transportation Code, Chapter 223, Subchapter E (the "**Code**"), and TxDOT has adopted Sections 27.1 through 27.10 of Title 43, Texas Administrative Code (the "**Rules**"), to accomplish that purpose.

B. Pursuant to the Code and the Rules, TxDOT issued a Request for Qualifications on May 3, 2013, as amended.

C. TxDOT received three responsive qualification submittals on August 2, 2013, and subsequently shortlisted three responsive proposers.

D. On January 31, 2014, TxDOT issued to the shortlisted proposers a Request for Proposals to Develop, Design, Construct, Finance, Operate and Maintain the TxDOT SH 288 Toll Lanes Project in Harris County (as subsequently amended by addenda, the "**RFP**").

E. On January 27, 2015 (the "**Financial Proposal Due Date**"), TxDOT received responses to the RFP, including the response of Developer (the "**Proposal**").

F. An RFP evaluation committee comprised of TxDOT staff determined that Developer was the proposer that best met the selection criteria contained in the RFP and that Developer's Proposal provided the best value to the State.

G. On February 26, 2015, the Commission accepted the recommendation of the Executive Director and the RFP evaluation committee and authorized TxDOT staff to negotiate this Agreement.

H. This Agreement and the other CDA Documents collectively constitute a comprehensive development agreement as contemplated under the Code and the Rules and are entered into in accordance with the provisions of the RFP.

I. The Executive Director has been authorized to enter into this Agreement pursuant to the Code, the Rules and the Commission Minute Order 114205.

NOW, THEREFORE, in consideration of the foregoing premises and the covenants and agreements set forth herein, the Parties hereby agree as follows:

PART A
THE TRANSACTION; FINANCING

ARTICLE 1
DEFINITIONS; CDA DOCUMENTS

1.1 Definitions. Definitions for the terms used in this Agreement and other CDA Documents are contained in Exhibit 1.

1.2 CDA Documents. The following documents (together, the "**CDA Documents**"), each of which is an essential part of the agreement between the Parties, are intended to be complementary and to be read together as a complete agreement: (a) this Agreement, including all exhibits and attachments and the executed originals of exhibits that are contracts; (b) the Technical Provisions; (c) any amendments to the foregoing; and (d) any Change Orders.

1.3 Order of Precedence. In the event of any conflict, ambiguity or inconsistency among the CDA Documents (a) later-in-time revisions to the CDA Documents, including Change Orders and amendments, shall prevail; and (b) subject to the foregoing, the provisions that establish the higher quality, manner or method of performing the Work (including statements, offers, terms, concepts or designs included in Developer's Proposal Schematics, Proposal Commitments and Alternative Technical Concepts set forth in Exhibit 7), establish better Good Industry Practice or use more stringent standards shall prevail. In the event of any conflict, ambiguity or inconsistency between the Project Management Plan and any of the CDA Documents, the latter shall take precedence and control. If either Party becomes aware of any such conflict, it shall promptly notify the other party of the conflict; TxDOT shall promptly resolve the conflict by notice to Developer in accordance with the terms hereof.

1.4 Custodial Accounts. As of the Effective Date, Developer and TxDOT have entered into the TxDOT Tolling Services Agreement. Pursuant to Section 4.1 of the TxDOT Tolling Services Agreement, the Parties shall enter into a joinder agreement in the form set out as Exhibit B to such agreement, pursuant to which TxDOT shall designate Developer to be a "Beneficiary" under the Master Lockbox and Custodial Account Agreement and acknowledge that the Collateral Agent shall be a "Secured Party" under the Master Lockbox and Custodial Account Agreement designated by Developer.

1.5 Reference Information Documents. TxDOT has provided the Reference Information Documents to Developer. The Reference Information Documents are not mandatory or binding on Developer. Developer is not entitled to rely on the Reference Information Documents as presenting design, engineering, operating or maintenance solutions or other direction, means or methods for complying with the requirements of the CDA Documents, Governmental Approvals or Law. 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. 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 CDA Documents, Governmental Approvals or Laws. Except as expressly set forth in clause (s) of the definition of Relief Event, Developer shall have no right to additional compensation or time extension based on any incompleteness or inaccuracy in the Reference Information Documents.

1.6 Approvals by TxDOT

1.6.1 Whenever the CDA Documents indicate that a matter is subject to TxDOT's approval, consent, acceptance, determination or decision, and no standard is otherwise provided, then such approval, acceptance, consent, determination or decision shall not be unreasonably withheld, conditioned or delayed. If TxDOT fails to notify Developer of its response to any such request within the applicable time period (or if no time period is provided with respect to the particular matter, then within 30 days after TxDOT receives the request), and if Developer notifies TxDOT of the delay within five days after the expiration of such time period and TxDOT still fails to notify Developer of its response within such five-day period, the delay caused from and after the expiration of such time period may constitute TxDOT-Caused Delay.

1.6.2 Whenever the CDA Documents indicate that a matter is subject to TxDOT's approval, acceptance, consent, determination or decision in TxDOT's discretion, then TxDOT's decision shall be final, binding and not subject to dispute resolution. TxDOT's failure to notify Developer of its response to any such request within the applicable time period shall be considered disapproval or denial of the request.

1.7 Approvals by Developer. Whenever the CDA Documents indicate that a matter is subject to Developer's approval, consent, determination or decision, and no standard is otherwise provided, then such approval, consent, determination or decision shall not be unreasonably withheld, conditioned or delayed. Whenever the CDA Documents indicate that a matter is subject to Developer's approval, consent, determination or decision in Developer's discretion, then Developer's decision shall be final, binding and not subject to dispute resolution.

1.8 Construction and Interpretation of the Agreement

1.8.1 Interpretation. The language in all parts of the CDA Documents shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any Party. The Parties acknowledge and agree that the CDA Documents are the product of an extensive and thorough, arm's length negotiation during the Proposal preparation process, that each Party has been given the opportunity to independently review the CDA Documents with legal counsel, and that each Party has the requisite experience and sophistication to negotiate, understand, interpret and agree to the provisions of the CDA Documents. Accordingly, in the event of an ambiguity in or Dispute regarding the interpretation of the CDA Documents, the CDA Documents shall not be interpreted or construed against the Party preparing them, and instead other rules of interpretation and construction shall be utilized. TxDOT's final answers to the questions posed during the Proposal preparation process for this Agreement shall not be deemed part of the CDA Documents and shall not be relevant in interpreting the CDA Documents except as they may clarify provisions otherwise considered ambiguous.

1.8.2 Number and Gender. In this Agreement, terms defined in the singular have the corresponding plural meaning when used in the plural and vice versa, and words in one gender include all genders.

1.8.3 Headings. The division of this Agreement into parts, articles, sections and other subdivisions is for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The headings in this Agreement are not intended to be full or precise descriptions of the text to which they refer and shall not be considered part of this Agreement.

1.8.4 References to this Agreement. The words "herein", "hereby", "hereof", "hereto" and "hereunder" and words of similar import refer to this Agreement as a whole and not to any particular

portion of it. The words "Article", "Section", "paragraph", "sentence", "clause" and "Exhibit" mean and refer to the specified article, section, paragraph, sentence, clause or exhibit of, or to, this Agreement. A reference to a subsection or clause "above" or "below" refers to the denoted subsection or clause within the Section in which the reference appears.

1.8.5 References to Agreements and Other Documents. Unless specified otherwise, a reference to an agreement or other document is considered to be a reference to such agreement or other document (including any schedules or exhibits thereto) as it may be amended, modified or supplemented from time to time in accordance with its terms.

1.8.6 References to Any Person. A reference in this Agreement to any Person at any time refers to such Person's permitted successors and assigns.

1.8.7 Meaning of Including. In this Agreement, the word "including" (or "include" or "includes") means "including without limitation" and shall not be considered to set forth an exhaustive list.

1.8.8 Meaning of Discretion. In this Agreement, the word "discretion" with respect to any Person means the sole and absolute discretion of such Person.

1.8.9 Notice, Approval, Etc., in Writing. Whenever the CDA Documents require or provide for any notice, approval, consent, acceptance, determination, decision, certificate, certification, order, waiver, explanation, policy, information or the like, the same and any request therefor must be in writing (unless otherwise waived in writing by the other Party).

1.8.10 Meaning of Promptly. In this Agreement, the word "promptly" means as soon as reasonably practicable in light of then-prevailing circumstances.

1.8.11 Trade Meanings. Unless otherwise defined herein, words or abbreviations that have well-known trade meanings are used herein in accordance with those meanings.

1.8.12 Laws. Unless specified otherwise, a reference to a Law is considered to be a reference to (a) such Law as it may be amended, modified or supplemented from time to time, (b) all regulations and rules pertaining to or promulgated pursuant to such Law, (c) the successor to the Law resulting from recodification or similar reorganizing of Laws and (d) all future Laws pertaining to the same or similar subject matter.

1.8.13 Currency. Unless specified otherwise, all statements of or references to dollar amounts or money in this Agreement are to the lawful currency of the United States of America.

1.8.14 Time. Unless specified otherwise, all references to time are to local time in Austin, Texas.

ARTICLE 2
GRANT OF CONCESSION; TERM

2.1 Grant of Concession. Pursuant to the provisions of the Code and subject to the terms and conditions of the CDA Documents and the Principal Project Documents (including the issuance of NTP1 and NTP2, the receipt of Governmental Approvals, and TxDOT's sole ownership of fee simple title to the

Project and Project Right of Way and all improvements constructed thereon), TxDOT hereby grants to Developer the exclusive right, and Developer accepts the obligation (a) to finance, develop, design and construct the Project described in Section 1 of the Technical Provisions, to perform Upgrades, and to enter into the Lease in the form attached as Exhibit 3 for the Project and Project Right of Way; (b) to use, manage, operate, maintain and repair the Project and to perform Renewal Work and Upgrades during the Operating Period; and (c) to toll the Toll Lanes of each Project Segment commencing on the Service Commencement Date for that Project Segment and ending at the end of the Term. After issuance of NTP1, Developer and its authorized Developer-Related Entities shall have the right and license to enter onto Project Right of Way and other lands owned by TxDOT for purposes of carrying out its obligations under the CDA Documents.

2.2 Term of Concession. This Agreement shall take effect on the Effective Date and shall remain in effect until expiration or termination of the Lease, unless earlier terminated in accordance with the terms of this Agreement (the "**Term**").

2.3 Effectiveness of Lease. TxDOT and Developer shall enter into the Lease as of the Operating Commencement Date. As of such date, but not before then, and as a ministerial act, TxDOT and Developer shall date the Lease and Memorandum of Lease, obtain acknowledgment of their signatures on the Memorandum of Lease by a Texas notary public, attach all legal descriptions pertaining to the Project and each Party shall deliver to the other Party, and the other Party shall accept, the Lease and Memorandum of Lease, whereupon the Lease shall take effect. Developer, at its expense, shall have the right to record the Memorandum of Lease upon its delivery to Developer, and shall promptly deliver to TxDOT a conformed copy of the Memorandum of Lease bearing all recording information.

2.4 Term of Lease. The Lease shall take effect upon the Operating Commencement Date and shall remain in effect until the 52nd anniversary of the Effective Date, unless earlier terminated in accordance with the terms of this Agreement or extended pursuant to Section 27.1.3.

2.5 Treatment for Tax Purposes. To the maximum extent permitted by Law, Developer shall be treated as the owner for federal income tax purposes of such portion of the Project for which Developer is not reimbursed its total capital improvement costs by the TMC Public Funds Payment or (if applicable) the Public Funds Payments. The payment of the TMC Public Funds Payment and (if applicable) the Public Funds Payments by TxDOT to Developer is reimbursement of the portion of Developer's total capital improvement costs of the Project that are expended by Developer on behalf of, and for the benefit of, TxDOT and shall not be treated as compensation or consideration of any kind paid by TxDOT to Developer for federal income tax purposes. TxDOT will not file any documentation with the United States government inconsistent with this Section 2.5.

ARTICLE 3
FINANCING; REFINANCING

3.1 Developer's Responsibility to Finance. Except for the TMC Public Funds Payment and the Public Funds Payments (if applicable), and as may otherwise be provided herein, Developer is solely responsible for obtaining and repaying all financing, at its own cost and risk and without recourse to TxDOT, necessary for the acquisition, design, permitting, development, construction, equipping, operation, maintenance, modification, reconstruction, rehabilitation, restoration, renewal and replacement of the Project and for the Utility Adjustment Work. Developer will pursue the necessary financing in accordance with the Project Plan of Finance. Subject to Section 3.6, Developer exclusively bears the risk of any changes in the interest rate, payment provisions or the other financing terms.

3.2 No TxDOT Liability

3.2.1 TxDOT shall have no obligation to pay debt service on any debt issued or incurred in connection with the Project or this Agreement. TxDOT shall have no obligation to join in, execute or guarantee any note or other evidence of indebtedness incurred in connection with the Project or this Agreement, any other Funding Agreement or any Security Document.

3.2.2 None of the State, TxDOT, the Commission or any other agency, instrumentality or political subdivision of the State, and no board member, director, officer, employee, agent or representative of any of them, has any liability whatsoever for payment of the principal sum of any Project Debt, any other obligations issued or incurred by any Person described in Section 3.5.2(b) in connection with this Agreement, the Lease or the Project, or any interest accrued thereon or any other sum secured by or accruing under any Funding Agreement or Security Document. Except for a violation by TxDOT of its express obligations to Lenders set forth in any Lenders' Direct Agreement and except as set forth in Section 14.4.3(c), no Lender is entitled to seek any damages or other amounts from TxDOT, whether for Project Debt or any other amount. TxDOT's review of any Funding Agreements or Security Documents or other Project financing documents (a) is not a guaranty or endorsement of the Project Debt, any other obligations issued or incurred by any Person described in Section 3.5.2(b) in connection with this Agreement, the Lease or the Project, or any traffic and revenue study, and (b) is not a representation, warranty or other assurance as to the ability of any such Person to perform its obligations with respect to the Project Debt or any other obligations issued or incurred by such Person in connection with this Agreement, the Lease or the Project, or as to the adequacy of the Toll Revenues to provide for payment of the Project Debt or any other obligations issued or incurred by such Person in connection with this Agreement, the Lease or the Project. For the avoidance of doubt, the foregoing does not affect TxDOT's liability to Developer for Termination Compensation that is measured in whole or in part by outstanding Project Debt or the obligations of the PABs Issuer under any Funding Agreement.

3.2.3 TxDOT shall not have any obligation to any Lender pursuant to this Agreement, except, if the Collateral Agent has notified TxDOT of the existence of its Security Documents, for the express obligations to Lenders set forth in any Lenders' Direct Agreement and Section 14.4.3(c). The foregoing does not preclude Lender enforcement of this Agreement against TxDOT where the Lender has succeeded to the rights, title and interests of Developer under the CDA Documents, whether by way of assignment or subrogation.

3.3 Financial Close

3.3.1 Financial Close Deadline. Unless Developer or TxDOT elects to terminate this Agreement pursuant to Sections 3.4.3 and 31.6, Developer shall be unconditionally obligated to enter into the Initial Funding Agreements and Initial Security Documents (including the PABs Agreement if the initial Project Plan of Finance includes PABs) and complete closing for all the Initial Project Debt (including any sub-debt), in a total amount, which, when combined with all unconditional equity commitments acceptable to the Collateral Agent and any TMC Public Funds Payment and (if applicable) the Public Funds Payments, is not less than the total capital funding set forth in Exhibit 4, by not later than the Financial Close Deadline. Notwithstanding any other provision of this Agreement to the contrary, the Financial Close Deadline may not be extended, including on account of any Relief Event, except in the following circumstances: (a) the Financial Close Deadline shall be extended by the period of delay in Developer's ability to achieve Financial Close directly caused by a Relief Event described in clauses (d), (e), (f), (g), (m), (n) or (o) of the definition thereof or by a Force Majeure Event described in clauses (a) or (c) of the definition thereof; (b) the Financial Close Deadline shall be extended until December 23, 2015, as requested by Developer and reasonably approved by TxDOT, which approval shall not be withheld if the delay in Developer's ability to achieve Financial Close is not due to any fault

or less-than-diligent efforts of Developer; (c) the Financial Close Deadline shall be extended until January 22, 2016, as requested by Developer and reasonably approved by TxDOT, which approval shall not be withheld if the delay in Developer's ability to achieve Financial Close is not due to any fault or less-than-diligent efforts of Developer; and (d) the Financial Close Deadline may be extended by TxDOT in its discretion; *provided* that Developer shall, as a condition to any extension pursuant to this Section 3.3.1, extend the expiration of the Financial Close Security so that such security remains valid for at least 10 days after the Financial Close Deadline (as extended) (Developer shall be entitled to reimbursement from TxDOT for Developer's reasonable costs to extend the expiration of the Financial Close Security).

3.3.2 Deliveries Prior to Financial Close. Developer shall deliver to TxDOT for review and comment (as to compliance with the CDA Documents and applicable Law) drafts of those proposed Initial Funding Agreements and Initial Security Documents that will contain the material commercial terms relating to the Initial Project Debt, together with a draft updated Base Case Financial Model, concurrently with delivery thereof to other third parties involved in the review of such agreements and documents.

3.3.3 Conditions Precedent to Financial Close. Developer has not achieved Financial Close unless all of the following conditions have been satisfied (or expressly waived by TxDOT in TxDOT's discretion) and Developer has provided notice thereof to TxDOT:

(a) Developer has satisfied all of the conditions for commercial close delineated in the ITP;

(b) Developer has delivered to TxDOT substantially final drafts of those proposed Initial Funding Agreements and Initial Security Documents that will contain the material commercial terms relating to the Initial Project Debt not later than 10 days prior to the proposed date for Financial Close;

(c) TxDOT has received an update of the Base Case Financial Model and an update of the audit and opinion obtained from the independent model auditor that provided to TxDOT an opinion on suitability of the Base Case Financial Model, which update shall be in accordance with the provisions of Section 4.3.3;

(d) Developer has delivered to TxDOT true and complete executed copies of the Lenders' Direct Agreement and the D&C Direct Agreement, if any;

(e) All applicable parties have entered into and delivered the Initial Funding Agreements and Initial Security Documents (other than minor ancillary documents normally delivered after financial closing and containing no new material commercial terms) meeting the requirements of Section 4.3.1 and Developer has delivered to TxDOT true and complete copies of the executed Initial Funding Agreements and Initial Security Documents (other than minor ancillary documents normally delivered after Financial Close and containing no new material commercial terms); and

(f) Developer has remitted the Concession Payment under Section 4.1, if applicable.

3.3.4 Warranty and Representation as of Financial Close. As of Financial Close, Developer warrants and represents that it has delivered to TxDOT true, correct and complete copies of the Initial Funding Agreements and Initial Security Documents (other than minor ancillary documents normally delivered after financial closing and containing no new material commercial terms) and that, as of the Financial Close, there exists no breach or default, and there have been no events which with notice or the passage of time (or both) would constitute a breach or default, by Developer or any Affiliate thereunder.

3.3.5 Date of Financial Close. Financial Close shall be achieved on the date when all of the conditions precedent thereto have been satisfied. The date shall be memorialized in a certificate or other written documentation provided by TxDOT to Developer.

3.3.6 TxDOT Deliveries at Financial Close. TxDOT shall deliver to Developer updated opinions from the Office of General Counsel and Mayer Brown LLP in substantially the forms delivered pursuant to Section 5.14 of the ITP.

3.3.7 Deliveries after Financial Close. Within two Business Days after the date of Financial Close and payment of any Concession Payment, TxDOT shall return to Developer the original of the Financial Close Security. Within 30 days after the date of Financial Close, Developer shall deliver copies of any ancillary supporting documents (e.g., UCC filing statements) to TxDOT.

3.4 Failure to Achieve Financial Close

3.4.1 Developer Default. The failure to achieve Financial Close by the Financial Close Deadline, unless such failure is directly attributable to an Excuse from Closing, shall be considered a Developer Default (for which TxDOT may give notice and seek liquidated damage and termination remedies under Section 29.5.6 and terminate this Agreement under Section 31.3.1).

3.4.2 Other Failures. An "Excuse from Closing" shall occur if Financial Close does not occur by the Financial Close Deadline and such failure is directly attributable to:

(a) If the initial Project Plan of Finance includes PABs, the refusal or unreasonable delay of the PABs Issuer to issue PABs in the amount that Developer's underwriters are prepared to underwrite; *provided* that (i) such refusal or delay is not due to any fault or less-than-diligent efforts of Developer (including Developer's failure to satisfy all requirements that it is obligated to satisfy under the PABs Agreement) and (ii) Developer's financing schedule provides the PABs Issuer customary time periods for carrying out the ordinary and necessary functions of a conduit issuer of tax-exempt bonds;

(b) If the initial Project Plan of Finance includes PABs, the refusal or unreasonable delay of the PABs Issuer's counsel to allow closing of the PABs; *provided* that (i) bond counsel is ready to give an unqualified opinion regarding the validity of the issuance of the PABs and the tax exempt status of interest paid on the PABs, (ii) the basis for such refusal is not that it would be unreasonable for bond counsel to deliver the opinion and (iii) Developer's financing schedule provides the PABs Issuer's counsel customary time periods for carrying out the ordinary and necessary functions of counsel to a conduit issuer of tax-exempt bonds;

(c) If the initial Project Plan of Finance includes PABs, (i) the failure of the PABs Issuer or TxDOT to comply with the terms of the PABs Agreement, (ii) the expiration of the USDOT-approved PABs allocation despite Developer's commercially reasonable efforts to obtain an extension of the PABs allocation or (iii) the withdrawal, rescission or revocation of the USDOT-approved PABs allocation, or the reduction of such allocation to an amount less than the amount of PABs included in the Project Plan of Finance, by USDOT; *provided* that, in all such cases, the failure to achieve Financial Close is directly caused by such occurrence, and such occurrence is not due to any fault of Developer (including Developer's failure to satisfy any conditions precedent to the use of the PABs allocation);

(d) If TIFIA financing is included in the initial Project Plan of Finance, (i) the failure of the TIFIA Joint Program Office to provide credit assistance to Developer (including a decision by the TIFIA Joint Program Office to decline to invite Developer to apply for TIFIA financing), or the determination by TxDOT that such a decision is reasonably likely to occur, due to no direct fault of

Developer or any Developer-Related Entity or Developer's agents or advisors, (ii) the insistence by the TIFIA Joint Program Office that, as determined by TxDOT, the loan agreement include terms that (1) are inconsistent with the Conditional TIFIA Term Sheet, other than terms requested or insisted by the TIFIA Joint Program Office during negotiations with Developer in response to the Project Plan of Finance, and (2) have a material adverse effect on Developer relative to the terms included in the Conditional TIFIA Term Sheet, (iii) the imposition by the TIFIA Joint Program Office pursuant to footnote 1 of the Conditional TIFIA Term Sheet of a downside rating case that, as determined by TxDOT (1) differs from the downside rating case of a Rating Agency providing an investment grade rating on the Initial Senior Obligations, as defined in the Conditional TIFIA Term Sheet, and (2) has a material adverse effect on Developer, or (iv) the failure of the TIFIA Joint Program Office to work diligently and reasonably towards achieving Financial Close by the Financial Close Deadline (including unreasonable negotiation); but, in any such case described in clause (i), (ii), (iii) or (iv) above, only so long as Developer (1) is in compliance with all applicable federal statutes and rules with respect to TIFIA financing, (2) has used diligent and reasonable efforts to achieve Financial Close, including negotiating in good faith mutually agreeable terms and conditions with the TIFIA Joint Program Office and furnishing all required information and credit ratings in a timely manner, and (3) has satisfied, or is able and prepared to satisfy by or at Financial Close, all conditions precedent for the TIFIA financing set forth in the Conditional TIFIA Term Sheet and/or loan agreement (other than conditions outside of the control of Developer).

(e) An Unaffordability Determination is made by TxDOT prior to Financial Close;

(f) The issuance of a temporary restraining order or other form of injunction by a court with jurisdiction that (i) (1) prohibits prosecution of any portion of the Work or (2) invalidates any clause, provision, section or part of the CDA Documents without which there is no interpretation or reformation of the CDA Documents that can reasonably be adopted which will return the Parties to the benefits of their original bargain and (ii) remains pending on the Financial Close Deadline (for the avoidance of doubt, as extended pursuant to Section 3.3.1);

(g) The existence of litigation challenging a NEPA Approval that is filed before lapse of the applicable statute of limitations and remains pending as of the Financial Close Deadline (for the avoidance of doubt, as extended pursuant to Section 3.3.1); or

(h) A drop in the State's credit rating below A+ from Standard & Poor's and A2 from Moody's.

3.4.3 Termination for Excused Reasons. Subject to Section 3.4.4, Developer or TxDOT may terminate this Agreement pursuant to Section 31.6 if Financial Close does not occur by the Financial Close Deadline and such failure is directly attributable an Excuse from Closing. Such termination shall be without fault, Claim, penalty or Termination Compensation, other than the Termination Compensation expressly set out in Section 31.6.3. Upon such termination, all the CDA Documents and the Independent Engineer Agreement shall be deemed terminated (except for provisions of this Agreement that survive termination), and TxDOT shall promptly return to Developer the original of the Financial Close Security).

3.4.4 Notice; Mitigation Efforts. Following the delivery of any notice to terminate this Agreement under Section 31.6, TxDOT and Developer shall engage in good faith negotiations for up to 30 days as to means of proceeding to Financial Close in light of the adverse circumstances giving rise to the termination right. As appropriate, the Parties shall consider alternative financing sources, including an alternative project debt competition. With respect to an Unaffordability Determination, the Parties shall also consider sharing or incorporating some or all of the net change contemplated by Sections 3.6.1 and 3.6.2. Each Party may act in its own discretion in determining whether to consent to a proposed change to this Agreement intended to mitigate such adverse circumstances and avoid termination.

3.5 Project Debt and Security Interests; Mandatory Terms

3.5.1 Developer may grant security interests in or assign the entire Developer's Interest (but not less than the entire Developer's Interest) to Lenders or the Collateral Agent, for the benefit of the Lenders, for purposes of securing the Project Debt, subject to the terms and conditions contained in this Agreement and the Lease. Developer is strictly prohibited from pledging or encumbering the Developer's Interest, or any portion thereof, to secure any indebtedness of any Person other than indebtedness of (a) Developer, (b) any special purpose entity that owns Developer but no other assets and has powers limited to Developer, the Project and the Work, (c) a special purpose entity that is a subsidiary owned by Developer or an entity described in clause (b) or (d) the PABs Issuer. Notwithstanding the foreclosure or other enforcement of any security interest created by a Security Document, Developer shall remain liable to TxDOT for the payment of all sums owing to TxDOT, and the performance and observance of all of Developer's covenants and obligations, under this Agreement and the Lease.

3.5.2 Project Debt, Funding Agreements and Security Documents, and any amendments or supplements thereto, shall comply with the following terms and conditions:

(a) The Security Documents may only secure Project Debt the proceeds of which are obligated to be used exclusively for the purposes of (i) acquiring, designing, permitting, building, constructing, improving, equipping, modifying, operating, maintaining, reconstructing, restoring, rehabilitating, renewing or replacing the Project, performing the Utility Adjustment Work or the Renewal Work, or performing other Work, (ii) paying interest and principal on other existing Project Debt, (iii) paying reasonable development fees to Developer-Related Entities or to the Design-Build Contractor or its affiliates for services related to the Project, (iv) paying fees and premiums to any Lender of the Project Debt or such Lender's agents in consideration for such Project Debt or the commitment thereof, (v) paying costs and fees in connection with the closing of any permitted Project Debt or in connection with any amendment or administration of the Funding Agreements or Security Documents or in connection with the enforcement or preservation of the rights of the Lenders or the Collateral Agent under the Funding Agreements or Security Documents, (vi) making payments due under the CDA Documents to TxDOT or any other Person, (vii) funding reserves required under this Agreement, Funding Agreements or Security Documents, applicable securities laws, or Environmental Laws, (viii) making Distributions, but only from the proceeds of Refinancings permitted under this Agreement and (ix) refinancing any Project Debt previously incurred for such purposes.

(b) The Security Documents may only secure Project Debt and Funding Agreements issued and executed by (i) Developer, (ii) its permitted successors and assigns, (iii) a special purpose entity that owns Developer but no other assets and has purposes and powers limited to the Project and the Work, (iv) any special purpose subsidiary wholly owned by Developer or such entity or (v) the PABs Issuer.

(c) Project Debt under a Funding Agreement and secured by a Security Document must be issued and held only by Institutional Lenders who qualify as such at the date the Security Document is executed and delivered (or, if later, at the date any such Institutional Lender becomes a party to the Security Document), except that (i) qualified investors other than Institutional Lenders may acquire and hold interests in Project Debt in connection with the securitization or syndication of Project Debt through a public or private offering, but only if an Institutional Lender acts as Collateral Agent for such Project Debt, (ii) PABs may be issued, acquired and held by parties other than Institutional Lenders but only if an Institutional Lender acts as indenture trustee for the PABs and (iii) Subordinate Debt is not subject to this provision.

(d) The Security Documents as a whole securing each separate issuance of debt shall encumber the entire Developer's Interest; *provided* that the foregoing does not preclude subordinate Security Documents or equipment lease financing.

(e) No Security Document or other instrument purporting to mortgage, pledge, encumber, or create a lien, charge or security interest on or against Developer's Interest shall extend to or affect the fee simple interest of TxDOT in the Project or the Project Right of Way or TxDOT's rights or interests under the CDA Documents.

(f) Each note, bond or other negotiable or non-negotiable instrument evidencing Project Debt, or evidencing any other obligations issued or incurred by any Person described in Section 3.5.2(b) in connection with this Agreement, the Lease or the Project must include, or refer to a document controlling or relating to the foregoing that includes, a conspicuous recital to the effect that payment of the principal thereof and interest thereon is a valid claim only as against the obligor and the security pledged by Developer or the obligor therefor, is not an obligation, moral or otherwise, of the State, TxDOT, the Commission, any other agency, instrumentality or political subdivision of the State, or any elected official, board member, director, officer, employee, agent or representative of any of them, and neither the full faith and credit nor the taxing power of the State, TxDOT, the Commission or any other agency, instrumentality or political subdivision of the State is pledged to the payment of the principal thereof and interest thereon.

(g) Each Funding Agreement and Security Document containing provisions regarding default by Developer shall require, or incorporate a requirement by reference to another Funding Agreement or Security Document that requires, that if Developer is in default thereunder and the Collateral Agent gives notice of such default to Developer, then the Collateral Agent shall also give concurrent notice of such default to TxDOT. Each Funding Agreement and Security Document that provides Lender remedies for default by Developer or the borrower shall require that the Collateral Agent deliver to TxDOT, concurrently with delivery to Developer or any other Person, every notice of election to sell, notice of sale or other notice required by Law or by the Security Document in connection with the exercise of remedies under the Funding Agreement or Security Document.

(h) No Funding Agreement or Security Document that may be in effect during any part of the period during which the Handback Requirements apply shall grant to the Lender any right to apply funds in the Handback Requirements Reserve or to apply proceeds from any Handback Requirements Letter of Credit to the repayment of Project Debt, to any other obligation owing the Lender or to any other use except the uses set forth in Section 20.2.4, and any provision purporting to grant such right shall be null and void; *provided, however*, that (i) any Lender or Substituted Entity shall, following foreclosure or transfer in lieu of foreclosure, automatically succeed to all rights, claims and interests of Developer in and to the Handback Requirements Reserve and (ii) an exception may be made for excess funds described in Section 20.2.5(b).

(i) Each relevant Funding Agreement and Security Document that may be in effect during any part of the period during which the Handback Requirements apply shall permit, without condition or qualification, or incorporate permission by reference to another Funding Agreement or Security Document that permits, without condition or qualification, Developer (i) to use and apply funds in the Handback Requirements Reserve in the manner contemplated by the CDA Documents, and (ii) to issue additional Project Debt, secured by the Developer's Interest, for the added limited purposes of funding work pursuant to Handback Requirements and Safety Compliance as set forth in Section 25.5 and (iii) to otherwise comply with its obligations in the CDA Documents regarding Renewal Work, the Renewal Work Schedule, the Handback Requirements and the Handback Requirements Reserve. Subject to the foregoing, any protocols, procedures, limitations and conditions concerning draws from the

Handback Requirements Reserve set forth in any Funding Agreement or Security Document or the issuance of additional Project Debt as described in clause (ii) shall be consistent with the permitted uses of the Handback Requirements Reserve and shall not constrain Developer's or TxDOT's access thereto for such permitted uses, even during the pendency of a default under the Funding Agreement or Security Document. For the avoidance of doubt, (1) the Lenders then holding Project Debt may reasonably limit additional Project Debt if other funds are then readily available to Developer for the purpose of funding the Work; (2) no Lender then holding Project Debt is required hereby to grant *pari passu* lien or payment status to any such additional Project Debt; and (3) the Lenders then holding Project Debt may impose reasonable, customary requirements as to performance and supervision of the Work.

(j) Each Funding Agreement and Security Document shall state, or incorporate a statement by reference to another Funding Agreement or Security Document that states, that the Lender shall not name or join TxDOT, the Commission, any other agency, instrumentality or political subdivision of the State, or any elected official, board member, director, officer, employee, agent or representative of any of them in any legal proceeding seeking collection of the Project Debt or other obligations secured thereby or the foreclosure or other enforcement of the Funding Agreement or Security Document, unless and except to the extent that (i) joinder of TxDOT as a necessary party is required by applicable Law in order to confer jurisdiction on the court over the dispute with Developer or to enforce Lender remedies against Developer and (ii) the complaint against TxDOT states no claim or cause of action for a lien or security interest on, or to foreclose against, TxDOT's right, title and interest in and to the Project and Project Right of Way, or for any liability of TxDOT on the indebtedness. For clarity, this Section 3.5.2(j) is not intended to limit suits for damages or amounts due to the extent explicitly permitted by clauses (i) and (ii) of Section 3.5.2(k).

(k) Each Funding Agreement and Security Document shall state, or incorporate a statement by reference to another Funding Agreement or Security Document that states, that the Lender shall not seek any damages or other amounts from TxDOT, the Commission, any other agency, instrumentality or political subdivision of the State, or any elected official, board member, director, officer, employee, agent or representative of any of them, whether for Project Debt or any other amount, except (i) damages from TxDOT for a violation by TxDOT of its express obligations to Lenders set forth in Section 14.4 or in any Lenders' Direct Agreement delivered at Financial Close or at any time thereafter in accordance with the terms hereof and (ii) amounts due from TxDOT under this Agreement where the Lender has succeeded to the Developer's Interest, whether by way of assignment or subrogation.

(l) Each Funding Agreement and Security Document shall be consistent with Section 14.4.3(a).

(m) Each Funding Agreement and Security Document shall state, or incorporate a statement by reference to another Funding Agreement or Security Document that states, that the Lender or the Collateral Agent acting on the Lender's behalf shall respond to any request from TxDOT or Developer for consent to a modification or amendment of this Agreement within a reasonable period of time.

(n) Each Funding Agreement and Security Document shall state, or incorporate a statement by reference to another Funding Agreement or Security Document that states, that the Lender agrees to exclusive jurisdiction and venue in the federal and State courts in Travis County in any action by or against TxDOT or its successors and assigns.

(o) Each Funding Agreement and Security Document shall state, or incorporate a statement by reference to another Funding Agreement or Security Document that states, that the Project Debt may be prepaid in whole or in part without penalty or premium at or following early termination of

this Agreement. Specifically with respect to PABs or other bonds, the bonds shall be subject to extraordinary mandatory redemption, in whole or in part, at a redemption price of par plus accrued interest to, but not including, the redemption date on any date for which the requisite notice of redemption can be given within 120 days upon receipt by the Collateral Agent of any Termination Compensation in a principal amount, including accrued interest, equal to the portion of Termination Compensation available therefor.

3.6 Changes Affecting Financing Terms

3.6.1 Changes in Market Interest Rates

(a) Subject to Section 3.6.1(b), TxDOT will bear the risk and have the benefit of:

(i) 100% of the impact of changes in Benchmark Rates (either positive or negative) solely with respect to PABs and TIFIA financing, taxable bonds and bank debt assumed and indicated in Developer's Base Case Financial Model as presented at the Financial Proposal Due Date, for the period beginning at 10:00 a.m. on January 20, 2015 (the "first date of the market interest rate adjustment period") and ending on the last date of the market interest rate adjustment period (as defined below); and

(ii) 75% of the impact (either positive or negative) of the differences between (1) the credit spreads for bonds (whether PABs or taxable bonds but excluding TIFIA financing and bank debt) assumed and indicated in Developer's Base Case Financial Model as presented at the Financial Proposal Due Date; and (2) the credit spreads for PABs or taxable bonds as obtained at the end of the market interest rate adjustment period.

For the purposes of this Section 3.6.1, the "last date of the market interest rate adjustment period" means the earlier of 10:00 a.m. on the interest rate commitment date or 10:00 a.m. on the Financial Close Deadline (as may be extended); and "interest rate commitment date" means the date on which the interest rate is set for each respective debt instrument protected by this Section 3.6.1(a).

(b) If the Financial Close Deadline is extended pursuant to Section 3.3.1(b), the risk and benefit allocated to TxDOT pursuant to Section 3.6.1(a) shall be reduced to 75% of the risk and benefit otherwise allocated to TxDOT for the period of such extension (*i.e.*, during such period, TxDOT will bear 75% of the impact of changes in Benchmark Rates and 56.25% of the impact of changes in credit spreads). If the Financial Close Deadline is extended pursuant to Section 3.3.1(c), the risk and benefit allocated to TxDOT pursuant to Section 3.6.1(a) shall be reduced to 50% of the risk and benefit otherwise allocated to TxDOT for the period of such extension (*i.e.*, during such period, TxDOT will bear 50% of the impact of changes in Benchmark Rates and 37.5% of the impact of changes in credit spreads). If the Financial Close Deadline is extended pursuant to Section 3.3.1(d) (discretionary extension) and such extension was not initiated by TxDOT, TxDOT will not bear any of the risk or have any of the benefit of the impact of changes described in Section 3.6.1(a) (either for Benchmark Rates or credit spreads) for the period of such extension.

3.6.2 Changes to TIFIA Financing Terms

(a) If there is a positive impact on the Equity IRR caused by changes from the Assumed TIFIA Financial Terms to the Actual TIFIA Financial Terms, then TxDOT will receive the benefit of 50% of the positive impact on the Equity IRR of the differences between the Assumed TIFIA Financial Terms and the Actual TIFIA Financial Terms. The Parties will calculate any change in the Concession Payment or Public Funds Payments in accordance with Section 3.6.3.

(b) Developer must notify and provide TxDOT the opportunity to observe and participate in all discussions, meetings and negotiations between Developer and the TIFIA Joint Program Office concerning the TIFIA financing.

3.6.3 Calculation of Changes in Financing Terms. Following the end of the market interest rate adjustment period, Developer and TxDOT shall adjust the Base Case Financial Model as presented at the Financial Proposal Due Date to reflect only those changes to financial terms permitted under Sections 3.6.1 and 3.6.2 with respect to Developer's Project Plan of Finance and any revisions approved by the Parties. In accordance with this Section 3.6.3, the Base Case Financial Model will be updated to calculate the change, positive or negative, in the Concession Payment or Public Funds Payment resulting from changes permitted under Sections 3.6.1 and 3.6.2. For the avoidance of doubt, the Base Case Financial Model shall not be adjusted for the terms and conditions included in the Initial Funding Agreements and Initial Security Documents (except as provided in Section 3.6.2) and may not include any potential errors identified as part of the updated audit opinion provided pursuant to Section 4.3.3.

(a) The Base Case Financial Model as presented at the Financial Proposal Due Date shall be run to solve for the Public Funds Payment or Concession Payment, as applicable, inputting only the changes, if any, in financial terms recognizable under Section 3.6.1(a)(i) and holding the Equity IRR and the nominal amount of debt in the Base Case Financial Model as presented at the Financial Proposal Due Date constant. The resulting Base Case Financial Model will become the Financial Model - STEP 1.

(b) The Public Funds Payment or Concession Payment resulting from Financial Model - STEP 1 will be subtracted from the Public Funds Payment or Concession Payment from the Base Case Financial Model as presented at the Financial Proposal Due Date and then multiplied by the applicable percentage, if any, in accordance with Section 3.6.1(b). The resulting amount is the TxDOT Benchmark Interest Rate Portion.

(c) The Financial Model - STEP 1 shall be run to solve for the Public Funds Payment or Concession Payment, as applicable, inputting only the changes, if any, in financial terms recognizable under Section 3.6.1(a)(ii) and holding the Equity IRR and the nominal amount of debt in the Base Case Financial Model as presented at the Financial Proposal Due Date constant. The resulting model will become the Financial Model - STEP 2.

(d) The Public Funds Payment or Concession Payment resulting from Financial Model - STEP 2 will be subtracted from the Public Funds Payment or Concession Payment resulting from Financial Model – STEP 1 and then multiplied by 75% and by the applicable percentage, if any, in accordance with Section 3.6.1(b). The resulting amount is the TxDOT Credit Spread Portion.

(e) The Financial Model – STEP 2 shall be run to solve for the Public Funds Payment or Concession Payment, as applicable, inputting only the changes, if any, in financial terms recognizable under Section 3.6.2 and holding the Equity IRR and the nominal amount of debt in the Base Case Financial Model as presented at the Financial Proposal Due Date, excluding changes recognizable under Section 3.6.2, constant. The resulting model will become the Financial Model - STEP 3.

(f) In accordance with Section 3.6.2(a), if there is a positive impact on the Equity IRR, the Public Funds Payment or Concession Payment, resulting from Financial Model – STEP 3, will be subtracted from the Public Funds Payment or Concession Payment from the Financial Model – STEP 2; and then multiplied by 50% in accordance with Section 3.6.2(a). The resulting amount is the TxDOT TIFIA Portion.

(g) The Base Case Financial Model as presented at the Financial Proposal Due Date will be run to solve for the Equity IRR by inputting (i) all changes, if any, in the terms of financing between those assumed in the Base Case Financial Model as presented at the Financial Proposal Due Date and those set forth in the Initial Project Debt and Initial Funding Agreements obtained at Financial Close and (ii) adjustments to the Public Funds Payment or Concession Payment based on the sum of the TxDOT Benchmark Interest Rate Portion, TxDOT Credit Spread Portion, and TxDOT TIFIA Portion. The resulting financial model shall constitute the Base Case Financial Model as of Financial Close, and the resulting internal rate of return for Developer and its Equity Members shall be the Equity IRR as of Financial Close.

(h) Each circumstance above in this Section 3.6.3 where an amount is added to or subtracted from the Public Funds Payment or Concession Payment (for the purposes of this subsection (k), such amount is referred to as the "adjustment amount") shall be subject to the following:

(i) If there was initially a Concession Payment greater than $0, and if this Section 3.6.3 requires the addition of an adjustment amount to the Concession Payment, then the adjustment amount shall be added to the Concession Payment.

(ii) If there was initially a Concession Payment greater than $0, and if this Section 3.6.3 requires the subtraction of an adjustment amount from the Concession Payment, and if the absolute value of the adjustment amount is less than or equal to the initial Concession Payment, then the adjustment amount shall be subtracted from the Concession Payment.

(iii) If there was initially a Concession Payment greater than $0, and if this Section 3.6.3 requires the subtraction of an adjustment amount from the Concession Payment, and if the absolute value of the adjustment amount is greater than the initial Concession Payment, then (1) the Concession Payment shall be reduced to $0, and (2) the Public Funds Payment shall be increased by the amount by which the absolute value of the adjustment amount exceeds the initial Concession Payment (before it is reduced to $0).

(iv) If there was initially a Public Funds Payment greater than $0 (and no Concession Payment), and if this Section 3.6.3 requires the addition of an adjustment amount to the Public Funds Payment, then the adjustment amount shall be added to the Public Funds Payment.

(v) If there was initially a Public Funds Payment greater than $0 (and no Concession Payment), and if this Section 3.6.3 requires the subtraction of an adjustment amount from the Public Funds Payment, and if the absolute value of the adjustment amount is less than or equal to the initial Public Funds Payment, then the adjustment amount shall be subtracted from the Public Funds Payment.

(vi) If there was initially a Public Funds Payment greater than $0 (and no Concession Payment), and if this Section 3.6.3 requires the subtraction of an adjustment amount from the Public Funds Payment, and if the absolute value of the adjustment amount is greater than the initial Public Funds Payment, then (1) the Public Funds Payment shall be reduced to $0, and (2) the Concession Payment shall be increased by the amount by which the absolute value of the adjustment amount exceeds the initial Public Funds Payment (before it is reduced to $0).

(vii) If the cumulative effect of the adjustments described in this Section 3.6.3 results in a Public Funds Payment when, prior to such adjustments, there had been a Concession Payment rather than a Public Funds Payment, then, for the purposes of Table 2 of Exhibit 8, the resulting Public Funds Payment shall be payable at, and not prior to, the date of Substantial Completion.

(viii) If the cumulative effect of the adjustments described in this Section 3.6.3 results in an increase in the Public Funds Payment, and prior to such adjustments there had been a Public Funds Payment rather than a Concession Payment, then, for the purposes of Table 2 of Exhibit 8, the resulting Public Funds Payment shall be payable at the same times and in the same ratios as the Public Funds Payment amounts and schedules set out in Table 2 of Exhibit 8 prior to such adjustments. To implement this requirement, the amounts of Table 2 of Exhibit 8 shall be increased pro rata by the increase in the Public Funds Payment required by the adjustments described in this Section 3.6.3.

3.7 Refinancing

3.7.1 Right to Refinance. Developer from time to time may consummate Refinancings under the Funding Agreements on terms and conditions acceptable to Developer. TxDOT shall have no obligations or liabilities in connection with any Refinancing except for the rights, benefits and protections set forth in the Lenders' Direct Agreement (but only if the Refinancing satisfies the conditions and limitations set forth in Section 2.1 of the Lenders' Direct Agreement).

3.7.2 Notice of Refinancing. In connection with any Refinancing (except an Exempt Refinancing under clause (b), (c) or (d) of the definition of Exempt Refinancing), Developer shall deliver to TxDOT (a) draft proposed Funding Agreements and Security Documents (other than minor ancillary documents normally delivered after financial closing and containing no new material commercial terms) and the Pre-Refinancing Data not later than 14 days prior to the proposed date for closing the Refinancing and (b) copies of all signed Funding Agreements and Security Documents in connection with the Refinancing and the Refinancing Data not later than 30 days after close of the Refinancing.

3.7.3 TxDOT's Recoverable Costs. Regardless of whether a proposed Refinancing actually closes, Developer shall reimburse TxDOT for all TxDOT's Recoverable Costs in connection with (a) assistance provided by TxDOT in connection with a Refinancing, other than delivering a consent and estoppel certificate under Section 2.9 of the Lenders' Direct Agreement or any direct lender agreement pursuant to Section 32.1, and (b) assessing any Refinancing Gain and TxDOT's share thereof. TxDOT shall provide Developer an invoice for such costs within 30 days of receipt of notice of the Refinancing Gain. Developer shall remit reimbursement to TxDOT at the closing to the extent TxDOT has delivered to Developer the invoice at least two Business Days prior to the scheduled date of closing or, otherwise, within 10 days after delivery of such invoice.

ARTICLE 4
COMPENSATION AND PAYMENTS; FINANCIAL MODEL UPDATES

4.1 Concession Payment. At Financial Close, subject to adjustment pursuant to Section 3.6.3, Developer shall pay $27,624,975 in good and immediately available funds to TxDOT (the "**Concession Payment**").

4.1.1 Allocation for Federal Income Tax Purposes. For U.S. federal income tax purposes, the Concession Payment is allocated between the right to toll the Toll Lanes and rent under the lease for Project Right of Way based on the relative fair market values of such rights as of the Effective Date, which are 80% and 20%, respectively.

4.2 Revenue Payments. As compensation to TxDOT in exchange for TxDOT's grant to Developer of rights to impose and receive tolls pursuant to this Agreement and as rent for the use and operation of the Project pursuant to the Lease, Developer agrees to pay to TxDOT (a) revenue payments as determined

under this Section 4.2 (each a "**Revenue Payment**") and (b) interest earned on such amounts prior to distribution at the same interest rate as the blended average rate earned on Developer's accounts into which Toll Revenues and other amounts received from the Custodian are deposited. Developer's payment obligations under this Section 4.2 shall survive expiration or any earlier termination of the Term.

4.2.1 Calculation. The amount of each Revenue Payment (the "**Revenue Payment Amount**") shall be calculated as of December 31 of the year in which the third anniversary of the first Service Commencement Date occurs, as of December 31 of every subsequent year during the Term, and as of the last day of the Term (each such date as of which the Revenue Payment is calculated is referred to in Exhibit 6 as a "calculation date"). The amount of each Revenue Payment shall equal:

(a) the portion of the cumulative Toll Revenues during the Term to date within Band 1, multiplied by the applicable Revenue Payment percentage for such band; plus

(b) the portion of the cumulative Toll Revenues during the Term to date within Band 2, multiplied by the applicable Revenue Payment percentage for such band; plus

(c) the portion of the cumulative Toll Revenues during the Term to date within Band 3, multiplied by the applicable Revenue Payment percentage for such band; plus

(d) the portion of the cumulative Toll Revenues during the Term to date within Band 4, multiplied by the applicable Revenue Payment percentage for such band; plus

(e) the portion of the cumulative Toll Revenues during the Term to date within Band 5, multiplied by the applicable Revenue Payment percentage for such band; minus

(f) all Revenue Payment amounts, if any, paid in previous calendar years.

Each band and its applicable Revenue Payment percentage are shown in Exhibit 6. The band values are stated on a calendar year basis, starting with the calendar year in which the first Service Commencement Date occurs. In the calculation of revenue sharing, if the operating period in the first or last calendar year is less than a full calendar year, the applicable amounts of the Revenue Band floors and ceilings will be adjusted *pro rata* based on the number of operating days. For the last calendar year of the Term, Toll Revenues shall include those revenues that are accrued or earned but not yet received in such calendar year.

4.2.2 Payment Procedures

(a) Within 15 days after the end of each year for which the Revenue Payment is to be determined, Developer shall deliver to TxDOT (i) a preliminary calculation of the Revenue Payment Amount and (ii) subject to Section 4.2.2(d), full payment of the Revenue Payment as so calculated.

(b) Within 90 days after the end of each year for which the Revenue Payment is to be determined, Developer shall deliver to TxDOT (i) a final calculation of the Revenue Payment, (ii) an audited financial statement prepared by a reputable independent certified public account according to US GAAP, consistently applied, setting forth the total Toll Revenues for such year, and (iii) subject to Section 4.2.2(d), payment of any additional Revenue Payment as so calculated (if the final calculation exceeds the preliminary calculation) or a request for refund of any prior overpayment of the Revenue Payment (if the preliminary calculation exceeds the final calculation).

(c) Within 120 days after receipt of the deliverables under Section 4.2.2(b), TxDOT may request further clarification or amendment to the final calculation of the Revenue Payment, which

Developer shall provide to TxDOT within 30 days after such request. If TxDOT does not agree with the calculation of the Revenue Payment after receipt of such clarification or amendment, or if Developer refuses to amend the final calculation, the Dispute shall be resolved according to the Dispute Resolution Procedures.

(d) If the Revenue Payment Amount is finally determined by the Parties or pursuant to the Dispute Resolution Procedures to be different than the amount calculated pursuant to Section 4.2.2(b), then either: (i) if the finally-determined amount exceeds the prior final calculation, Developer shall promptly pay to TxDOT the additional amount owing, together with interest thereon commencing as of the deadline for payment under Section 4.2.2(b) at a floating rate equal to the LIBOR in effect from time to time; or (ii) if the finally-determined amount is less than the prior final calculation, TxDOT shall promptly refund the difference to Developer together with interest thereon commencing 30 days after TxDOT receives the deliverables under Section 4.2.2(b) at a floating rate equal to the LIBOR in effect from time to time.

4.2.3 Deferral of Revenue Payments. Notwithstanding anything to the contrary in this Section 4.2, Developer shall have the option to defer any amounts otherwise owing to TxDOT under this Section 4.2, to the extent, and only for so long as, Developer does not have cash available to pay such amounts (after accounting for payment of Project Debt and other amounts under the Funding Agreements, taxes, costs for the proper operation, maintenance, reconstruction, restoration, and rehabilitation of the Project, and any other amounts due to TxDOT), during the first 10 years after the first Service Commencement Date upon advance notice to TxDOT of Developer's election to defer payment of such amounts. Any amount deferred under this Section 4.2.3 shall be due no later than the date that is 10 years after the first Service Commencement Date with interest at a floating rate equal to the ENR Construction Cost Index in effect from time to time; *provided, however,* that upon termination of this Agreement for any reason, any such amounts plus interest shall be due on the date of termination. Developer shall provide TxDOT with a written statement in a form acceptable to TxDOT of each amount deferred and the amount of interest owing thereon on December 31 of any year that Developer has deferred payment of any amounts under this Section 4.2.3.

4.2.4 Allocation for Federal Income Tax Purposes. For U.S. federal income tax purposes, the Revenue Payment is allocated between the right to toll the Toll Lanes and rent under the lease for Project Right of Way based on the relative fair market values of such rights as of the Effective Date, which are 80% and 20%, respectively.

4.3 Financial Model and Model Audit Updates

4.3.1 When Required. Developer shall run new projections and calculations under the Financial Model Formulas to establish a Base Case Financial Model Update (a) as of the date of Financial Close as described in Section 3.6.3 and (b) whenever (i) a Compensation Event occurs, (ii) a Refinancing occurs in which TxDOT participates in the Refinancing Gain, (iii) a Tolling Method Change occurs in which TxDOT participates in the Tolling Method Gain, (iv) the CDA Documents are amended and the Parties agree that the amendment has a material effect on future costs or Toll Revenues and (v) a Relief Event extends the Term. In no event shall the Financial Model Formulas be changed except with the prior approval of both Parties, each in its discretion. When running new projections and calculations under the Financial Model Formulas to establish a Base Case Financial Model Update pursuant to Section 4.3.1(b), Developer shall incorporate only those changes caused by the event for which the Base Case Financial Model Update is being prepared; unrelated changes caused by the actual performance of the Project shall be disregarded.

4.3.2 Developer's Determination. Developer's determination shall be final except:

(a) Base Case Financial Model Updates pursuant to Section 4.3.1(b) require the mutual approval of the Parties; and

(b) TxDOT may dispute a Base Case Financial Model Update pursuant to Section 4.3.1(a) within 90 days after receiving notice of such update from Developer, in which case the Dispute shall be resolved in accordance with the Dispute Resolution Procedures and the disputed update shall not become effective until resolution of the Dispute.

4.3.3 Model Audit Update. Within two Business Days after the Effective Date, and within two Business Days after the date of Financial Close, Developer shall deliver to TxDOT an update of the audit and opinion obtained from the independent model auditor that provided to TxDOT an opinion on suitability of the Base Case Financial Model. Each updated audit and opinion shall (a) be co-addressed to TxDOT and (b) expressly identify TxDOT as an entity entitled to rely thereon. The updated audit and opinion to be delivered within two Business Days after the last date of the market interest rate adjustment period shall take into account only the adjustments identified in Sections 3.6.1 and 3.6.2.

4.3.4 Effect of Interest Rate Changes. If a Base Case Financial Model Update occurs prior to the Base Case Financial Model adjustment under Section 3.6.1, then the Base Case Financial Model Update shall be revised to also incorporate the effect of the Base Case Financial Model adjustment under Section 3.6.1.

4.3.5 Informational Update Provided to TIFIA. Whenever Developer provides any updated financial model to TIFIA, whether or not such updated financial model constitutes a Base Case Financial Model Update for purposes of this Agreement, Developer shall provide TxDOT with a copy thereof.

4.4 Refinancing Gain; Gain from Certain Initial Financings. As compensation to TxDOT in exchange for TxDOT's grant to Developer of rights to impose and receive tolls pursuant to this Agreement and as rent for the use and operation of the Project pursuant to the Lease, Developer agrees to pay TxDOT as follows:

4.4.1 Refinancing Gain. Developer shall pay to TxDOT 50% of any Refinancing Gain from a Refinancing. The Refinancing Gain shall be calculated after deducting payment of (i) TxDOT's Recoverable Costs under Section 3.7.3 and (ii) Developer's reasonable professional costs and expenses directly associated with the Refinancing.

4.4.2 Payment. TxDOT's portion of any Refinancing Gain shall be calculated as if realized entirely in the year in which the Refinancing or initial financing (as the case may be) occurs, and Developer shall pay TxDOT's portion of such gain to TxDOT concurrently with the close of such transaction; *provided, however*, if Developer demonstrates to TxDOT's reasonable satisfaction that such gain will enable Developer to make additional Distributions only over future years (and not all at the close of the transaction), then TxDOT's portion of the such gain shall be payable over time pursuant to a payment schedule, reasonably approved by TxDOT, corresponding with the anticipated timing of such future Distributions, but only so long as such payments yield the same Net Present Value to TxDOT as if TxDOT had received its portion of such gain at the close of the transaction. Notwithstanding any such payment schedule, the Net Present Value of the unpaid amount shall be due and payable in full to TxDOT immediately upon (i) any failure to pay a scheduled payment when due, if such failure is not cured within the cure period available to then-existing Lenders under Section 2.4.2 of the Lenders' Direct Agreement (if any) or (ii) termination of this Agreement for any reason.

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

4.4.4 Allocation for Federal Income Tax Purposes. For U.S. federal income tax purposes, the Refinancing Gain payment to TxDOT is allocated between the right to toll the Toll Lanes and rent for Project Right of Way based on the relative fair market values of such rights as of the Effective Date, which are 80% and 20%, respectively.

4.5 TMC Public Funds Payment. TxDOT shall pay to Developer up to $17,100,000 (the "**TMC Public Funds Payment**") as payment for Construction Work associated with the TMC Direct Connector and as payment for the acquisition of Project Right of Way needed for the TMC Direct Connector (it being understood, however, that (a) the actual cost of Construction Work and Project Right of Way for the TMC Direct Connector may exceed $17,100,000, and in such case TxDOT will not increase the TMC Public Funds Payment, and (b) if the actual costs associated with the TMC Direct Connector are less than $17,100,000, TxDOT will not pay more than the amount of such actual costs). Developer shall submit a payment request to TxDOT and the Independent Engineering no sooner than Developer has incurred costs associated with the TMC Direct Connector equal to or in excess of the amount of the payment request. Refer to the "Public Funds Payment Terms" set out in Exhibit 8 for requirements pertaining to the payment request and TxDOT's remittance of the TMC Public Funds Payment.

4.6 Public Funds Payments

4.6.1 Payments. If Developer's Proposal included Public Funds Payments, TxDOT agrees to make the applicable Public Funds Payments, in the amounts, and according to the schedule, set out in Table 2 of Exhibit 8 and subject to the requirements of Section 4.6.2 and the "Public Funds Payment Terms" set out in Exhibit 8.

4.6.2 Notice of Completion; Payment. For each Public Funds Payment, Developer shall submit a payment request to TxDOT and the Independent Engineer no sooner than the earlier of (a) the corresponding date for such payment in the second column of Table 2 of Exhibit 8 and (b) Developer has incurred costs for the Work equal to or in excess of the sum of (i) the payment requested, (ii) all Public Funds Payments previously paid, and (iii) the TMC Public Funds Payment (if previously paid). Refer to the "Public Funds Payment Terms" set out in Exhibit 8 for requirements pertaining to the payment request and TxDOT's remittance of the Public Funds Payments.

4.7 Interoperability Fee Adjustments

4.7.1 Developer shall deliver a report to TxDOT and the Independent Engineer in a standardized form acceptable to TxDOT within 10 days following each month, itemizing each Interoperability Fee that Developer paid during the month and the amount of any adjustment in connection with such fee under this Section 4.7.

4.7.2 If Developer paid total Interoperability Fees in a month that are greater than those it would pay assuming an 8% rate, then TxDOT shall pay the difference to Developer within 15 days after TxDOT's receipt of the applicable report.

4.7.3 If Developer paid total Interoperability Fees in a month that are less than those it would pay assuming an 8% rate, then Developer shall pay the difference to TxDOT within 15 days after the end of the month.

4.8 Tolling Method Gain

4.8.1 Implementation of Tolling Method Change

(a) A Tolling Method Change with respect to operation of the Toll Lanes in Dynamic Mode shall be implemented (i) if requested by Developer and approved by TxDOT pursuant to Section 7(a)(i) of Exhibit 10 or (ii) if required by TxDOT pursuant to Section 7(a)(ii) of Exhibit 10.

(b) A Tolling Method Change with respect to Image-Based Billing shall be implemented (i) if requested by Developer and approved by TxDOT pursuant to Section 10(a) of Exhibit 10 or (ii) if authorized and directed by TxDOT pursuant to Section 14.5.7(a).

(c) A Tolling Method Change shall not constitute a TxDOT-Caused Delay, TxDOT Change, Relief Event, Compensation Event or other basis for any Claim.

4.8.2 Selection of Independent Firm. The Parties shall jointly select and retain an independent, qualified firm that is recognized by Rating Agencies as having expertise in analyzing and forecasting traffic and toll revenue. Such firm (within this Section 4.8, the "independent firm") shall have a duty of care to both TxDOT and Developer. TxDOT and Developer shall share equally the cost of the independent firm. The independent firm may have a prior relationship with one or both Parties only so long as the firm is jointly approved by both Parties, otherwise meets the foregoing qualifications, and complies with any applicable TxDOT conflict policies.

4.8.3 Preparation of Tolling Method Gain Forecasts. The independent firm shall prepare two forecasts of annual Net Project Cash Flows for the period from the date of implementation of the Tolling Method Change through the end of the Term. The two forecasts shall use the same formulas, data, economic indicators, inputs, and assumptions, except that the first forecast shall assume that the Tolling Method Change is not implemented (the "first forecast") and that the second forecast shall assume that the Tolling Method Change is implemented (the "second forecast"). The forecasts shall be based upon forecasts of traffic and Toll Revenues made at that time, as opposed to assumptions included in Developer's Proposal. The second forecast shall be supported by a traffic and revenue study and analysis showing the projected effects of the Tolling Method Change relative to the first forecast.

4.8.4 Acceptance of the Forecasts. The forecasts prepared pursuant to Section 4.8.3 shall be subject to acceptance by both Parties. If either Party has a good faith reason to believe that either or both forecasts do not represent a view that could reasonably be taken by an independent, qualified firm with the requisite expertise, that Party shall promptly notify the other Party of its concerns and the basis for its concerns. The initial forecasts prepared by the independent firm shall not be altered except with permission of both Parties to address such concerns. If the Parties are ultimately unable to accept the forecasts prepared by the independent firm, (a) the Parties may jointly retain a different independent, qualified firm (meeting the criteria of Section 4.8.3) to prepare new forecasts, which forecasts shall be subject to acceptance by the Parties, or else (b) the Dispute shall be resolved according to the Dispute Resolution Procedures.

4.8.5 Calculation and Payment of Tolling Method Gain (Lump Sum Option). Unless Developer elects to determine and pay TxDOT's portion of any Tolling Method Gain pursuant to Section 4.8.6:

(a) the Cumulative Tolling Method Gain shall equal the greater of $0 or the present value as of the implementation date, using a 5% discount rate, of the difference between Net Project Cash

Flows for the remainder of the Term under the second forecast and Net Project Cash Flows for the remainder of the Term under the first forecast.

(b) Developer shall remit payment to TxDOT in an amount equal to 80% of the Cumulative Tolling Method Gain within 180 days after the Tolling Method Change implementation date.

4.8.6 Calculation and Payment of Tolling Method Gain (Annual Option). If Developer elects to determine and pay TxDOT's portion of any Tolling Method Gain pursuant to this Section 4.8.6, then:

(a) The Annual Tolling Method Gain for each calendar year remaining in the Term (including and after the calendar year in which the Tolling Method Change is implemented) shall equal the greater of $0 or the difference between Net Project Cash Flows for that year under the second forecast and Net Project Cash Flows for that year under the first forecast.

(b) For each such year, Developer shall remit payment to TxDOT, in accordance with Section 4.8.6(c), an amount equal to the lesser of (i) the amount equal to (1) 80% of the nominal aggregate of Annual Tolling Method Gains (without discounting) for all years to date (in each case as calculated under Section 4.8.6(a)), *less* (2) all payments remitted to TxDOT for prior years pursuant to this Section 4.8.6; and (ii) the difference equal to (but not less than $0) (1) actual Net Project Cash Flows during that year, *less* (2) forecasted Net Project Cash Flows during that year under the first forecast. For clarity, the intent of the foregoing calculation is to provide payment to TxDOT equal to 80% of the nominal aggregate forecasted Annual Tolling Method Gains, but not to exceed in any year the difference between actual Net Project Cash Flows following the Tolling Method Change and forecasted Net Project Cash Flows without the Annual Tolling Method Gain for that year.

(c) Developer shall determine, report, and remit a payment owing to TxDOT under Section 4.8.6(b) as follows:

(i) Within 15 days after the end of each year for which the payment is to be determined, Developer shall deliver to TxDOT (1) a preliminary calculation of the payment amount and (2) subject to subsection (iv) below, full payment of the payment as so calculated.

(ii) Within 90 days after the end of each year for which the payment is to be determined, Developer shall deliver to TxDOT (1) a final calculation of the payment, (2) an audited financial statement prepared by a reputable independent certified public account according to US GAAP, consistently applied, setting forth the total Toll Revenues for such year, and (3) subject to subsection (iv) below, payment of any additional payment as so calculated (if the final calculation exceeds the preliminary calculation) or a request for refund of any prior overpayment of the payment (if the preliminary calculation exceeds the final calculation).

(iii) Within 120 days after receipt of the deliverables under subsection (ii) above, TxDOT may request further clarification or amendment to the final calculation of the payment, which Developer shall provide to TxDOT within 30 days after such request. If TxDOT does not agree with the calculation of the payment after receipt of such clarification or amendment, or if Developer refuses to amend the final calculation, the Dispute shall be resolved according to the Dispute Resolution Procedures.

(iv) If the payment amount is finally determined by the Parties or pursuant to the Dispute Resolution Procedures to be different than the amount calculated pursuant to subsection (ii) above, then either: (1) if the finally-determined amount exceeds the prior final calculation, Developer

shall promptly pay to TxDOT the additional amount owing, together with interest thereon commencing as of the deadline for payment under subsection (ii) above at a floating rate equal to the LIBOR in effect from time to time; or (2) if the finally-determined amount is less than the prior final calculation, TxDOT shall promptly refund the difference to Developer together with interest thereon commencing 30 days after TxDOT receives the deliverables under subsection (ii) above at a floating rate equal to the LIBOR in effect from time to time.

(d) The amount of each Annual Tolling Method Gain to date shall be deducted from cumulative Toll Revenues to date for the purposes of Section 4.2.1.

(e) With respect to any amounts payable to TxDOT pursuant to this Section 4.8.6, such payments shall be treated as Revenue Payment Amounts for priority of funds purposes.

(f) At any time after implementation of the Tolling Method Change, Developer may subsequently elect to pay TxDOT's remaining portion of any Tolling Method Gain as a lump sum, notwithstanding its earlier election to pay such portion pursuant to this Section 4.8.6. In such case, Developer shall notify TxDOT of its subsequent election and remit to TxDOT payment equal to (i) the Cumulative Tolling Method Gain for the remainder of the Term, which shall equal the greater of (1) $0 or (2) 80% of the present value (as of the payment date, using a 5% annual discount rate) of the difference between (A) Net Project Cash Flows for the remainder of the Term under the second forecast and (B) Net Project Cash Flows for the remainder of the Term under the first forecast (for this purpose, "remainder of the Term" includes any year for which payment had not already been made to TxDOT pursuant to Sections 4.8.6(b) and (c)); *plus* (ii) for each prior calendar year during the Term (beginning the calendar year in which the Tolling Method Change is implemented), an amount equal to the greater of (1) $0 or (2) the present value (escalated to the payment date, using a 5% annual discount rate) of the amount which equals (A) 80% of the nominal Annual Tolling Method Gain for such year (as calculated under Section 4.8.6(a)), *less* (B) the payment actually remitted to TxDOT for such year pursuant to Sections 4.8.6(b) and (c). Developer shall be relieved of its payment obligation under Section 4.8.6(b) and (c) only when TxDOT receives such payment.

4.8.7 Relationship of Multiple Tolling Method Gains. For clarity, if during the Term there occurs both (x) a Tolling Method Change with respect to operation of the Toll Lanes in Dynamic Mode and (y) a Tolling Method Change with respect to Image-Based Billing, then:

(a) The second Tolling Method Change and the forecasts made in respect thereof will not alter the forecasts previously made for the first Tolling Method Change. The forecasts made for the second Tolling Method Change will take into account then-prevailing conditions, which would reflect the impacts actually realized from the first Tolling Method Change (whether those impacts are greater than or less than the impacts previously forecasted for the first Tolling Method Change).

(b) After implementation of the second Tolling Method Change, and if Developer elected to pay TxDOT's portion of both Tolling Method Gains pursuant to Section 4.8.6 rather than Section 4.8.5, there will be two "bands" of Annual Tolling Method Gains (one for each Tolling Method Change) for which Developer will owe payments to TxDOT under this Section 4.8. The amount of the Annual Tolling Method Gain for one Tolling Method Change shall not be deducted from Toll Revenues for purposes of determining the payment owing to TxDOT for the other Tolling Method Change. For the avoidance of doubt, an overlapping of "bands" could occur (i.e., because the impacts actually realized from the first Tolling Method Change were less than forecasted), but Developer continues to be obligated to pay the amount calculated for each Tolling Method Change.

4.8.8 Relationship with Section 14.5.7. If Image-Based Billing is authorized pursuant to Section 14.5.7, such Tolling Method Change shall remain subject to this Section 4.8, but subject to the following:

(a) The forecasts of annual Net Project Cash Flows shall be prepared pursuant to Section 4.8.3 as of the date of implementation of Image-Based Billing, using forecasts of traffic and Toll Revenues made at that time, except that both forecasts shall disregard any expected effect of the termination of the HCTRA-TxDOT Interoperable Relationship. The first forecast prepared pursuant to Section 4.8.3 shall be the same as the forecast prepared pursuant to Section 14.5.7(d).

(b) Developer shall elect to pay TxDOT's portion of any Tolling Method Gain pursuant to Section 4.8.5 or Section 4.8.6 by the end of the liquidity period (as defined in Section 14.5.7). If Developer elects to pay such portion pursuant to Section 4.8.5, the Cumulative Tolling Method Gain shall not include the difference between Net Project Cash Flows during the liquidity period under the second forecast and Net Project Cash Flows during the liquidity period under the first forecast. If Developer elects to pay such portion pursuant to Section 4.8.6, the Annual Tolling Method Gain for any year wholly or partially occurring during the liquidity period shall not include the difference between Net Project Cash Flows during the liquidity period under the second forecast and Net Project Cash Flows during the liquidity period under the first forecast (which difference will be treated as $0 for purposes of determining the Annual Tolling Method Gain during the liquidity period).

4.9 TxDOT Monetary Obligations. All TxDOT monetary obligations under the CDA 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 and will make best efforts 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 4.9 applies to all monetary obligations of TxDOT set forth in the CDA Documents, notwithstanding any contrary provisions of the CDA Documents. The CDA Documents do not create a debt under the Texas Constitution.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES

5.1 Developer Representations and Warranties. Developer hereby represents and warrants to TxDOT as follows:

5.1.1 The Financial Model Formulas (a) were prepared by or on behalf of Developer in good faith, (b) are the same financial formulas that Developer utilized and is utilizing in the Base Case Financial Model, in making its decision to enter into this Agreement and, if Developer has included only approved financing commitments in its Proposal, in making disclosures to Lenders under the Initial Funding Agreements, and (c) as of the Effective Date are mathematically correct and suitable for making reasonable projections. (This Section 5.1.1 does not apply to assumptions used in the Base Case Financial Model, which are addressed in Section 5.1.2.) No breach of this warranty shall entitle TxDOT to new compensation or to increase the TxDOT compensation set forth in Sections 4.1 and 4.2.

5.1.2 The Base Case Financial Model (a) was prepared by or on behalf of Developer in good faith, (b) was audited and verified by an independent recognized model auditor prior to the Effective Date

and will be audited and verified by an independent recognized model auditor within two Business Days after the Financial Close, (c) fully discloses all cost, revenue and other financial assumptions and projections that Developer has used or is using in making its decision to enter into this Agreement and, if Developer has included only approved financing commitments in its Proposal, in making disclosures to Lenders under the Initial Funding Agreements and (d) as of the Effective Date represents the projections that Developer believes in good faith are reasonable for the Project; *provided, however*, that such projections (i) are based upon a number of estimates and assumptions, (ii) are subject to significant business, economic and competitive uncertainties and contingencies and (iii) accordingly are not a representation or warranty that any of the assumptions are correct, that such projections will be achieved or that the forward-looking statements expressed in such projections will correspond to actual results.

5.1.3 During all periods necessary for the performance of the Work, Developer and its design Contractors will maintain all required authority, license status, professional ability, skills and capacity to perform the Work.

5.1.4 As of the Effective Date, Developer has evaluated the constraints affecting design and construction of the Project, including the Project Right of Way limits as well as the conditions of the NEPA Approval, and has reasonable grounds for believing and does believe that the Project can be designed and built within such constraints.

5.1.5 Except as to parcels to which TxDOT lacked title or access prior to the Financial Proposal Due Date, prior to the Financial Proposal Due Date Developer, in accordance with Good Industry Practice, examined the Site and surrounding locations, performed appropriate field studies and geotechnical investigations of the Site, investigated and reviewed available public and private records, and undertook other activities sufficient to familiarize itself with surface conditions and subsurface conditions, including the presence of Utilities, Hazardous Materials, contaminated groundwater, archeological, paleontological and cultural resources, and Threatened or Endangered Species, affecting the Site or surrounding locations; and as a result of such review, inspection, examination and other activities Developer is familiar with and accepts the physical requirements of the Work, subject to TxDOT's obligations regarding Hazardous Materials under Section 12.3 and Developer's rights to seek relief under Article 27.

5.1.6 Developer has familiarized itself with the requirements of any and all applicable Laws and the conditions of any required Governmental Approvals prior to entering into this Agreement. Except as specifically permitted under Article 13 or 27, Developer shall be responsible for complying with the foregoing at its sole cost and without any additional compensation or time extension on account of such compliance, regardless of whether such compliance would require additional time for performance or additional labor, equipment and/or materials not expressly provided for in the CDA Documents. As of the Effective Date, Developer has no reason to believe that any Governmental Approval required to be obtained by Developer will not be granted in due course and thereafter remain in effect so as to enable the Work to proceed in accordance with the CDA Documents.

5.1.7 All Work furnished by Developer will be performed by or under the supervision of Persons who hold all necessary, valid licenses to practice in the State, by personnel who are skilled, experienced and competent in their respective trades or professions, who are professionally qualified to perform the Work in accordance with the CDA Documents and who shall assume professional responsibility for the accuracy and completeness of the Design Documents, Construction Documents and other documents prepared or checked by them.

5.1.8 As of the Effective Date, Developer is a limited liability company duly organized and validly existing under the laws of Delaware, has the requisite power and all required licenses to carry on

its present and proposed activities, and has full power, right and authority to execute and deliver the CDA Documents, the PABs Agreement and the Principal Project Documents to which Developer is a party and to perform each and all of the obligations of Developer provided for herein and therein. Developer is duly qualified to do business, and is in good standing, in the State as of the Effective Date, and will remain duly qualified and in good standing throughout the Term and for as long thereafter as any obligations remain outstanding under the CDA Documents.

5.1.9 The execution, delivery and performance of the CDA Documents, the PABs Agreement and the Principal Project Documents to which Developer is (or will be) a party have been (or will be) duly authorized by all necessary corporate action of Developer; each person executing the CDA Documents, the PABs Agreement and such Principal Project Documents on behalf of Developer has been (or at the time of execution will be) duly authorized to execute and deliver each such document on behalf of Developer; and the CDA Documents, the PABs Agreement and such Principal Project Documents have been (or will be) duly executed and delivered by Developer.

5.1.10 Neither the execution and delivery by Developer of the CDA Documents, the PABs Agreement and the Principal Project Documents to which Developer is (or will be) a party, nor the consummation of the transactions contemplated hereby or thereby, is (or at the time of execution will be) in conflict with or has resulted or will result in a default under or a violation of the governing instruments of Developer.

5.1.11 As of the Effective Date, each of the CDA Documents, the PABs Agreement and the Principal Project Documents to which Developer is (or will be) a party constitutes (or at the time of execution and delivery will constitute) the legal, valid and binding obligation of Developer, enforceable against Developer in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

5.1.12 As of the Effective Date, there is no action, suit, proceeding, investigation or litigation pending and served on Developer that challenges Developer's authority to execute, deliver or perform, or the validity or enforceability of, the CDA Documents, the PABs Agreement and the Principal Project Documents to which Developer is a party, or which challenges the authority of the Developer representative executing the CDA Documents, the PABs Agreement or such Principal Project Documents; and Developer has disclosed to TxDOT prior to the Effective Date any pending and un-served or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which Developer is aware.

5.1.13 As of the Financial Proposal Due Date Developer disclosed to TxDOT in writing all organizational conflicts of interest of Developer and its Contractors of which Developer was actually aware; and between the Financial Proposal Due Date and the Effective Date Developer has not obtained knowledge of any additional organizational conflict of interest, and there have been no organizational changes to Developer or its Contractors identified in its Proposal that have not been approved by TxDOT. For this purpose, organizational conflict of interest has the meaning set forth in the ITP.

5.1.14 To the extent the Design-Build Contractor is not Developer, Developer represents and warrants, as of the effective date of the Design-Build Contract, as follows: (a) the Design-Build Contractor is duly organized, validly existing and in good standing under the laws of the state of its organization; (b) with respect to Persons that individually hold more that 10% of the capital stock of the Design-Build Contractor (including options, warrants and other rights to acquire capital stock), such stock is owned by the Persons whom Developer has set forth in a certification delivered to TxDOT prior to the Effective Date; (c) the Design-Build Contractor has the power and authority to do all acts and things and

execute and deliver all other documents as are required to be done, observed or performed by it in connection with its engagement by Developer; (d) the Design-Build Contractor has all necessary expertise, qualifications, experience, competence, skills and know-how to perform the design and construction of the Project in accordance with the CDA Documents; and (e) the Design-Build Contractor is not in breach of any applicable Law that would have a material adverse effect on the design and construction of the Project.

5.1.15 To the extent any O&M Contractor is not Developer, Developer represents and warrants as to each such O&M Contractor, as of the effective date of its O&M Contract, as follows: (a) the O&M Contractor is duly organized, validly existing and in good standing under the laws of the state of its organization; (b) the capital stock of the O&M Contractor (including options, warrants and other rights to acquire capital stock) is owned by the Persons who Developer has or will set forth in a certification delivered to TxDOT prior to the execution of the O&M Contract; (c) the O&M Contractor has the power and authority to do all acts and things and execute and deliver all other documents as are required to be done, observed or performed by it in connection with its engagement by Developer; (d) the O&M Contractor has all necessary expertise, qualifications, experience, competence, skills and know-how to perform the operation and maintenance of the Project in accordance with the CDA Documents; and (e) the O&M Contractor is not in breach of any applicable Law that would have a material adverse effect on the operations of the Project.

5.1.16 The execution and delivery by Developer of this Agreement, the Lease and the Principal Project Documents to which Developer is a party will not result, at the time of execution, in a default under any other agreement or instrument to which it is a party or by which it is bound.

5.1.17 The execution and delivery by Developer of the CDA Documents and performance by Developer of its obligations thereunder will not conflict with any Laws applicable to Developer that are valid and in effect on the Effective Date.

5.2 TxDOT Representations and Warranties. TxDOT hereby represents and warrants to Developer as follows:

5.2.1 As of the Effective Date, TxDOT has full power, right and authority to execute, deliver and perform the CDA Documents and the Principal Project Documents to which TxDOT is a party and to perform each and all of the obligations of TxDOT provided for herein and therein.

5.2.2 Each person executing the CDA Documents, the PABs Agreement and such Principal Project Documents on behalf of TxDOT has been (or at the time of execution will be) duly authorized to execute and deliver each such document on behalf of TxDOT; and the CDA Documents, the PABs Agreement and such Principal Project Documents have been (or will be) duly executed and delivered by TxDOT.

5.2.3 As of the Effective Date, there is no action, suit, proceeding, investigation or litigation pending and served on TxDOT which challenges TxDOT's authority to execute, deliver or perform, or the validity or enforceability of, the CDA Documents, the PABs Agreement and the Principal Project Documents to which TxDOT is a party or which challenges the authority of the TxDOT official executing the CDA Documents, the PABs Agreement and such Principal Project Documents; and TxDOT has disclosed to Developer prior to the Effective Date any pending and un-served or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which TxDOT is aware.

5.2.4 As of the Effective Date, each of the CDA Documents, the PABs Agreement and the Principal Project Documents to which TxDOT is (or will be) a party constitutes (or at the time of

execution and delivery will constitute) the legal, valid and binding obligation of TxDOT, enforceable against TxDOT in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

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

5.2.6 The execution and delivery by TxDOT of the CDA Documents, the PABs Agreement and performance by TxDOT of its obligations thereunder will not conflict with any Laws applicable to TxDOT that are valid and in effect on the Effective Date.

5.3 Survival of Representations and Warranties. The representations and warranties of Developer and TxDOT contained in this Article 5 shall survive expiration or earlier termination of this Agreement and the Lease.

5.4 Special Remedies for Mutual Breach of Warranty. Notwithstanding any other provision of this Agreement, if there exists or occurs any circumstance or event that constitutes or results in a concurrent breach of any of the warranties set forth in this Article 5 by both Developer and TxDOT but does not also constitute or result in any other breach or default by either Party, then the only remedies shall be for the Parties to take action to rectify or mitigate the effects of such circumstance or event, to pursue severance and reformation of the CDA Documents and Principal Project Documents as set forth in Section 35.14 or Termination by Court Ruling as set forth in Section 31.5.

PART B
DEVELOPMENT OF THE PROJECT; PERFORMANCE OF THE WORK

ARTICLE 6
PROJECT PLANNING AND APPROVALS; PUBLIC INFORMATION

6.1 Preliminary Planning and Engineering Activities; Site Conditions

6.1.1 Developer shall perform or cause to be performed all engineering activities appropriate for development of the Project and the Utility Adjustments included in the Design Work and the Construction Work in accordance with the CDA Documents and Good Industry Practice, including (a) technical studies and analyses; (b) geotechnical investigations; (c) right-of-way mapping, surveying, appraisals and acquisition; (d) Utility subsurface investigations and mapping; (e) Hazardous Materials investigations; and (f) design and construction surveys.

6.1.2 Except (x) to the extent that Developer is entitled to relief under this Agreement for Relief Events, warranty protections under Section 7.5, or compensation under clause (j) of the definition of Compensation Event, (y) as provided in Sections 12.3 and 12.4 with respect to the risk allocation as to Hazardous Material or archeological and paleontological resources, and (z) to the extent TxDOT is required to serve as the generator and arranger of Pre-existing Hazardous Materials under Section 12.2.5, Developer shall bear the risk of:

(a) any incorrect or incomplete review, examination and investigation by it of the Site and surrounding locations, and of any incorrect or incomplete information resulting from preliminary engineering activities conducted by Developer, TxDOT or any other Person; and

(b) all conditions occurring on, under or at the Site, including (i) physical conditions of an unusual nature, differing materially from those ordinarily encountered in the area, (ii) changes in surface topography, (iii) variations in subsurface moisture content, (iv) Utility facilities, (v) the presence or discovery of Hazardous Materials, including contaminated groundwater, (vi) the discovery at, near or on the Project Right of Way of any archeological, paleontological or cultural resources, and (vii) the discovery at, near or on the Project Right of Way of any Threatened or Endangered Species.

6.1.3 TxDOT makes no warranties or representations as to any surveys, data, reports or other information provided by TxDOT or other Persons concerning surface conditions and subsurface conditions, including the presence of Utilities, Hazardous Materials, contaminated groundwater, archeological, paleontological and cultural resources, and Threatened or Endangered Species, affecting the Site or surrounding locations. Developer acknowledges that such information is for Developer's reference only and has not been verified.

6.2 Governmental Approvals and Third-Party Agreements

6.2.1 Responsibility for Governmental Approvals. As of the Effective Date, TxDOT has obtained the TxDOT-Provided Approvals based on the schematic contained in the Reference Information Documents. Developer shall obtain all other Governmental Approvals and, except to the extent that the CDA Documents expressly provide that TxDOT is responsible therefor, all third-party approvals and agreements required in connection with the Project, the Project Right of Way or the Work, including any modifications, renewals and extensions of the TxDOT-Provided Approvals, including those required in

connection with a Compensation Event. Developer shall deliver to TxDOT true and complete copies of all new or amended Governmental Approvals and third-party approvals and agreements.

6.2.2 Pre-Submission to TxDOT. Prior to submitting to a Governmental Entity any application for a Governmental Approval (or any proposed modification, renewal, extension or waiver of a Governmental Approval or provision thereof), Developer shall submit the same, together with any supporting environmental studies and analyses, to TxDOT for approval or for review and comment, as specified in the Technical Provisions.

6.2.3 Impact of Design Changes. Except to the extent Developer is entitled to relief in respect of a Relief Event under clause (o) of the definition of Relief Event and to compensation in respect of a Compensation Event under clause (m) of the definition of Compensation Event, in the event Developer's design differs from the schematic contained in the Reference Information Documents upon which the TxDOT-Provided Approvals were based, including differences due to any alternative technical concepts approved by TxDOT and described in Exhibit 7, as between TxDOT and Developer, Developer shall be fully responsible for all necessary actions, and shall bear all risk of delay and all risk of increased cost, resulting from or arising out of any associated change in the Project location and design, including (a) conducting all necessary environmental studies and preparing all necessary environmental documents in compliance with applicable Environmental Laws, (b) obtaining and complying with all necessary new Governmental Approvals (including any modifications, renewals and extensions of the TxDOT-Provided Approvals, and other existing Governmental Approvals), and (c) bearing all risk and cost of litigation related thereto. TxDOT and FHWA will independently evaluate all environmental studies and documents and fulfill the other responsibilities assigned to them by 23 CFR Part 771.

6.2.4 Impact of Additional Properties. If Developer pursues Additional Properties outside the Project Right of Way, or any other modification of or Deviation from any Governmental Approvals, including TxDOT-Provided Approvals, Developer shall first comply with, and obtain any consent or waiver required pursuant to, then-existing agreements between TxDOT and other Governmental Entities related to such Additional Properties.

6.2.5 TxDOT Assistance and Participation. At Developer's request and expense, TxDOT shall reasonably assist and cooperate with Developer in obtaining from Governmental Entities the Governmental Approvals (including any modifications, renewals and extensions of existing Governmental Approvals from Governmental Entities) required to be obtained by Developer under the CDA Documents, including with respect to any Governmental Approvals required to be issued in TxDOT's name. TxDOT and Developer shall jointly establish a scope of work and budget for TxDOT's Recoverable Costs related to the assistance and cooperation TxDOT will provide. Subject to any agreed scope of work and budget and to any rights of Developer in the case of a Compensation Event, Developer shall fully reimburse TxDOT for all costs and expenses, including TxDOT's Recoverable Costs, TxDOT incurs in providing such cooperation and assistance, including those incurred to conduct further or supplemental environmental studies, and in carrying out TxDOT actions. Refer to Section 4.2 of the Technical Provisions for more specific provisions on applications in TxDOT's name for Environmental Approvals. In the event that TxDOT or FHWA must act as the lead agency and directly coordinate with a Governmental Entity in connection with obtaining Governmental Approvals that are the responsibility of Developer, Developer shall provide all necessary support to facilitate the approval, mitigation or compliance process, including conducting necessary field investigations, surveys, and preparation of any required reports, documents and applications.

6.2.6 Compliance with Conditions. Developer shall comply with all conditions imposed by and undertake all actions required by and all actions necessary to maintain in full force and effect all Governmental Approvals, including performance of all environmental mitigation measures required by

the CDA Documents or Governmental Approvals, except to the extent that responsibility for performance of such measures is expressly assigned to TxDOT in the CDA Documents.

6.2.7 Project Specific Locations. Developer shall be responsible for compliance with all applicable Laws in relation to Project Specific Locations and for obtaining any Governmental Approval required in connection with Project Specific Locations.

6.2.8 No Agreement on Behalf of TxDOT. Developer shall not enter into any agreement with any Governmental Entity, Utility Owner, railroad, property owner or other third party having regulatory jurisdiction over any aspect of the Project or Work or having any property interest affected by the Project or Work that in any way purports to obligate TxDOT, or states or implies that TxDOT has an obligation, to the third party to carry out any installation, design, construction, maintenance, repair, operation, control, supervision, regulation or other activity after the end of the Term, unless TxDOT otherwise approves in its discretion. Developer has no power or authority to enter into any such agreement with a third party in the name of or on behalf of TxDOT.

6.3 Community Outreach and Public Information. Developer shall provide ongoing information to the public concerning the development, operation, tolling and maintenance of the Project, in accordance with the Public Information and Communications Plan prepared by Developer pursuant to Section 3 of the Technical Provisions.

ARTICLE 7
DEVELOPMENT STANDARDS; DESIGN DEVIATIONS

7.1 General Obligations of Developer. In addition to performing all other requirements of the CDA Documents, Developer shall:

7.1.1 Furnish all design and other services, provide all materials, equipment and labor and undertake all efforts necessary or appropriate (excluding only those materials, services and efforts which the CDA Documents expressly specify will be undertaken by TxDOT or other Persons) to construct the Project and maintain it during construction, so as to achieve Service Commencement and Final Acceptance by the applicable Milestone Deadlines;

7.1.2 At all times provide a Project Manager approved by TxDOT who (a) will have full responsibility for the prosecution of the Work, including Design Work, Construction Work and O&M Work, (b) will act as agent and be a single point of contact in all matters on behalf of Developer, (c) will be present (or who will appoint a designee approved by TxDOT who will be present) at the Site at all times that Design Work or Construction Work is performed, and (d) will be available to respond to the Independent Engineer, TxDOT or its Authorized Representatives;

7.1.3 Comply with, and require that all Contractors comply with, all requirements of all applicable Laws, including Environmental Laws and the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), as amended;

7.1.4 Cooperate with TxDOT, the Independent Engineer, and Governmental Entities with jurisdiction in all matters relating to the Work, including Design Work, Construction Work and O&M Work, including their review, inspection and oversight of the design, construction, operations and maintenance of the Project and the design and construction of the Utility Adjustments; and

7.1.5 Use commercially reasonable efforts to mitigate delay to design and construction of the Project and mitigate damages due to delay in all circumstances, to the extent possible, including by re-sequencing, reallocating, or redeploying Developer's and its Contractors' forces to other work, as appropriate.

7.2 Performance, Design and Construction Standards; Deviations

7.2.1 Standards. Developer shall furnish all aspects of the Design Work and all Design Documents, including design required in connection with the operation and maintenance of the Project, Renewal Work or Upgrades, and shall construct the Project and Utility Adjustments included in the Construction Work as designed, free from Defects, and in accordance with (a) Good Industry Practice, (b) the requirements, terms and conditions set forth in the CDA Documents (including the Technical Provisions), (c) the Milestone Deadlines and Project Schedule, (d) all Laws, (e) the requirements, terms and conditions set forth in all Governmental Approvals, (f) the approved Project Management Plan and all component plans prepared or to be prepared thereunder, (g) the Final Design Documents and (h) the Construction Documents, in each case taking into account the Project Right of Way limits and other constraints affecting the Project. The Project design and construction shall be subject to the requirements of the approved Quality Management Plan.

7.2.2 Deviations. Developer may apply for, and TxDOT shall consider in its discretion, Deviations from applicable Technical Provisions; *provided* that TxDOT may elect to process such an application as a Change Request under Section 13.2 rather than as an application for a Deviation. No Deviation shall be effective unless and until approved by TxDOT's Authorized Representative. TxDOT's decision or failure to act in respect of a requested Deviation shall be final and not subject to the Dispute Resolution Procedures. The submission of a component plan of the Project Management Plan that includes a Deviation does not constitute a request for approval of the Deviation, and TxDOT's approval of such component plan does not constitute approval of any Deviation included therein.

7.2.3 Corrections Due to Error or Unsafe Conditions. Developer acknowledges that prior to the Effective Date it had the opportunity to identify any provisions of the Technical Provisions that are erroneous or create a potentially unsafe condition, and the opportunity and duty to notify TxDOT of such fact and of the changes to the provision that Developer believed were the minimum necessary to render it correct and safe. If it is reasonable or necessary to adopt changes to the Technical Provisions after the Effective Date to make the provisions correct and safe, such changes shall not be grounds for a Relief Event, Compensation Event or other Claim; unless (a) Developer neither knew nor had reason to know prior to the Effective Date that the provision was erroneous or created a potentially unsafe condition or (b) Developer knew of and reported to TxDOT the erroneous or potentially unsafe provision prior to the Effective Date and TxDOT did not adopt reasonable and necessary changes.

7.2.4 Changes to Standards

(a) References in the Technical Provisions to manuals or other publications governing the Design Work or Construction Work shall mean the most recent editions in effect as of the Setting Date, unless expressly provided otherwise (e.g., Section 7.3.5.2, paragraph 3 of the Technical Provisions). Any changes to the Technical Provisions, including Safety Standards, respecting Design Work or Construction Work shall be subject to the Change Order process for a TxDOT Change in accordance with Article 13. Safety Compliance changes shall be in accordance with Section 25.5.

(b) The Parties anticipate that from time to time after the Setting Date TxDOT will adopt, through revisions to existing manuals and publications or new manuals and publications, changed, added or replacement standards, criteria, requirements, conditions, procedures, specifications and other

provisions, including Safety Standards, relating to Design Work and Construction Work of general application to Comparable Limited Access Highways that are or become tolled or the subject of concession or public-private partnership agreements. TxDOT shall have the right to require Developer to comply with such changed, added or replacement standards, criteria, requirements, conditions, procedures, specifications and other provisions, including Safety Standards, by notice to Developer, whereupon they shall constitute amendments to, and become part of, the Technical Provisions. If such changed, added or replacement Technical Provisions or Safety Standards encompass matters that are addressed in the Technical Provisions as of the Setting Date, they may, upon inclusion in the Technical Provisions (conformed as appropriate to be consistent with the CDA Documents), replace and supersede inconsistent provisions of the Technical Provisions to the extent designated by TxDOT in its discretion. TxDOT will identify the superseded provisions in its notice to Developer. Notwithstanding the foregoing, in the absence of a TxDOT Change and except as provided otherwise in Section 7.2.4(c) with respect to a Change in Law and Section 11.2.1 with respect to Adjustment Standards, if TxDOT adopts the changed, added or replacement standards, criteria, requirements, conditions, procedures, specifications and other provisions, including changed, added or replacement Safety Standards, prior to any Service Commencement Date, Developer shall not be obligated to (but may) incorporate the same into its design and construction of the Project prior to the Service Commencement Date.

(c) New or revised statutes or regulations adopted after the Setting Date that change, add to or replace applicable standards, criteria, requirements, conditions, procedures, specifications and other provisions, including Safety Standards, related to the Design Work and Construction Work, as well as revisions to Technical Provisions to conform to such new or revised statutes or regulations, shall be treated as Changes in Law (including, to the extent expressly provided under other sections of this Agreement, Discriminatory Change in Law) rather than a TxDOT Change; however, the foregoing shall not apply to new or revised statutes or regulations that also cause or constitute changes in Adjustment Standards.

7.3 Design Implementation and Submittals

7.3.1 Developer, through the appropriately qualified and licensed design professionals identified in Developer's Project Management Plan in accordance with Section 2 of the Technical Provisions, shall prepare designs, plans and specifications in accordance with the CDA Documents. Developer shall cause the engineer of record for the Project to sign and seal all Released for Construction Documents.

7.3.2 Developer shall deliver to TxDOT and the Independent Engineer accurate and complete duplicates of all interim, revised and final Design Documents (including Final Design Documents) and Construction Documents within seven days after Developer completes preparation thereof, in form as provided in the Technical Provisions.

7.4 Software Compatibility. Unless otherwise specifically stated in the CDA Documents, Developer is responsible for assuring that all software it uses for any aspect of the Project is compatible with software used by TxDOT. Prior to using any software or version of software not then in use by TxDOT, Developer must obtain approval from TxDOT. In addition, Developer shall provide to TxDOT staff, at Developer's cost, any software, licenses and training reasonably necessary to assure that TxDOT is able to implement compatible usage of all software utilized by Developer. As used in this Section 7.4, "compatible" means that the Developer-provided electronic files may be loaded or imported and manipulated by TxDOT using its software with no modifications, preparation or adjustments. All electronic information submitted to TxDOT shall be in native format or, if not available, in a readable and useable format.

7.5 Contractor Warranties

7.5.1 If and to the extent Developer obtains general or limited warranties from any Contractor in favor of Developer with respect to design, materials, workmanship, equipment, tools, supplies, software or services, Developer also shall cause such warranty to be expressly extended to TxDOT and any third parties for whom Work is being performed or equipment, tools, supplies or software is being supplied by such Contractor; *provided* that the foregoing requirement shall not apply to standard, pre-specified manufacturer warranties of mass-marketed materials, products (including software products), equipment or supplies where the warranty cannot be extended to TxDOT using commercially reasonable efforts. TxDOT agrees to forebear from exercising remedies under any such warranty so long as Developer or a Lender is diligently pursuing remedies thereunder. To the extent that any Contractor warranty would be voided by reason of Developer's negligence in incorporating material or equipment into the Work, Developer shall be responsible for correcting such defect.

7.5.2 Contractor warranties (if any) are in addition to all rights and remedies available under the CDA Documents or applicable Law or in equity, and shall not limit Developer's liability or responsibility imposed by the CDA Documents or applicable Law or in equity with respect to the Work, including liability for design Defects, latent construction Defects, strict liability, breach, negligence, willful misconduct or fraud.

ARTICLE 8
SUBMITTALS; MEETINGS; INSPECTION

8.1 Submittals

8.1.1 Submission. Except as otherwise provided, Developer shall submit any Submittal concurrently to TxDOT and the Independent Engineer (although the Independent Engineer is expected to complete its review before TxDOT reviews the Submittal). The Submittal shall include all information and documentation concerning the subject matter and shall be accompanied by a transmittal, in a form to be agreed by TxDOT and Developer.

8.1.2 Time for Review

(a) The time periods for the Independent Engineer to review and comment on a Submittal shall be set forth in the Independent Engineer Agreement.

(b) Whenever TxDOT is entitled to review, comment on, approve or disapprove a Submittal, TxDOT shall have a period of 14 days to act (or such other applicable period as provided in the CDA Documents). Such period shall commence (i) upon the conclusion of the Independent Engineer's review, if applicable, or (ii) if the Independent Engineer's review is not required, or if the CDA Documents or the Independent Engineer Agreement provide for concurrent review by TxDOT and the Independent Engineer, upon TxDOT's receipt of an accurate and complete Submittal from Developer.

(c) TxDOT may reasonably extend the time periods for TxDOT and the Independent Engineer to act (and such extension shall not constitute a TxDOT-Caused Delay, TxDOT Change, Relief Event, Compensation Event or other basis for any Claim) whenever (i) there are more than 10 concurrent Submittals of any type pending review by TxDOT and the Independent Engineer in aggregate, (ii) there are more than the maximum number of concurrent Submittals of a particular type as set forth in the CDA Documents pending review by TxDOT and the Independent Engineer in aggregate, (iii) there has been a

delay caused by a Relief Event set forth in clause (a), (b), (c), (e), (m) or (n) of the definition of Relief Event (for this purpose modified where applicable to refer to Developer acts rather than TxDOT acts), (iv) there has been a delay caused by any Developer-Related Entity or (v) TxDOT is entitled under Section 28.5 to increase the level of its and the Independent Engineer's auditing, monitoring, inspection, sampling, measuring, testing and oversight of the Project, the Utility Adjustments and Developer's compliance with its obligations under the CDA Documents. Whenever TxDOT is in receipt of excess concurrent Submittals, Developer may establish by notice to TxDOT and the Independent Engineer an order of priority for processing such Submittals; and TxDOT and the Independent Engineer shall comply with such order of priority. Refer to Sections 6.5.1, 7.2.4 and 7.3.1 of the Technical Provisions for maximum concurrent Utility Submittals, Submittals of Acquisition Packages and Submittals of Project ROW maps, and extensions of time in the case of Utility Submittals, Acquisition Packages and Project ROW maps in excess of the maximum.

8.1.3 TxDOT Approvals. Whenever the CDA Documents indicate that a Submittal or other matter is subject to TxDOT's approval, Developer shall not proceed until the Submittal is approved by TxDOT. The standard for approval of any Submittal is set forth in Section 1.6, except that any Submittal submitted to TxDOT for approval prior to the issuance of NTP2 is subject to approval or disapproval by TxDOT in TxDOT's discretion.

8.1.4 TxDOT Review and Comment (No Prior Approval). Whenever the CDA Documents indicate that a Submittal or other matter is subject to TxDOT's review, comment, review and comment, disapproval or similar action not entailing a prior approval and TxDOT delivers no comments, exceptions, objections, rejections or disapprovals within the applicable time period, then Developer may proceed thereafter at its election and risk, without prejudice to TxDOT's rights to later object or disapprove. No such failure or delay by TxDOT in delivering comments, exceptions, objections, rejections or disapprovals within the applicable time period shall constitute a TxDOT-Caused Delay, TxDOT Change, Relief Event, Compensation Event or other basis for any Claim. When used in the CDA Documents, the phrase "completion of the review and comment process" or similar terminology means either (a) TxDOT has reviewed, provided comments, exceptions, objections, rejections or disapprovals, and all the same have been resolved, or (b) the applicable time period has passed without TxDOT providing any comments, exceptions, objections, rejections or disapprovals.

8.1.5 Submittals Not Subject to Prior Review, Comment or Approval. Whenever the CDA Documents indicate that Developer is to deliver a Submittal to TxDOT but express no requirement for TxDOT review, comment, disapproval, prior approval or other TxDOT action, then Developer is under no obligation to provide TxDOT any period of time to review the Submittal or obtain approval of it before proceeding with further Work, and TxDOT shall have the right, but is not obligated, to at any time review, comment on, take exception to, object to, reject or disapprove the Submittal. The failure or delay by TxDOT in delivering comments, exceptions, objections, rejections or disapprovals with respect to the Submittal does not constitute a TxDOT-Caused Delay, TxDOT Change, Relief Event, Compensation Event or other basis for any Claim.

8.1.6 Resolution of TxDOT Comments and Objections

(a) Developer shall respond to, and make modifications to the Submittal as necessary to fully reflect and resolve, all comments and objections to a Submittal by TxDOT and the Independent Engineer that are based on the following grounds: (i) the Submittal fails to comply with any applicable provision of the CDA Documents or Project Management Plan and component plans thereunder; (ii) the Submittal is not to a standard equal to or better than the requirements of Good Industry Practice; (iii) Developer has not provided all required information; (iv) implementation of the Submittal would result in a conflict with or violation of any Law or Governmental Approval; or (v) the Submittal requires or

proposes a commitment, requirements, action, term or condition in connection with a Governmental Approval that is not the usual and customary arrangement offered or accepted by TxDOT for addressing similar circumstances affecting its own projects. The foregoing does not obligate Developer to incorporate any comments or resolve objections that would render the Submittal erroneous, defective or less than Good Industry Practice, except pursuant to a TxDOT Change.

(b) TxDOT or the Independent Engineer may also provide comments and objections that reflect concerns regarding interpretation or preferences of the commenter or that otherwise do not directly relate to grounds set forth in Section 8.1.6(a). Developer shall use reasonable efforts to accommodate or otherwise resolve any such comments or objections. However, unless the Submittal is subject to approval or disapproval by TxDOT in its discretion, the foregoing does not obligate Developer to incorporate any comments or resolve objections that are not reasonable and would result in a delay to a Critical Path on the Project Schedule, in an increase in Developer's costs or a decrease in Toll Revenues, except pursuant to a TxDOT Change.

(c) If Developer does not accommodate or otherwise resolve any comment or objection, Developer shall deliver to TxDOT, within 30 days after receipt of the comment or objection, an explanation why modifications based on such comment or objection are not required, including the facts, analyses and reasons that support the conclusion. Developer's failure to provide such explanation with such 30-day period shall constitute Developer's agreement to make all changes necessary to accommodate or resolve the comment or objection and Developer's full acceptance of all responsibility for such changes without right to a TxDOT-Caused Delay, Change Order, Relief Event, Compensation Event or other Claim. If there continues to be disagreement about any comment or objection, or the accommodation or resolution thereof, after Developer delivers its explanation, the Parties shall attempt in good faith to resolve the dispute; if the Parties are unable to resolve the dispute, it shall be resolved according to the Dispute Resolution Procedures except (i) to the extent the Submittal is subject to TxDOT's discretionary approval or disapproval (in which case TxDOT's disapproval or approval shall govern), and (ii) if TxDOT elects to issue a Directive Letter pursuant to Section 13.3 with respect to the disputed matter, Developer shall proceed in accordance with TxDOT's directive while retaining any Claim as to the disputed matter.

8.1.7 Reliance by Developer. Developer may rely on approvals and acceptances from TxDOT in respect of a Submittal only (a) for the limited purpose of establishing that the approval or acceptance occurred or (b) that are within TxDOT's sole discretion, but only to the extent that Developer is prejudiced by a subsequent decision of TxDOT to rescind such approval or acceptance. No review, comment, objection, rejection, approval, disapproval, acceptance, certification (including certificates of Substantial Completion, Service Commencement and Final Acceptance), concurrence, monitoring, testing, inspection, spot checking, auditing or other oversight by or on behalf of TxDOT or the Independent Engineer, and no lack thereof by TxDOT or the Independent Engineer, shall constitute acceptance of materials or Work or waiver of any legal or equitable right under the CDA Documents, at law, or in equity. Regardless of any such activity or failure to conduct any such activity by TxDOT or the Independent Engineer (which activities are solely for the benefit and protection of TxDOT), Developer at all times shall have an independent duty and obligation to fulfill the requirements of the CDA Documents. TxDOT shall be entitled to remedies for unapproved Deviations and Nonconforming Work and to identify additional Work that must be done to bring the Work and Project into compliance with requirements of the CDA Documents. Notwithstanding the foregoing, (i) Developer shall be entitled to rely on specific written Deviations TxDOT approves under Section 7.2.2 or 15.2.10; (ii) Developer shall be entitled to rely on the certificates of Substantial Completion, Service Commencement and Final Acceptance from TxDOT for the limited purpose of establishing that Substantial Completion, Service Commencement and Final Acceptance, as applicable, have occurred, and the respective dates thereof; (iii) TxDOT is not relieved from any liability arising out of a knowing and intentional material misrepresentation under any

written statement TxDOT delivers to Developer; and (iv) TxDOT is not relieved from performance of its express responsibilities under the CDA Documents in accordance with all standards applicable thereto.

8.2 Oversight, Inspection and Testing. The Independent Engineer will perform oversight, inspection, testing and auditing respecting the Design Work and Construction Work in accordance with the Independent Engineer Agreement. TxDOT's rights of oversight, inspection, testing and auditing respecting the Design Work and Construction Work are set forth in Sections 22.3 and 34.4.

8.3 Meetings. Developer shall conduct regular progress meetings with TxDOT at least once per month during the course of design and construction. At TxDOT's request, Developer will require the Design-Build Contractor to attend the progress meetings. In addition, TxDOT and Developer, through their respective Authorized Representatives, shall meet from time to time at the other Party's request to discuss and resolve matters relating to the Design Work, Construction Work or Project. Developer shall schedule all meetings with TxDOT at a date, time and place reasonably convenient to both Parties and, except in the case of urgency, shall provide TxDOT with notice and a meeting agenda at least three Business Days in advance of each meeting. Developer shall prepare and submit to TxDOT minutes of each meeting with TxDOT within 10 Business Days after the meeting.

ARTICLE 9
PROJECT SCHEDULE; SUBSTANTIAL COMPLETION; FINAL ACCEPTANCE

9.1 Schedule

9.1.1 Schedule Commitments. As a material consideration for entering into this Agreement, Developer hereby commits, and TxDOT is relying upon Developer's commitment, to develop the Project in accordance with the milestones and time periods set forth in this Agreement, Section 2.1.1 of the Technical Provisions, the Project Schedule and the Milestone Deadlines, subject only to delays caused by Relief Events specifically provided hereunder. Except where this Agreement expressly provides for extension of time due to a Relief Event, the time limitations set forth in the CDA Documents, including the Milestone Deadlines, for Developer's performance of its covenants, conditions and obligations are of the essence, and Developer waives any right at law or in equity to tender or complete performance beyond the applicable time period, or to require TxDOT to accept such performance. Developer hereby represents and warrants that the Project Baseline Schedule set forth as Attachment 2 to Exhibit 7 meets the requirements of Section 2.1.1.2 of the Technical Provisions and is consistent with the Milestone Deadlines. The Parties shall use the Project Baseline Schedule for planning and monitoring the progress of the Work.

9.1.2 Milestone Deadlines

(a) Developer shall satisfy all conditions to issuance of NTP2 by the NTP2 Conditions Deadline.

(b) Developer shall achieve Service Commencement for all Project Segments by the Service Commencement Deadline.

(c) Developer shall achieve Final Acceptance for each Project Segment by the Final Acceptance Deadline for such Project Segment.

9.1.3 Float. All Float contained in the Project Schedule, as shown in the initial Project Baseline Schedule or as generated thereafter, shall be considered a shared resource among TxDOT, Developer and the Design-Build Contractor available to any or all such parties as needed to absorb delay caused by Relief Events or other events, achieve interim completion dates and achieve Milestones by the applicable Milestone Deadlines, except that Float shall not be available to TxDOT to absorb delays caused by the Relief Events set forth in clauses (d) through (i) and (q) of the definition of Relief Events. As for such Relief Events, extensions of time shall be determined as if no Float then exists. All Float shall be shown as such in the Project Schedule on each affected schedule path. TxDOT shall have the right to examine the identification of (or failure to identify) Float on the Project Schedule in determining whether to approve the Project Schedule. Once identified, Developer shall monitor and account for Float in accordance with critical path methodology.

9.2 Notices to Proceed; Conditions Precedent to Construction Work

9.2.1 NTP1. Issuance of NTP1 authorizes Developer (a) to perform (or, continue performance of) the portion of the Work necessary to obtain TxDOT's approval of the component parts, plans and documentation of the Project Management Plan that are labeled "A" in the column titled "Required By" in Attachment 2-1 to the Technical Provisions, (b) to enter the Project Right of Way TxDOT owns, after coordinating with TxDOT's Area Office, in order to conduct surveys and site investigations, including geotechnical, Hazardous Materials and Utilities investigations, and (c) to engage in the other activities anticipated to be performed after NTP1 in the Technical Provisions to satisfy the conditions to issuance of NTP2 under Section 9.2.2. TxDOT anticipates issuing NTP1 concurrently with execution and delivery of this Agreement.

9.2.2 NTP2. Issuance of NTP2 authorizes Developer to perform all other Work and activities pertaining to the Project, except Construction Work (for which the conditions precedent set forth in Section 9.2.4 must also be satisfied). TxDOT anticipates issuing NTP2 concurrently with TxDOT's approval, in accordance with Section 22.1 of this Agreement and Section 2 of the Technical Provisions, of all the component parts, plans and documentation of the Project Management Plan that are labeled "A" in the column titled "Required By" in Attachment 2-1 to the Technical Provisions and achievement of the following conditions:

(a) Submittal by Developer to TxDOT and approval by TxDOT of Developer's design schematic of the Project pursuant to the description of the Project set forth in Section 1.2.1 of the Technical Provisions;

(b) Submittal by Developer to TxDOT and approval by TxDOT of Developer's modified WBS and PBS-2 under Section 2.1.1 of the Technical Provisions;

(c) Submittal by Developer to TxDOT and approval by TxDOT of Developer's Schedule of Values under Section 2.1.1 of the Technical Provisions;

(d) Joint inspection of the existing facilities, structures and environmentally sensitive areas in the vicinity of the Site but not included as part of the Work under Section 4.3.7 of the Technical Provisions;

(e) Submittal by Developer to TxDOT and approval by TxDOT and FHWA of a preliminary operational signing schematic under Section 16.3.1 of the Technical Provisions;

(f) Conducting of an inventory by Developer of all existing sidewalks and footpaths under Section 20.3.2 of the Technical Provisions;

(g) Submittal by Developer to TxDOT of the Safety and Health Plan under Section 2.5 of the Technical Provisions;

(h) Submittal by Developer to TxDOT and approval by TxDOT, at least 60 days in advance, of the Public Information and Communications Plan under Section 3.2.1 of the Technical Provisions;

(i) Submittal by Developer to TxDOT and approval by TxDOT of plans identifying the Auditable Sections under Section 19.5.2 of the Technical Provisions;

(j) Submittal by Developer to TxDOT and approval by TxDOT of the Performance and Measurement Table under Section 19.3 of the Technical Provisions;

(k) Submittal by Developer to TxDOT and approval by TxDOT of a Project Segment Plan under Section 1.3 of the Technical Provisions;

(l) All Insurance Policies required to be obtained at or prior to the issuance of NTP2 under Section 26.1 and Exhibit 16 have been obtained and are in full force and effect, and Developer has delivered to TxDOT binding verifications of coverage from the relevant issuers of such Insurance Policies; and

(m) Occurrence of Financial Close or submittal by Developer of a request to TxDOT to issue NTP2 notwithstanding the fact that Financial Close has not occurred.

9.2.3 Work at Risk Prior to Issuance of NTP2. Except as may be expressly permitted by TxDOT in writing on terms prescribed by TxDOT, any Work for which NTP2 is required to be issued that is performed prior to the issuance of NTP2 is not authorized by TxDOT or the CDA Documents and is at Developer's sole risk, without any recourse to TxDOT. TxDOT is not required to accept any such Work prior to the issuance of NTP2. If Developer nonetheless submits a Submittal to TxDOT prior to the issuance of NTP2, (a) TxDOT will not review the Submittal unless the relevant portion of the Project Management Plan has been approved, (b) even if the relevant portion of the Project Management Plan has been approved, TxDOT is entitled to determine, in its discretion, whether and when to review the Submittal, and (c) if TxDOT agrees to review the Submittal prior to the issuance of NTP2, the time period for review of the Submittal shall not begin until the issuance of NTP2. If Developer commences any Work for which NTP2 is required to be issued that is performed prior to the issuance of NTP2, TxDOT may, without prejudice to or waiver of its other rights under the CDA Documents, require Developer to obtain and maintain Insurance Policies required under Sections 2 and 3 of Exhibit 16 prior to the issuance of NTP2. Under no circumstance shall Developer commence Construction Work unless and until permitted by Section 9.2.4.

9.2.4 Conditions Precedent to Commencement of Construction Work. Except to the extent expressly permitted by TxDOT, Developer shall not commence or permit or suffer commencement of construction of the Project or applicable portion thereof until TxDOT issues NTP2 and all of the following conditions have been satisfied:

(a) All Governmental Approvals necessary to begin Construction Work in the applicable portion of the Project have been obtained, and Developer has furnished to TxDOT fully executed copies of such Governmental Approvals;

(b) Fee simple title or, if acceptable to TxDOT in its discretion, other property rights, for the Project Right of Way necessary for commencement of construction of the applicable portion of the

Project and Utility Adjustments included in the Construction Work have been identified, conveyed to and recorded in favor of TxDOT, TxDOT has obtained possession thereof through eminent domain, or all necessary parties have validly executed and delivered a possession and use agreement therefor on terms acceptable to TxDOT;

(c) Developer has satisfied for the applicable portion of the Project all applicable pre-construction requirements contained in the NEPA Approval and other relevant Governmental Approvals;

(d) Developer has delivered to TxDOT the original of each of the Performance Bond and the Payment Bond (in each case in the increased amount, as provided in Sections 26.2.1 and 26.2.2, respectively) or a certified copy thereof;

(e) The guarantees in favor of TxDOT, if any, required under Section 26.4 have been obtained and delivered to TxDOT;

(f) All Insurance Policies required under Section 26.1 and Exhibit 16 have been obtained and are in full force and effect, and Developer has delivered to TxDOT binding verifications of coverage from the relevant issuers of such Insurance Policies;

(g) Developer has caused to be developed and delivered to TxDOT and TxDOT has approved, in accordance with Section 22.1 of this Agreement and Section 2 of the Technical Provisions, the component parts, plans and documentation of the Project Management Plan that are labeled "A" and "B" in the column titled "Required By" in Attachment 2-1 to the Technical Provisions;

(h) Developer has delivered to TxDOT and the Independent Engineer all Submittals relating to the Construction Work required by the Project Management Plan or CDA Documents, in the form and content required by the Project Management Plan or CDA Documents;

(i) Developer demonstrates to TxDOT's reasonable satisfaction that Developer has completed training of operations and maintenance personnel, which demonstration shall consist of (i) delivery to TxDOT of a certificate, in form acceptable to TxDOT, executed by Developer that it and its Contractors are fully staffed with such trained personnel and are ready, willing and able to operate and maintain the Project in accordance with the terms and conditions of the CDA Documents and Project Management Plan pertaining to the Operating Period, (ii) delivery to TxDOT of training records and course completion certificates issued to each of the subject personnel and (iii) TxDOT's verification that the training program and number of trained personnel meet the standards in the Hazardous Material Management Plan and Section 4.3.5 of the Technical Provisions;

(j) All component parts, plans and documentation of the Project Management Plan required to be prepared, submitted and approved prior to the Operating Period have been so prepared, submitted and approved, including all operations and maintenance plans, procedures, rules, schedules and manuals, and including manuals and procedures respecting safety, security, Emergency response and Incident response, as identified in the Project Management Plan;

(k) All Submittals required by the Project Management Plan or CDA Documents to be submitted to and approved by TxDOT or the Independent Engineer prior to the Operating Period have been submitted to and approved by TxDOT or the Independent Engineer, as applicable, in the form and content required by the Project Management Plan or CDA Documents;

(l) Developer has received, and paid all associated fees (that are due and payable) for, all applicable Governmental Approvals and other third-party approvals required for use and operation, and there exists no uncured material violation of the terms and conditions of any such Governmental Approval or other third-party approvals;

(m) Any other guaranty of payment or performance required pursuant to Section 26.4 during the Operating Period has been delivered to TxDOT;

(n) All representations and warranties of Developer set forth in Section 5.1 shall be and remain true and correct in all material respects;

(o) Developer has adopted policies establishing ethical standards of conduct for all Developer-Related Entities, including Developer's supervisory and management personnel in dealing with (i) TxDOT and the Independent Engineer and (ii) employment relations, in accordance with Section 23.7.1; and

(p) There exists no uncured Developer Default (or any other failure or breach which would become a Developer Default after the expiration of the applicable cure period in Section 29.1) for which Developer has received notice from TxDOT, unless, (i) with respect to a monetary default that Developer has disputed, Developer has delivered to TxDOT any letter of credit required pursuant to Section 29.4.7(b) regarding the amount in dispute, or (ii) with respect to a non-monetary default, Developer has a right to cure and is diligently pursuing cure within the applicable cure period specified in Section 29.1.

Developer shall provide to TxDOT and the Independent Engineer at least 60 days' advance notice of the date Developer anticipates that it will satisfy all such conditions precedent.

9.2.5 Conditions Precedent to Commencement of Utility Adjustments. Developer shall not commence or permit or suffer commencement of construction of a Utility Adjustment included in the Construction Work until TxDOT issues NTP2, all of the conditions set forth in Section 9.2.4 that are applicable to the Utility Adjustment (reading such provisions as if they referred to the Utility Adjustment) have been satisfied, and the following additional requirements have been satisfied:

(a) If applicable, the Alternate Procedure List has been approved by FHWA, and either the affected Utility or the Utility Owner is on the approved Alternate Procedure List, as supplemented;

(b) Except as otherwise provided in Section 11.6.3, the Utility Adjustment is covered by an executed Utility Agreement; and

(c) The review and comment process has been completed and any required approvals have been obtained for the Utility Assembly covering the Utility Adjustment.

9.3 Substantial Completion

9.3.1 TxDOT shall issue a certificate of Substantial Completion at such time as Substantial Completion occurs for each Project Segment. Substantial Completion shall occur for a Project Segment upon satisfaction of the following criteria:

(a) All major safety features are installed and functional, such major safety features to include shoulders, guard rails, striping and delineations, concrete traffic barriers, bridge railings, cable

safety systems, metal beam guard fences, safety end treatments, terminal anchor sections and crash attenuators;

(b) All required illumination is installed and functional;

(c) All required signs and signals are installed and functional;

(d) The need for temporary traffic controls or for lane closures at any time has ceased (except for any then required for routine maintenance, and except for temporary lane closures during hours of low traffic volume in accordance with and as permitted by the Traffic Management Plan solely in order to complete Punch List items);

(e) All lanes of traffic (including ramps, interchanges, overpasses, underpasses, other crossings and frontage roads) set forth in the Design Documents are in their final configuration and available for public use;

(f) Except to the extent Developer is unable to do so directly as a result of failures or defects in TxDOT's legacy system, the Electronic Toll Collection System is completed, has passed all demonstration and performance testing in accordance with the Project Management Plan, including demonstration of interoperability with the CSC Host as provided in the Technical Provisions, and is ready for normal operation. As part of fulfilling such condition, Developer shall deliver to TxDOT and the Independent Engineer all reports, data and documentation relating to such demonstration testing, and such testing shall demonstrate that the Electronic Toll Collection System meets the minimum threshold performance standards and requirements set forth in the Project Management Plan, and the minimum interoperability performance standards set forth in the Technical Provisions, for commencing normal, live use and operation. TxDOT and Developer recognize that such threshold performance standards and requirements may be at lower levels, consistent with Good Industry Practice, than the performance standards and requirements set forth in the Performance and Measurement Table Baseline because of normal need for ramp-up and optimization of performance at the beginning of regular operations;

(g) The ITS and safety features for ITS components are installed and functional;

(h) Completion of all Work necessary to provide full integration with all other Project Segments that have previously achieved Substantial Completion and demonstration of continuity of all Elements of the Project Segment that extend into any other Project Segment that has previously achieved Substantial Completion; and

(i) Developer has otherwise completed the Construction Work in accordance with the CDA Documents, Final Design Documents and Construction Documents, such that the applicable Project Segment is in a condition that it can be used for normal and safe vehicular travel in all lanes and at all points of entry and exit, with a fully operable Electronic Toll Collection System meeting the Technical Provisions, subject only to Punch List items and other items of work that do not affect the ability to safely open for such normal use by the traveling public and for normal tolling operation.

9.3.2 The Parties shall disregard the status of the landscaping and aesthetic features included in the Design Documents in determining whether Substantial Completion has occurred, except to the extent that its later completion will affect public safety or satisfaction of the criterion in Section 9.3.1(d).

9.3.3 Developer shall provide to TxDOT and the Independent Engineer at least 60 days' advance notice of the date Developer anticipates that it will achieve Substantial Completion for a Project Segment. During such 60-day period, (a) Developer, TxDOT and the Independent Engineer shall meet

and confer and exchange information on a regular, cooperative basis, (b) the Independent Engineer shall inspect the applicable Project Segment and its components, review the applicable Final Design Documents and Construction Documents and conduct such other investigation as may be necessary to evaluate whether Substantial Completion is achieved, (c) the Independent Engineer shall deliver a report of findings and recommendations to TxDOT and Developer following such inspection, review and investigation and (d) TxDOT may, but is not obligated to, jointly with the Independent Engineer or independently conduct such inspection, review and investigation.

9.3.4 Upon or after the expiration of the 60-day period under Section 9.3.3, Developer shall provide to TxDOT and the Independent Engineer notice that Developer has achieved Substantial Completion for such Project Segment. Within five days after receipt of such notice, TxDOT shall either (a) issue the certificate of Substantial Completion for such Project Segment or (b) notify Developer why the applicable Project Segment has not reached Substantial Completion. If TxDOT and Developer cannot agree as to the date of Substantial Completion, such Dispute shall be resolved according to the Dispute Resolution Procedures.

9.4 Punch List

9.4.1 The Project Management Plan shall establish procedures and schedules for preparing, for each Project Segment, a Punch List for the Project Segment and all corresponding portions of the Project between the ROW boundaries, including the applicable portions of the General Purpose Lanes and Frontage Roads, and completing Punch List work. Such procedures and schedules shall conform to the following provisions.

9.4.2 The schedule for preparation of the Punch List either shall be consistent and coordinated with the inspections regarding Substantial Completion, or shall follow such inspections.

9.4.3 Developer shall prepare and maintain the Punch List. Developer shall deliver to TxDOT and the Independent Engineer not less than five days' prior notice stating the date when Developer will commence Punch List field inspections and Punch List preparation. The Independent Engineer and TxDOT may, but are not obligated to, participate in the development of the Punch List. Each participant shall have the right to add items to the Punch List and none shall remove any item added by any other without such other's express permission. If Developer objects to the addition of an item by TxDOT or the Independent Engineer, the item shall be noted as included under protest, and if the Parties thereafter are unable to reconcile the protest, the Dispute shall be resolved according to the Dispute Resolution Procedures. Developer shall deliver to TxDOT and the Independent Engineer a true and complete copy of the Punch List, and each modification thereto, as soon as it is prepared.

9.4.4 Developer shall immediately commence work on the Punch List items and diligently prosecute such work to completion, consistent with the CDA Documents, within the time period to be set forth in the Project Management Plan and in any case by the applicable Final Acceptance Deadline.

9.5 Service Commencement

9.5.1 Developer shall not initiate, permit or suffer Service Commencement for any Project Segment until TxDOT issues a certificate that all of the following conditions have been satisfied. TxDOT will issue such a certificate immediately upon satisfaction of all the following conditions for the Project Segment:

(a) TxDOT has issued a certificate of Substantial Completion, or the Disputes Board has determined that TxDOT should have issued such certificate (regardless of whether TxDOT subsequently contests such determination);

(b) All component parts, plans and documentation of the Project Management Plan required to be prepared, submitted and approved prior to Service Commencement have been so prepared, submitted and approved, including all operations and maintenance plans, procedures, rules, schedules and manuals, and including manuals and procedures respecting safety, security, Emergency response and Incident response, as identified in the Project Management Plan;

(c) All Submittals required by the Project Management Plan or CDA Documents to be submitted to and approved by TxDOT or the Independent Engineer prior to Service Commencement have been submitted to and approved by TxDOT and the Independent Engineer, in the form and content required by the Project Management Plan or CDA Documents;

(d) Developer has received, and paid all associated fees for, all applicable Governmental Approvals and other third-party approvals required for use and operation of the Project Segment, and there exists no uncured material violation of the terms and conditions of any such Governmental Approval or other third-party approvals;

(e) Developer, and, if applicable, TxDOT and the Independent Engineer, have completed preparation of the Punch List in accordance with Section 9.4;

(f) All Insurance Policies required under this Agreement during the Operating Period have been obtained and Developer has delivered to TxDOT verification thereof as required under Section 26.1.2(d);

(g) Any payment and performance security in favor of TxDOT required under Section 26.2 during the Operating Period has been obtained and Developer has delivered the same to TxDOT;

(h) Any other guaranty of payment or performance required pursuant to Section 26.4 during the Operating Period has been delivered to TxDOT; and

(i) There exists no uncured Developer Default (or any other failure or breach which would become a Developer Default after the expiration of the applicable cure period in Section 29.1) that is the subject of a Warning Notice, unless (i) Service Commencement will effect its cure, (ii) with respect to a monetary default that Developer has disputed, Developer has delivered to TxDOT any letter of credit required pursuant to Section 29.4.7(b)(ii) regarding the amount in dispute, or (iii) with respect to a non-monetary default, Developer has a right to cure and is diligently pursuing cure within the applicable cure period in Section 29.1.

9.5.2 Developer shall provide to TxDOT and the Independent Engineer at least 20 days' advance notice of the date Developer anticipates that it will satisfy all of the foregoing conditions for a Project Segment. During such 20-day period, (a) Developer, TxDOT and the Independent Engineer shall meet and confer and exchange information on a regular, cooperative basis, (b) the Independent Engineer shall inspect the Project Segment and review such other reports, data and documentation as may be necessary to evaluate whether all of the conditions to Service Commencement have been satisfied, (c) the Independent Engineer shall deliver a report of findings and recommendations to TxDOT and Developer following such inspection and review and (d) TxDOT may, but is not obligated to, jointly with the Independent Engineer or independently conduct such inspection and review.

9.5.3 Upon or after the expiration of the 20-day period under Section 9.5.2, Developer shall provide to TxDOT and the Independent Engineer notice that Developer has satisfied all of the foregoing conditions for such Project Segment (other than in Section 9.5.1(a)). Within five days after receipt of such notice, TxDOT shall either (a) issue a certificate authorizing Service Commencement for the Project Segment or (b) notify Developer why the conditions to Service Commencement for the Project Segment have not been satisfied. If TxDOT and Developer cannot agree as to the date of Substantial Completion, such Dispute shall be resolved according to the Dispute Resolution Procedures. If TxDOT and Developer cannot agree as to the date of Service Commencement, such Dispute shall be resolved according to the Dispute Resolution Procedures.

9.5.4 If Developer has satisfied all of the foregoing conditions for a Project Segment other than the condition under Section 9.5.1(a), TxDOT may authorize Developer to nonetheless request the certificate authorizing Service Commencement for the Project Segment on the condition that TxDOT verifies that the condition under Section 9.5.1(i) remains satisfied at the time of Substantial Completion of the Project Segment.

9.6 Final Acceptance

9.6.1 Promptly after achieving Substantial Completion for each Project Segment, Developer shall perform all remaining Construction Work for the Project Segment, including completion of all Punch List items and all landscaping other than vegetative ground cover and aesthetic features. Developer shall prepare and adhere to a timetable for planting and establishing the vegetative ground cover landscaping, taking into account weather conditions necessary for successful planting and growth, which timetable shall in any event provide for vegetative ground cover landscaping to be planted and established by 12 months after Substantial Completion for the Project Segment. TxDOT shall issue a certificate of Final Acceptance for each Project Segment at such time as all of the following have occurred for the Project Segment:

(a) All requirements for Substantial Completion and Service Commencement have been satisfied;

(b) All Punch List items have been completed and delivered to the reasonable satisfaction of TxDOT;

(c) All aesthetic and landscaping features (other than vegetative ground cover landscaping) have been completed in accordance with Section 15 of the Technical Provisions and the plans and designs prepared in accordance therewith;

(d) TxDOT has received a complete set of the Record Drawings in form and content required by Section 2.2.7.2 of the Technical Provisions;

(e) TxDOT has accepted Developer's as-built schedule as required by Section 2.1.1.2.6 of the Technical Provisions;

(f) All Utility Adjustment Work and other work that Developer is obligated to perform for or on behalf of third parties has been accepted by such third parties, and Developer has paid for all work by third parties that Developer is obligated to pay for, other than disputed amounts;

(g) Developer has paid in full all liquidated damages that are owing to TxDOT pursuant to this Agreement and are not in Dispute, and has provided to TxDOT reasonable security for the full amount of liquidated damages that may then be the subject of an unresolved Dispute; and

(h) There exist no uncured Developer Defaults that are the subject of a Warning Notice, or with the giving of notice or passage of time, or both, could become the subject of a Warning Notice (except any Developer Default for which Final Acceptance will effect its cure).

9.6.2 Developer shall notify TxDOT and the Independent Engineer when Developer has achieved Final Acceptance for a Project Segment. During the 15-day period following receipt of such notice, (a) Developer, TxDOT and the Independent Engineer shall meet and confer and exchange information on a regular, cooperative basis, (b) the Independent Engineer shall inspect the Punch List items, review the Record Drawings and conduct such other investigation as may be necessary to evaluate whether the conditions to Final Acceptance are satisfied, (c) the Independent Engineer shall deliver a report of findings and recommendations to TxDOT and Developer following such inspection, review and investigation and (d) TxDOT may, but is not obligated to, jointly with the Independent Engineer or independently conduct such inspection, review and investigation. Within five days after expiration of such 15-days period and TxDOT's receipt of the Independent Engineer's report, TxDOT shall either (i) issue a certificate of Final Acceptance for the Project Segment or (ii) notify Developer why Final Acceptance for the Project Segment has not been achieved. If TxDOT and Developer cannot agree as to the date of Final Acceptance, such Dispute shall be resolved according to the Dispute Resolution Procedures.

9.7 Opening and Operation. In addition to Developer's obligations under Section 18 of the Technical Provisions, prior to the Service Commencement Date for a Project Segment, Developer shall (a) have the right and obligation to open to traffic, operate and maintain portions of the Project Segment that Developer completes where safe and necessary or advisable for traffic circulation and (b) have the right to open to traffic, operate and maintain discrete portions of the Project Segment that Developer completes to the extent safe and necessary to enable orderly construction of the Project. If the portion opened is to be tolled, no tolling shall commence thereon until the Service Commencement Date therefor, but the portion shall first be adequately posted with signs informing the public that it is a tolled roadway and of the estimated date when tolls will commence. Developer shall undertake early openings consistently with and in accordance with the TxDOT-approved Traffic Management Plan. No early openings shall be relevant for determining Substantial Completion, Service Commencement or Final Acceptance, or determining whether Milestone Deadlines are satisfied.

ARTICLE 10
PROJECT RIGHT OF WAY ACQUISITION

10.1 Developer's Responsibility

10.1.1 To the extent any Project Right of Way is not already owned by the State and available for the Project, Developer shall undertake and complete the acquisition of Project Right of Way and Additional Properties in accordance with Section 7 of the Technical Provisions, the approved Right of Way Acquisition Plan and all applicable Laws relating to such acquisition, including the Uniform Act. Developer shall also be responsible for submitting the completed files in accordance with the closeout procedures as defined by TxDOT in Section 7.2.11 of the Technical Provisions. All Project Right of Way, including Additional Properties other than temporary interests in property for Project Specific Locations, shall be acquired in the name of the State.

10.1.2 Developer shall perform all Project Right of Way engineering, mapping, surveying, appraisal, appraisal review, administration, negotiation, acquisition, environmental assessment, testing and remediation, environmental permitting, if any (except to the extent that TxDOT has obtained NEPA

Approval for the Project Right of Way prior to the Financial Proposal Due Date), procurement of title insurance, clearing of title, closing of acquisitions, relocation assistance, clearance/demolition of improvements and related services in connection with the acquisition of real property interests necessary for construction and/or operation of the Project Right of Way, and for temporary work space, lay down areas, material storage areas and earthwork borrow sites or any other convenience of Developer, as described in more detail in Section 7 of the Technical Provisions. Prior to the time Developer has necessary access to a particular parcel, the environmental assessment, testing and remediation and environmental permitting for such parcel may be limited to such environmental assessment as is necessary for reasonable investigation of such parcel in connection with the acquisition of such parcel.

10.2 Costs

10.2.1 Developer shall be responsible for all costs and expenses associated with acquisition of real property interests necessary for construction and/or operation of all Project Right of Way and Additional Properties, including (a) the cost of acquisition services and document preparation, (b) the cost of condemnation proceedings required by the Office of the Attorney General, from Special Commissioner's hearings through jury trials and appeals, including private attorneys' fees and expert witness fees, and all fees and expenses for exhibits, transcripts, photos and other documents and materials production, (c) the purchase prices, court awards or judgments, and Special Commissioner's awards for all parcels required for the Project or the Work, whether within or outside of the Project Right of Way, (d) the cost of permanent or temporary acquisition of leases, easement and other interests in real property, including for drainage, temporary work space, lay down areas, material storage areas, earthwork borrow sites, and any other convenience of Developer, (e) the cost of permitting, (f) closing costs associated with parcel purchases, including title insurance, in accordance with the Uniform Act and TxDOT policies, (g) property outside of the Project ROW that is acquired for drainage easements, and (h) relocation assistance payments and costs, in accordance with the Uniform Act. If TxDOT incurs and pays any such costs and expenses on Developer's behalf, TxDOT may submit any invoices and Developer shall reimburse TxDOT within 10 days of TxDOT's submittal to Developer of an invoice therefor.

10.2.2 TxDOT, in accordance with the Right of Way Acquisition Plan, shall make available to Developer the land or land rights owned or controlled by TxDOT that are necessary for construction of the Project and/or Utility Adjustments (subject to the Utility Accommodation Rules and other requirements of Section 6 of the Technical Provisions). Subject to applicable Law affecting the easement holders' payment obligations for Utility Adjustments, TxDOT shall provide to Developer the benefit of any provisions in recorded utility or other easements affecting the Project which require the easement holders to relocate at their expense.

10.3 TxDOT's Responsibility. TxDOT shall (a) provide review and approval or disapproval of Acquisition Packages and/or Condemnation Packages, and (b) except as provided below, undertake eminent domain proceedings, if necessary, in accordance with the procedures and time frames established in Section 7 of the Technical Provisions and the approved Right of Way Acquisition Plan. TxDOT shall also provide review and approval of final closeout procedures established in Section 7.2.12 of the Technical Provisions. Except as otherwise authorized by Law for temporary areas that are necessary for construction of the Project, TxDOT shall not be obligated to exercise its power of eminent domain in connection with Developer's acquisition of any such temporary right or interest, and TxDOT shall have no obligations or responsibilities with respect to the acquisition, maintenance or disposition of such temporary rights or interests. Developer shall have no obligation to submit Acquisition Packages to TxDOT for, or obtain TxDOT's approval of Developer's acquisition of, any such temporary right or interest. TxDOT shall be solely responsible for all decisions regarding the exercise of its power of eminent domain, condemnation and the trials and appeals thereof. TxDOT shall provide Developer regular and timely updates of the eminent domain proceedings. TxDOT shall to all practicable extent,

consult with Developer with respect to the eminent domain process in order to remain informed of Developer's concerns and input.

10.4 ROW Acquisition Manager. Developer's designated Right of Way Acquisition Manager (referred to herein as the "ROW AM") shall be entitled to undertake the right-of-way acquisition services for Project Right of Way and Additional Properties described in Section 7 of the Technical Provisions on behalf of TxDOT as its agent for such limited purpose, subject to the conditions and limitations of this Section 10.4. In performing such activities, the ROW AM shall at all times follow the standard of care and conduct and be subject to the Laws applicable to a licensed real estate broker in the State, and shall at all times conform with applicable Law (including, to the extent applicable, the Uniform Act) in all communications and interactions with the owners or occupants of the real property in which Developer seeks to obtain any right or interest.

10.5 Developer Acquisition. If at any time Developer or, to the best of Developer's knowledge, any Developer-Related Entity directly or indirectly (a) acquires or has previously acquired an interest in real property likely to be parcels of the Project Right of Way or the remainders of any such parcels, (b) loans or has previously loaned money to any interest holder in any real property likely to be a Project Right of Way parcel and accepts as security for such loan the parcel, or the remainder of any such ROW parcel that is not a whole acquisition, or (c) purchases or has previously purchased from any existing mortgagee the mortgage instrument that secures an existing loan against real property likely to be a Project Right of Way parcel, or the remainder of any such parcel, Developer shall promptly disclose the same to TxDOT. In the case of acquisitions, loans or mortgage purchases that occurred prior to the Effective Date, such disclosure shall be made within 10 days after the Effective Date. In the event that Developer or any Developer-Related Entity acquires a real property interest, whether title or mortgage, in parcels of the Project Right of Way, the real property interest acquired or a release of mortgage, as the case may be, shall be conveyed to the State without the necessity of eminent domain. Developer shall not acquire or permit the acquisition by any Developer-Related Entity of any real property interest in a Project Right of Way parcel, whether in fee title or mortgage, for the purpose of avoiding compliance with applicable Laws regarding Project Right of Way acquisition or with the practices, guidelines, procedures and methods described in Section 7.2 of the Technical Provisions.

10.6 Saleable Improvements. Developer and TxDOT acknowledge that Developer has incorporated the value of saleable improvements not retained by the property owner into the Project Right of Way costs shown in the Financial Model and that Developer, subject to the property owner's waiver of the right to retain, shall concurrently with conveyance of the real property interest to TxDOT, and without the necessity of further documentation executed by TxDOT, obtain the rights to such saleable improvements. Developer shall not be entitled to a credit for any improvements retained by a property owner. To the extent required, TxDOT shall execute a transfer of title of such saleable improvements within the acquired Project Right of Way to Developer as soon as legally permissible and in accordance with applicable Laws. Upon conveyance of the real property interest to TxDOT, Developer shall comply with all applicable Laws with respect to relocation assistance and demolition.

ARTICLE 11
UTILITY ADJUSTMENTS

11.1 Developer's Responsibility. Developer is responsible for causing all Utility Adjustments necessary to accommodate construction, operation, maintenance and/or use of the Project. Accordingly, when used in the CDA Documents with respect to Utilities, the phrase "accommodation of the Project" or similar terminology refers to accommodation of the Project in both its Initial Configuration and its

Ultimate Configuration. All Utility Adjustment Work performed by Developer shall comply with the CDA Documents. Developer shall coordinate, monitor, and otherwise undertake the necessary efforts to cause Utility Owners performing Utility Adjustment Work to perform such work timely, in coordination with the Work, and in compliance with the standards of design and construction and other applicable requirements specified in the CDA Documents. However, regardless of the arrangements made with the Utility Owners and except as otherwise provided in Article 27, Developer shall continue to be the responsible party to TxDOT for timely performance of all Utility Adjustment Work so that upon completion of the Work, all Utilities that might impact the Project or be impacted by it (whether located within or outside the Project Right of Way) are compatible with the Project. Subject to and in accordance with the Technical Provisions and any applicable Law affecting the easement holder's payment obligations for Utility Adjustments, TxDOT shall provide to Developer the benefit of any provisions in recorded utility or other easements affecting the Project which require the easement holders to relocate at their own expense.

11.2 Utility Agreements

11.2.1 Agreements. As described in Section 6 of the Technical Provisions, Developer is responsible for preparing, negotiating and entering into Utility Agreements with the Utility Owners. Developer shall use the Utility Agreement form specified in Section 6.1 of the Technical Provisions. TxDOT is not providing any assurances to Developer that the Utility Owners will accept, without modification, the standard Utility Agreement forms specified in Section 6.1 of the Technical Provisions. Developer is solely responsible for the terms and conditions of all PUAAs and UAAAs into which it enters; however, Developer may revise the form only with prior approval by TxDOT. Developer may also negotiate specific modifications to the form with individual Utility Owners as necessary to reach agreement, so long as such modifications are consistent with the requirements of the CDA Documents and (subject to the requirements of the CDA Documents, including Section 6.1 of the Technical Provisions) acceptable to TxDOT. All Utility Agreements shall incorporate by reference 23 CFR Part 645, Subpart A. Each Utility Adjustment (whether performed by Developer or by the Utility Owner) shall comply with the Adjustment Standards that (a) are necessary to conform to applicable Law, including 43 Texas Administrative Code Part 1, Chapter 21, Subchapter C or (b) are adopted by the Utility Owner and affect the Utility Adjustment pursuant to the applicable Utility Agreements. All Utility Adjustment Work shall comply with all applicable Laws, the applicable Utility Agreements, and all other requirements specified in Section 6 of the Technical Provisions. Developer shall comply with and timely perform all obligations imposed on Developer by any Utility Agreement.

11.2.2 TxDOT Assistance. TxDOT agrees to cooperate as reasonably requested by Developer in pursuing Utility Agreements, including by attending negotiation sessions, providing information reasonably within TxDOT's possession and reviewing Utility Agreements. Such cooperation shall not require TxDOT (a) to take a position which it believes to be inconsistent with the CDA Documents, the Project Management Plan (and component plans thereunder), applicable Law or Governmental Approvals, the requirements of Good Industry Practice or TxDOT policy or (b) to refrain from taking a position concurring with that of a Utility Owner if TxDOT believes that position to be correct. Developer shall cause every Utility Agreement to designate TxDOT as an intended third-party beneficiary thereof and to permit assignment of Developer's right, title and interest thereunder to TxDOT without necessity for Utility Owner consent. Developer shall not enter into any agreement with a Utility Owner that purports to bind TxDOT in any way, unless TxDOT has executed such agreement as a party thereto (TxDOT's signature indicating approval or review of an agreement between Developer and a Utility Owner, or its status as a third-party beneficiary, shall not satisfy this requirement).

11.2.3 Conflict with CDA Documents. If a conflict occurs between the terms of an agreement between Developer and a Utility Owner and those of the CDA Documents, the terms that establish the

higher quality, manner or method of performing Utility Adjustment Work, establish better Good Industry Practice, or use more stringent standards shall prevail between Developer and TxDOT; if the foregoing criteria are not relevant to the terms at issue, then the CDA Documents shall prevail, unless expressly provided otherwise in the CDA Documents. Developer shall comply with and timely perform all obligations imposed on Developer by any Utility Agreement.

11.2.4 Requirements. Each Utility Adjustment (whether performed by Developer or by the Utility Owner) shall comply with the Adjustment Standards in effect as of the Effective Date, together with any subsequent amendments and additions to those standards that (a) are necessary to conform to applicable Law, or (b) are adopted by the Utility Owner and affect the Utility Adjustment pursuant to the applicable Utility Agreement(s). Developer is solely responsible for negotiating any terms and conditions of its Utility Agreements that might limit Utility Owner amendments and additions to its Adjustment Standards after the Effective Date. In addition, all Utility Adjustment Work shall comply with all applicable Laws, the applicable Utility Agreement(s), and all other requirements specified in Section 6 of the Technical Provisions.

11.3 Utility Adjustment Costs

11.3.1 Subject to Sections 11.3.2 and 11.3.3, Developer is responsible for all costs of the Utility Adjustment Work, whether incurred by Developer or by the Utility Owner, including costs of acquiring Replacement Utility Property Interests and costs with respect to relinquishment or acquisition of Existing Utility Property Interests, but excluding (a) costs attributable to Betterment and (b) any costs for which the Utility Owner is responsible under applicable Law at the time of Adjustment (including Section 203.092 of the Texas Transportation Code). Developer shall fulfill its responsibility either by performing the Utility Adjustment Work itself at its own cost (except that any assistance provided by any Developer-Related Entity to the Utility Owner in acquiring Replacement Utility Property Interests shall be provided outside of the Work, in compliance with Section 6.2.4.2 of the Technical Provisions) or by reimbursing the Utility Owner for its Utility Adjustment Work (however, Developer has no obligation to reimburse Utility Adjustment costs for any Service Line Adjustment for which the affected property owner has been compensated pursuant to Article 10). The Work shall include all work necessary to and including the service meter but does not include work downstream of the service meter.

11.3.2 For each Utility Adjustment, the eligibility of particular Utility Owner costs (both indirect and direct) for reimbursement by Developer and any credits due against those costs (e.g., for Betterment), as well as the determination of any Betterment or other costs due to Developer, shall be established in accordance with applicable Law (including Section 203.092 of the Texas Transportation Code) and the applicable Utility Agreements, all of which shall incorporate by reference 23 CFR Part 645, Subpart A.

11.3.3 For each Utility Adjustment, Developer shall compensate the Utility Owner for the fair market value of each Existing Utility Property Interest relinquished pursuant to Section 6.2.4.3 of the Technical Provisions, to the extent TxDOT would be required to do so by applicable Law and *provided* that TxDOT has not objected to the Utility Owner's claim. Developer shall pay any compensation due to the Utility Owner and all costs and expenses associated therewith (including any incurred by TxDOT on Developer's behalf for eminent domain proceedings or otherwise) in accordance with Article 10. Developer shall carry out the same duties for acquisition of an Existing Utility Property Interest, as are assigned to Developer in Article 10 of this Agreement and in Section 7 of the Technical Provisions for the acquisition of any other necessary real property interests.

11.3.4 Developer is solely responsible for collecting directly from the Utility Owner any reimbursement due to Developer for Betterment costs or other costs for which the Utility Owner is

responsible under applicable Law. If for any reason Developer is unable to collect any amounts owed to Developer from any Utility Owner, then (a) TxDOT shall have no liability for any such amounts,(b) Developer shall have no right to collect such amounts from TxDOT or to offset such amounts against amounts otherwise owed from Developer to TxDOT, and (c) Developer shall have no right to stop Work or exercise any other remedies against TxDOT on account of such failure of the Utility Owner to pay any such amounts.

11.3.5 If any local Governmental Entity is participating in any portion of Utility Adjustment costs, Developer shall coordinate with TxDOT and such local Governmental Entity regarding accounting for and approval of those costs. If applicable, Developer shall provide utility costs breakdown by local Governmental Entity boundaries.

11.3.6 Developer shall maintain a complete set of records for the costs of each Utility Adjustment (whether incurred by Developer or by the Utility Owner), in a format compatible with the estimate attached to the applicable Utility Agreement and in sufficient detail for analysis and Project close-out purposes. For both Utility Owner costs and Developer costs, the totals for each cost category shall be shown in such manner as to permit comparison with the categories stated on the estimate. Developer also shall indicate in these records, the source of funds used for each Utility Adjustment. Records shall indicate the final amount paid to Utility Owner and Owner's acceptance of final payment. All records with respect to Utility Adjustment Work shall comply with the record keeping and audit requirements of the CDA Documents. This Work includes the deliverables identified in the final closeout procedures of Section 6.5.3 of the Technical Provisions.

11.3.7 Under no circumstances will Developer be entitled to any additional compensation or time extension hereunder as the result of any Utility Adjustment, whether performed by Developer or by the Utility Owner, except as provided in Article 27.

11.4 FHWA Utility Requirements. Unless TxDOT advises Developer otherwise, the following provisions apply to Utility Adjustments:

11.4.1 The Project will be subject to 23 CFR Part 645, Subpart A (including its requirements as to plans, specifications, estimates, charges, tracking of costs, credits, billings, records retention, and audit) and FHWA's associated policies. Developer shall comply (and shall require the Utility Owners to comply) with 23 CFR Part 645, Subpart A as necessary for any Utility Adjustment costs to be eligible for FHWA reimbursement (or for any other federal financing or funding). Developer acknowledges, however, that without regard to whether such compliance is required, (a) it is not anticipated that Developer will be eligible for FHWA reimbursement of any Utility Adjustment outlays (unless from TIFIA financing, if any), and (b) Developer will not have any share in any reimbursement from FHWA or other federal financing or funding that TxDOT may receive on account of Utility Adjustments.

11.4.2 Developer shall prepare and deliver to TxDOT, in accordance with the Project Management Plan, the Alternate Procedures List of all Utilities identified by Developer pursuant to Section 6 of the Technical Provisions in appropriate format, including each Utility Owner's name, approximate project station numbers and estimated cost of the Utility Adjustments for TxDOT's approval, together with all other documentation required by FHWA or TxDOT for compliance with the FHWA Alternate Procedure. If applicable, TxDOT may transmit the Alternate Procedure List and other documentation to FHWA.

11.4.3 Promptly upon determining that any Utility Owner not referenced on the Alternate Procedure List is impacted by the Project, Developer shall submit to TxDOT for TxDOT's approval, all

documentation required by FHWA or TxDOT to add these Utilities to the Alternate Procedure List. If applicable, TxDOT may transmit the additional documentation to FHWA for approval.

11.4.4 TxDOT will forward the approved list to Developer.

11.5 Utility Enhancements. Developer shall be responsible for addressing any requests by Utility Owners that Developer design and/or construct a Betterment or Utility Owner Project (collectively, "**Utility Enhancement**"). Any Betterment performed as part of a Utility Adjustment, whether by Developer or by the Utility Owner, shall be subject to the same standards and requirements as if it were a necessary Utility Adjustment, and shall be addressed in the appropriate Utility Agreement. Developer shall perform any work on a Utility Owner Project only by separate contract outside of the Work, and such work shall be subject to Section 11.7 (except that the costs related thereto may be paid by the relevant Utility Owner). Under no circumstances shall Developer proceed with any Utility Enhancement that is incompatible with the Project or is not in compliance with applicable Law, the Governmental Approvals or the CDA Documents, including the Milestone Deadlines. Under no circumstances will Developer be entitled to any additional compensation or time extension hereunder as the result of any Utility Enhancement, whether performed by Developer or by the Utility Owner. Developer may, but is not obligated to, design and construct Utility Enhancements.

11.6 Failure of Utility Owners to Cooperate

11.6.1 Notice to TxDOT. Developer shall use diligent efforts to obtain the cooperation of each Utility Owner as necessary for Utility Adjustments. Developer shall notify TxDOT promptly if (a) Developer is unable (or anticipates that it will be unable), after diligent efforts, to reach agreement with a Utility Owner on a necessary Utility Agreement within a reasonable time, (b) Developer reasonably believes for any other reason that any Utility Owner would not undertake or permit a Utility Adjustment in a manner consistent with the timely completion of the Project, (c) Developer becomes aware that any Utility Owner is not cooperating in a timely manner to provide agreed-upon work or approvals, or (d) any other dispute arises between Developer and a Utility Owner with respect to the Project, despite Developer's diligent efforts to obtain such Utility Owner's cooperation or otherwise resolve such dispute. Such notice does not relieve Developer of its obligation to continue pursuing the Utility Owner's cooperation. Developer shall provide TxDOT with such information as TxDOT requests regarding the Utility Owner's failure to cooperate and the effect of any resulting delay on the Project Schedule.

11.6.2 TxDOT Support Request. Concurrent with the notice described in Section 11.6.1, Developer may request TxDOT's support to obtain the Utility Owner's cooperation or resolve the dispute. In such case, Developer shall also provide evidence reasonably satisfactory to TxDOT that (a) the subject Utility Adjustment is necessary, (b) the time for completion of the Utility Adjustment in the Project Schedule was, in its inception, a reasonable amount of time for completion of such work, (c) Developer's position in the dispute is otherwise reasonable, (d) Developer has made diligent efforts to obtain the Utility Owner's cooperation, and (e) the Utility Owner is not cooperating. Following TxDOT's receipt of satisfactory evidence, TxDOT shall take such reasonable steps as may be requested by Developer to obtain the cooperation of the Utility Owner or resolve the dispute; however, TxDOT shall have no obligation to prosecute eminent domain or other legal proceedings, or to exercise any other remedy available to it under applicable Law or existing contract, unless TxDOT elects to do so in its discretion. If TxDOT holds contractual rights that might be used to enforce the Utility Owner's obligation to cooperate and TxDOT elects in its discretion not to exercise those rights, then TxDOT shall assign those rights to Developer upon Developer's request; however, such assignment shall be without any representation or warranty as to either the assignability or the enforceability of such rights. Developer shall reimburse TxDOT for TxDOT's Recoverable Costs in connection with providing such support to Developer. Any support TxDOT provides shall not relieve Developer of its sole responsibility for satisfactory compliance

with its obligations and timely completion of all Utility Adjustment Work, except as otherwise expressly set forth herein. If the reason for the Utility Owner's alleged lack of cooperation is a disagreement with modifications made by Developer to the form Utility Agreement in accordance with Section 11.2.1, TxDOT's approval of the Deviation shall not be construed as confirmation that Developer's position in the dispute is reasonable. In no event shall TxDOT's obligations pursuant to this Section 11.6.2 require TxDOT (i) to take a position which it believes to be inconsistent with the CDA Documents, the Project Management Plan (and component plans thereunder), applicable Law or Governmental Approval(s), the requirements of Good Industry Practice, or TxDOT policy, or (ii) to refrain from taking a position concurring with that of a Utility Owner, if TxDOT believes that position to be correct. If TxDOT objects to a request for support under this Section 11.6.2, Developer may address the reasons for the objections and re-submit the request; but where the objection is because Developer has not yet made diligent efforts to obtain the Utility Owner's cooperation, Developer shall first make such diligent efforts and may not re-submit such request for at least 10 days after the objection by TxDOT.

11.6.3 Directive Letters. In certain cases where a Utility Owner is not cooperating with Developer or TxDOT, TxDOT may, in its discretion and where applicable Law authorizes TxDOT to take unilateral action, issue a Directive Letter directing Developer to proceed with a Utility Adjustment without an agreement or other consent by the Utility Owner. If TxDOT directs Developer to perform work pursuant to this Section 11.6.3, then Developer, without cost to TxDOT, shall proceed with such work as if Developer has entered into a Utility Agreement providing for Developer to perform such work and shall perform such work in accordance with the requirements of the CDA Documents otherwise applicable to Developer's performance of Utility Adjustment Work. A Directive Letter shall not be issued until all requirements set forth in Section 11.6.2 have been satisfied and accepted by TxDOT.

11.7 Applications for Utility Permits

11.7.1 It is anticipated that during the design and construction phases of the Work, from time to time Utility Owners will apply for utility permits to install new Utilities that would cross or longitudinally occupy the Project Right of Way, or to modify, upgrade, repair, relocate or expand existing Utilities within the Project Right of Way, for reasons other than accommodation of the Project. The provisions of Sections 11.7.2 through 11.7.4 shall apply to all such permit applications, except as otherwise provided in Section 11.7.5. Except as otherwise provided in Section 11.7.4(b) or in Section 24.2, no accommodation of new Utilities or of modifications, upgrades, repairs, relocations or expansions of existing Utilities pursuant hereto shall entitle Developer to additional compensation or time extension hereunder.

11.7.2 For all such utility permit applications pending as of or submitted after the Effective Date, Developer shall furnish the most recent Project design information and/or as-built plans, as applicable, to the applicants, and shall assist each applicant with information regarding the location of other proposed and existing Utilities. Developer shall keep records of its costs related to new Utilities separate from other costs, because such costs are not reimbursable by TxDOT or the requesting Utility Owners.

11.7.3 Developer shall assist TxDOT in deciding whether to approve a permit described in Section 11.7.2. Within a time period that will enable TxDOT to timely respond to the application, Developer shall analyze each application and provide to TxDOT a recommendation (together with supporting analysis) as to whether the permit should be approved, denied, or approved subject to conditions. As part of the recommendation process, Developer shall furnish to TxDOT Utility No-Conflict Sign-Off Forms, signed by both Developer's Utility Design Coordinator (UDC) and Developer's Utility Manager, using the forms included in the Technical Provisions. Developer shall limit the grounds for its recommendation to the grounds on which TxDOT is legally entitled to approve or deny the application or to impose conditions on its approval.

11.7.4 If Developer and TxDOT disagree on the response to a permit application described in Section 11.7.2. such disagreement shall be resolved according to the Dispute Resolution Procedures; *provided* that if Developer recommends against issuance of the permit and TxDOT determines issuance is appropriate or required, then (a) TxDOT's determination shall control unless it is arbitrary and capricious; (b) TxDOT may elect to issue the utility permit in advance of resolution of the Dispute, but if it is finally determined that issuance of the permit was arbitrary and capricious, its issuance shall be deemed a TxDOT Change (and therefore a potential Relief Event and Compensation Event); and (c) if TxDOT elects to delay issuance of a utility permit pending final resolution of the Dispute, Developer's indemnities under Sections 26.5.1(b) and 26.5.1(d) shall be deemed to apply with respect to any applicant claim of wrongful delay or denial.

11.7.5 Where TxDOT is pursuing a Business Opportunity involving a Utility in the Project Right of Way, (a) TxDOT shall have the right to issue utility permits in its discretion, (b) any decision by TxDOT to issue utility permits shall be final, binding and not subject to the Dispute Resolution Procedures, (c) Sections 11.7.2 through 11.7.4 shall not apply, and (d) instead, Section 24.2 shall apply.

11.8 Security for Utility Adjustment Costs; Insurance

11.8.1 Upon request from a Utility Owner entitled to reimbursement of Utility Adjustment costs, Developer shall provide security for such reimbursement by way of a payment bond, letter of credit or retention account, in such amount and on such terms as are negotiated in good faith between Developer and the Utility Owner.

11.8.2 Developer may satisfy a Utility Owner's requirement that Developer provide liability insurance by naming such Utility Owner as an additional insured on the insurance provided by Developer or any Contractor pursuant to Article 26.

ARTICLE 12
ENVIRONMENTAL COMPLIANCE; HAZARDOUS MATERIALS MANAGEMENT

12.1 Environmental Compliance. Throughout the course of the Design Work and Construction Work, Developer shall perform or cause to be performed all environmental mitigation measures required under the Environmental Approvals, including the NEPA Approval and any other Governmental Approvals for the Project, or under the CDA Documents, and shall comply with all other conditions and requirements of the Environmental Approvals in accordance with Section 4 of the Technical Provisions.

12.2 Hazardous Materials Management

12.2.1 Developer's Responsibility. Without limiting TxDOT's role or responsibilities set forth in this Article 12 and except as provided otherwise in Section 12.3, Developer shall manage, treat, handle, store, remediate, remove, transport (where applicable) and dispose of all Hazardous Materials and Recognized Environmental Conditions, including contaminated groundwater, in accordance with applicable Law, Governmental Approvals, the Hazardous Materials Management Plan, and all applicable provisions of the CDA Documents. If during the course of the Work, Developer encounters Hazardous Materials or a Recognized Environmental Condition in connection with the Project, Project Right of Way or Work, in an amount, type, quality or location that would require reporting or notification to any Governmental Entity or other Person or taking any preventive or remedial action, in each case under applicable Law, Governmental Approvals, the Hazardous Materials Management Plan or any applicable provision of the CDA Documents, Developer shall (a) promptly notify TxDOT and advise TxDOT of any

obligation to notify State or federal agencies under applicable Law; and (b) take reasonable steps, including design modifications and/or construction techniques, to avoid excavation or dewatering in areas with Hazardous Materials or Recognized Environmental Conditions. If during the Term TxDOT discovers Hazardous Materials or a Recognized Environmental Condition in connection with the Project, Project Right of Way or Work, TxDOT shall promptly notify Developer of such fact. Where excavation or dewatering of Hazardous Materials or Recognized Environmental Conditions is unavoidable or is required by applicable Law, Developer shall utilize appropriately trained Contractors or personnel to conduct the Hazardous Materials Management activities. Wherever feasible and consistent with applicable Law and Good Industry Practice, Developer shall not dispose of contaminated soil and groundwater off-site.

12.2.2 Hazardous Materials Investigation. Either Party, at its election and expense, or both Parties by joint election and at equally shared expense, shall have the right to conduct and complete (a) a Phase 1 Hazardous Materials Investigation of each parcel of the Project Right of Way, and (b) an original Phase 1 Hazardous Materials Investigation of each parcel of Additional Properties to be added to the Project Right of Way due to TxDOT Changes, in each case not later than 90 days after the date TxDOT makes available to Developer such parcel. If, as a result of any such Phase 1 Hazardous Materials Investigation, facts are revealed that would reasonably necessitate a Phase 2 Hazardous Materials Investigation of any such parcel, either Party, at its election and expense, or both Parties by joint election and at equally shared expense, shall have the right to conduct a Phase 2 Hazardous Materials Investigation, not later than 180 days after the date TxDOT makes available to Developer such parcel. (For this purpose "makes available" has the meaning set forth in the definition of Pre-existing Hazardous Materials.) Any such Phase 1 Hazardous Materials Investigation of any parcel of the Project Right of Way shall supplement the limited Phase 1 Hazardous Materials Investigation conducted for TxDOT prior to the Effective Date as identified in the definition of Pre-existing Hazardous Materials. The Party causing any such Phase 1 Hazardous Materials Investigation or Phase 2 Hazardous Materials Investigation to be prepared shall deliver to the other Party for review and comment a draft report of the Phase 1 Hazardous Materials Investigation or Phase 2 Hazardous Materials Investigation, as applicable. After receiving the other Party's comments, if any, the preparing Party shall complete and deliver to the other Party a final report of the Phase 1 Hazardous Materials Investigation or Phase 2 Hazardous Materials Investigation within five days after the final report is issued and within the foregoing applicable time period.

12.2.3 Remedial Action Obligations. The right of one Party to step in to carry out remedial action obligations of the other Party are as follows:

(a) If, within a reasonable time after discovery of Hazardous Materials or a Recognized Environmental Condition, taking into consideration the nature and extent of the contamination, the type and extent of remedial action required and the potential impact upon Developer's schedule for use of and operations on the Project Right of Way, Developer has not undertaken remedial action required of it under Section 12.2.1, TxDOT may provide Developer with notice that it will undertake the remedial action itself. TxDOT thereafter may undertake action to remediate in compliance with a remediation plan approved by applicable Governmental Entities and in compliance with applicable Laws. Without limiting TxDOT's role or responsibilities set forth in Section 12.2.4, Developer shall reimburse to TxDOT on a current basis the reasonable costs, including TxDOT's Recoverable Costs, TxDOT incurs in carrying out such remediation plan.

(b) If, within a reasonable time after discovery of Hazardous Materials or a Recognized Environmental Condition, taking into consideration the nature and extent of the contamination, the type and extent of remedial action required and the potential impact upon Developer's schedule for use of and operations on the Project Right of Way, TxDOT has not undertaken remedial action required of it under Section 12.3.1, Developer may provide TxDOT with notice that it will

undertake the remedial action itself. Developer thereafter may undertake action to remediate in compliance with a remediation plan approved by applicable Governmental Entities and in compliance with applicable Laws. TxDOT shall reimburse to Developer on a current basis the reasonable costs Developer incurs in carrying out such remediation plan.

(c) Notwithstanding the foregoing, if either Party notifies the other that it desires to preserve claims against other potentially responsible parties, then the Party undertaking the remedial action shall take all commercially reasonable efforts to preserve such claims consistently with either the National Contingency Plan or comparable State regulations and standards; and a reasonable period of time for Developer or TxDOT, as the case may be, to perform the remedial work shall include a sufficient period for Developer or TxDOT, as the case may be, to comply with the National Contingency Plan or such comparable State regulations and standards.

12.2.4 Costs and Delays. Except for TxDOT Release(s) of Hazardous Materials, except as set forth in Sections 12.2.3 and 12.3 and without limiting TxDOT's role or responsibilities set forth in Section 12.2.5, Developer shall not be entitled to any compensation due to increased costs or delays associated with the discovery, handling, storage, removal, remediation, transport, treatment or disposal of Hazardous Materials, including contaminated groundwater, encountered in construction of the Project or Utility Adjustments, but may be entitled to schedule relief under Article 27 to the extent such event constitutes a Relief Event.

12.2.5 Disposal. Off-site disposal of Pre-existing Hazardous Materials and Hazardous Materials from TxDOT Release(s) of Hazardous Material is subject to the following provisions:

(a) As among Developer, Design-Build Contractor and TxDOT, TxDOT shall be considered the generator and arranger solely for Pre-existing Hazardous Materials and TxDOT Release(s) of Hazardous Material. Such assumption of generator and arranger status does not relieve Developer from its scope of responsibilities under Section 12.2.1. Whenever TxDOT has such arranger liability, Developer's Investigative Work Plan, Site Investigative Report and remediation plans shall be subject to the prior approval of TxDOT.

(b) TxDOT shall determine the destination facility to which the Pre-existing Hazardous Materials or Hazardous Materials from TxDOT Release(s) of Hazardous Material will be transported. With regard to Pre-existing Hazardous Materials and TxDOT Release(s) of Hazardous Material, TxDOT shall comply with the applicable standards for generators and arrangers including those found at 40 CFR, Part 262, including the responsibility to sign manifests for the transport of hazardous wastes. The foregoing shall not preclude or limit any rights, remedies or defenses that TxDOT or Developer may have against any Governmental Entity or other third parties, including prior owners, lessees, licensees and occupants of any parcel of land that is or becomes part of the Project Right of Way.

(c) Notwithstanding any contrary provision of the CDA Documents, under no circumstances whatsoever shall any TxDOT-Caused Delay arising out of or relating to (i) its review and approval or disapproval of remediation plans for removal and off-Site disposal of Pre-existing Hazardous Materials or Hazardous Materials that any Person claims to be Pre-existing Hazardous Materials, (ii) any other act or failure to act by TxDOT in its capacity as generator and arranger for off-Site disposal of Pre-existing Hazardous Materials, or (iii) any Dispute over whether Hazardous Materials are Pre-existing Hazardous Materials constitute a Compensation Event or otherwise entitle Developer to any compensation from TxDOT or other remedy against TxDOT, other than remedies available where any of the foregoing constitutes a Relief Event.

(d) To the extent permitted by applicable Law, TxDOT shall indemnify, save, protect and defend Developer and Design-Build Contractor from third-party claims, causes of action and Losses arising out of or related to generator or arranger liability for the Pre-existing Hazardous Materials and Hazardous Materials from TxDOT Release(s) of Hazardous Material for which TxDOT is considered the generator and arranger pursuant to this Section, specifically excluding generator and arranger liability for actual and threatened Developer Releases of Hazardous Materials.

12.2.6 Generator and Arranger Status. As between Developer and TxDOT, Developer shall be considered the generator and arranger and assume generator and arranger responsibility solely for Hazardous Materials that are other than Pre-existing Hazardous Materials and TxDOT Release(s) of Hazardous Materials. For such Hazardous Materials, TxDOT will assist Developer in identifying potentially responsible parties, provided Developer reimburses TxDOT for reasonable costs, including TxDOT's Recoverable Costs, incurred in providing such assistance. The foregoing shall not preclude or limit any rights or remedies that Developer may have against any Governmental Entity or any other third parties, including prior owners, lessees, licensees and occupants of any parcel of land that is or becomes part of the Project Right of Way, excluding, however, TxDOT and the Commission and their respective agents. To the extent permitted by applicable Law, Developer shall indemnify, save, protect and defend TxDOT from claims, causes of action and Losses arising out of or related to generator or arranger liability for such Hazardous Materials for which Developer is considered the generator and arranger pursuant to this Section. For the avoidance of doubt, the obligations of Developer set forth in this Section 12.2.6 shall not inure to the benefit of or be enforceable by third parties, or relieve any such third parties of their obligations or liability for any Hazardous Materials, contamination or recognized environmental conditions caused by such third parties.

12.2.7 IH 610 Interchange Work. The Parties acknowledge the existence of a "Superfund site" designated under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 in the proximity of the IH 610 Interchange. If Developer undertakes any IH 610 Interchange Work, Developer shall use all reasonable measures to avoid such site and incurring any additional costs in connection therewith.

12.3 Hazardous Materials Risk Allocation Terms. All risks associated with the discovery of Hazardous Materials within the Project Right of Way at any time during the Term will be borne by Developer, except as follows:

12.3.1 TxDOT Responsibility. If there occurs any release of Hazardous Materials in, on or under a portion of the Project during the course of TxDOT's operation and maintenance thereof pursuant to Section 16.2, then TxDOT at its own expense shall manage, treat, handle, store, remediate, remove, transport (where applicable) and dispose of such Hazardous Materials in accordance with applicable Law and Governmental Approvals.

12.3.2 Reimbursement for Certain Costs. TxDOT shall compensate Developer for 100% of Developer's reasonable, out-of-pocket costs and expenses directly attributable to the handling, transport, removal and disposal of Pre-existing Hazardous Materials encountered by Developer. The foregoing notwithstanding, none of the following costs and expenses shall be chargeable to TxDOT under this Section 12.3.2: (i) costs and expenses to the extent attributable to Developer Releases of Hazardous Materials or TxDOT Releases of Hazardous Materials (without prejudice to any rights in respect of a Compensation Event under clause (j) of the definition of Compensation Event); (ii) delay and disruption costs and expenses; (iii) costs and expenses that could be avoided by the exercise of commercially reasonable efforts to mitigate and reduce cost; and (iv) Developer's administrative and overhead expenses arising out of or relating to Pre-existing Hazardous Materials.

12.3.3 Payment. Within 90 days after any month in which Developer encounters any Hazardous Materials, Developer shall provide TxDOT a reconciliation, including invoices, receipts and supporting documentation reasonably required by TxDOT, setting forth with particularity the total chargeable Hazardous Materials costs. TxDOT shall pay Developer any compensation required under Section 12.3.2 within 30 days after receiving such reconciliation and supporting documentation.

12.3.4 Effect of End of Term. Notwithstanding anything herein to the contrary, Developer shall be responsible for all Hazardous Materials Management for Developer Releases of Hazardous Materials, even if the required Hazardous Materials Management extends beyond the end of the Term. Developer's responsibility for Hazardous Materials Management for all Hazardous Materials other than Developer Releases of Hazardous Materials (except for liability for damages for breach of such obligations) shall end at the end of the Term.

12.4 Archeological and Paleontological Resources Risk Allocation Terms. All risks associated with the discovery of archeological and paleontological resources within the Project Right of Way at any time during the Term will be borne by Developer, except as follows:

12.4.1 Reimbursement for Certain Costs. TxDOT shall compensate Developer for 100% of Developer's reasonable, out-of-pocket costs and expenses directly attributable to the handling, transport and removal of archeological and paleontological resources encountered in Developer's construction of the Project or related Utility Adjustments (the "total chargeable archeological and paleontological costs"). The foregoing notwithstanding, none of the following costs and expenses shall be chargeable to TxDOT under this Section 12.4.1: (a) delay and disruption costs and expenses; (b) costs and expenses arising out of archeological and paleontological resources first discovered or encountered in a Project Segment or the corresponding portions of the General Purpose Lanes and Frontage Roads after Substantial Completion of the Project Segment (*provided* that the foregoing does not preclude compensation for amounts paid to the GPLCI Design-Build Contractor under the GPLCI Design-Build Contract pursuant to Section 25.1); (c) costs and expenses that could be avoided by the exercise of commercially reasonable efforts to mitigate and reduce cost; and (d) Developer's administrative and overhead expenses arising out of or relating to archeological and paleontological resources.

12.4.2 Payment. Within 90 days after the Substantial Completion Date of each Project Segment, Developer shall provide TxDOT a reconciliation, including invoices, receipts and supporting documentation reasonably required by TxDOT, setting forth with particularity the total chargeable archeological and paleontological costs. TxDOT shall pay Developer any compensation required under Section 12.4.1 within 30 days after receiving such reconciliation and supporting documentation.

ARTICLE 13
TXDOT CHANGES; DEVELOPER CHANGES; DIRECTIVE LETTERS

This Article 13 sets forth the requirements for obtaining all Change Orders under this Agreement. Developer hereby acknowledges and agrees that the assumptions contained in the Base Case Financial Model provide for full compensation for performance of all of the Work, subject only to those exceptions specified in this Article 13. Developer unconditionally and irrevocably waives the right to any claim for any monetary compensation or other relief in addition to that specifically provided under the terms of this Agreement, except in accordance with this Article 13. The foregoing waiver encompasses all theories of liability, whether in contract, tort (including negligence), equity, quantum meruit or otherwise, and encompasses all theories to extinguish contractual obligations, including impracticability, mutual mistake and frustration of purpose. Nothing in the Technical Provisions shall have the intent or effect or shall be

construed to create any right of Developer to any Change Order or other Claim for additional monetary compensation or other relief, any provision in the Technical Provisions to the contrary notwithstanding.

13.1 TxDOT Changes. At any time and without notice to any Lender or Surety, TxDOT may issue a Change Order to authorize or require changes in the Work, changes in the standards applicable to the Work, changes in the ability to toll any portion of the Project, changes in the scope of Developer's responsibilities for the maintenance of the General Purpose Lanes and Frontage Roads or changes in the terms and conditions of the Technical Provisions; *provided* that TxDOT has no right to require, except on terms acceptable to Developer, any change that (a) is not in compliance with applicable Laws, (b) would contravene an existing Governmental Approval and such contravention could not be corrected by the issuance of a further or revised Governmental Approval, (c) constitutes a fundamental change in the nature or scope of the Project, (d) would cause an insured risk to become uninsurable, (e) would materially adversely affect the health or safety of users of the Project, (f) is fundamentally incompatible with the Project design or (g) is not technically feasible to construct. The Parties shall negotiate and agree on the terms of the Change Order as follows:

13.1.1 Request for Change Proposal. Prior to issuing a Change Order, TxDOT may, but is not obligated to, request an assessment from Developer of the impact of a proposed TxDOT Change on the cost, Toll Revenue and schedule. In making such request, TxDOT shall describe to Developer the nature, extent and other details of the proposed TxDOT Change. After TxDOT makes such request, the Parties shall consult concerning the scope of the proposed TxDOT Change and the estimated financial and schedule impacts. Within 60 days after receiving such request, Developer shall provide TxDOT with Developer's determination (which is not binding) of whether the proposed change constitutes a TxDOT Change and a detailed assessment of (a) the estimated impact on costs and Toll Revenues, (b) the effect, if any, on the Project Schedule and Milestone Deadlines and (c) the effect, if any on traffic flow and traffic volume during the Operating Period.

13.1.2 Independent Analyses. TxDOT may, but is not obligated to, obtain (a) an analysis of Developer's estimated cost and schedule impacts attributable to a proposed TxDOT Change from the Independent Engineer (to be paid jointly by the Parties as provided in Section 22.3.1(e)) and (b) an analysis of traffic and revenue impacts attributable to a proposed TxDOT Change from a traffic and revenue consultant retained by Developer and approved by TxDOT (to be paid by TxDOT).

13.1.3 Negotiation of Change Order. TxDOT and Developer shall negotiate in good faith, giving due consideration to any independent analyses obtained, a mutually acceptable Change Order for the TxDOT Change, including (as applicable) adjustment the Project Schedule and Milestone Deadlines, any Compensation Amount to which Developer is entitled, and the timing and method for payment of any Compensation Amount. TxDOT may issue a Directive Letter to direct Developer to proceed with the TxDOT Change pending agreement of the Parties or resolution of a Dispute concerning the final terms of the Change Order.

13.2 Developer Changes

13.2.1 Change Request. Developer may request TxDOT to approve modifications to the Technical Provisions (a "**Change Request**"). The Change Request shall be set forth on a form approved by TxDOT and shall include Developer's detailed estimate of impacts on costs, Toll Revenues and schedule attributable to the requested change.

13.2.2 TxDOT Approval; Change Order. TxDOT, in its discretion (and, if it elects, after receiving an analysis from the Independent Engineer regarding the proposed Change Request), may accept or reject any Change Request; *provided* that if the Change Request is necessary to bring the

Technical Provisions into compliance with applicable Law, the Change Request shall be considered reasonably by TxDOT. TxDOT may condition its approval on new or a modification of compensation for TxDOT under this Agreement in order to share equally in the estimated net cost savings and revenue benefit, if any, attributable to the proposed change. If TxDOT accepts such change, Developer shall execute a Change Order and shall implement such change in accordance with all the Change Order, applicable Technical Provisions, the Project Management Plan, Good Industry Practice, and all applicable Laws. Such Change Order shall not be considered a TxDOT Change. Developer shall be solely responsible for payment of any increased costs, for any revenue losses and for any delays or other impacts to the Project Schedule and Milestone Deadlines resulting from a Change Request accepted by TxDOT (subject to the terms of the Change Order).

13.2.3 When Change Request Not Required. Developer may implement and permit a Utility Owner to implement, without a Change Request or Change Order, changes to a Utility Adjustment design that do not vary from the Technical Provisions, but such changes are subject either to TxDOT's approval as part of a Utility Assembly as provided in Section 6.3.4.5 of the Technical Provisions, or, if the changes are Utility Adjustment Field Modifications, to TxDOT's review and comment as provided in Section 6.4.10 of the Technical Provisions. No Change Request shall be required to implement any change to the Work that is not a Deviation and is not specifically regulated or addressed by the CDA Documents or applicable Law. Certain minor changes without significant cost savings or revenue benefits may be approved by TxDOT as Deviations and in such event shall not require a Change Order. Any other change in the requirements of the CDA Documents shall require a Change Order.

13.3 Directive Letters. At any time TxDOT may issue a directive (a "**Directive Letter**") to require Developer to comply with the CDA Documents or to undertake any change for which a Change Order may be issued. Developer shall proceed immediately as directed by the Directive Letter. To the extent that the Directive Letter constitutes a TxDOT Change, (a) the Parties shall also proceed to negotiate a Change Order pursuant to Section 13.1, absent which Developer shall have the right to assert a Claim in respect of the TxDOT Change, and (b) TxDOT shall make interim monthly payments to Developer for the reasonable documented costs of the Work.

PART C
TOLLING, OPERATIONS AND MAINTENANCE

ARTICLE 14
TOLLS

14.1 Tolling

14.1.1 Authorization and Obligation to Toll. In accordance with and subject to the terms and conditions of this Agreement, Developer (a) shall have the exclusive right to impose tolls upon the Users of the Toll Lanes; to establish, modify and adjust the rate of such tolls; to enforce and collect tolls from the Users of the Toll Lanes subject to Section 14.5.3 and subject to the Uniform Toll Account Rules, to fix, charge, enforce and collect Administrative Fees with respect to electronic tolling accounts managed by Developer or its Contractors and Image-Based Billing Toll Premiums; and (b) shall require payment of tolls for use of Toll Lanes. Except for toll violation penalties and Administrative Fees in effect under Exhibit 10, and except as may be provided in the TxDOT Tolling Services Agreement, the amount of any Administrative Fees shall not exceed the amount necessary for Developer to recover its actual, documented, reasonable, out-of-pocket costs and expenses directly incurred with respect to the items, services and work for which they are levied. Except as otherwise provided in Section 31.14, nothing in this Agreement shall obligate or be construed as obligating TxDOT to continue or cease tolls after the end of the Term.

14.1.2 Limitations on Authority to Toll; Exempt Vehicles. Developer has no authority or right to levy or impose any toll, fee, charge or other amount (a) on any Toll Lanes of a Project Segment until the Service Commencement Date for such Project Segment, (b) for use of any portion of the Project other than the Toll Lanes, (c) for use of the Project other than the tolls (including Image-Based Billing Toll Premiums) and Administrative Fees specifically authorized by this Article 14, (d) when ordered to suspend tolling under Section 14.3, or (e) for or in connection with the use of the Project by any Exempt Vehicle.

14.1.3 Exceptions to Obligation to Toll. Developer's obligation under Section 14.1.1(b) to require payment of tolls for use of the Toll Lanes is subject to the following: (a) Developer is not required to impose tolls for use of the Tolls Lanes to the extent so provided in Exhibit 10; (b) Developer is not required (directly or through TxDOT under the terms of the TxDOT Tolling Services Agreement) to collect toll violations not reasonably collectible; and (c) with TxDOT's consent, Developer may allow for use of all or part of the Toll Lanes for a limited period of time after any applicable Service Commencement Date without imposing any toll so long as Developer complies with measures (determined jointly by TxDOT and Developer) to ensure that such toll-free use is not deemed to be the conversion of a free facility to a tolled facility under State Law at the end of such toll-free period.

14.1.4 Toll Collection System. Developer shall implement toll collection systems that charge, debit and collect tolls only at or through the electronic tolling facilities physically located on the Project Right of Way or through global positions system technologies or other remote sensing technologies that charge, debit and collect tolls for actual vehicular use of the Toll Lanes in compliance with the requirements of Section 14.5.

14.2 Changes in User Classifications

14.2.1 Initial User Classifications. Developer has irrevocably selected a User Classification system as set forth in Exhibit 10. Developer may not change (including adding or deleting) such User Classifications except as provided in Section 14.2.2.

14.2.2 Changes. Developer may apply to TxDOT for permission to implement a change to such User Classifications. Such application shall be delivered to TxDOT at least 210 days prior to the proposed effective date of the proposed change and shall set forth the proposed change, the date such change will become effective, the duration of such change, the reason for such change, the effect such change is expected to have upon Users and traffic patterns and such other information and data as TxDOT may reasonably request. Such application shall also include a thorough analysis of the effect each change is expected to have on Developer's internal rate of return (determined using the Financial Model Formulas), including the effects on the Base Case Financial Model Update (or if there has been no Base Case Financial Model Update, on the Base Case Financial Model) and on the assumptions and data therein. TxDOT may, in its discretion, approve the application without conditions, approve the application with conditions (including conditioning approval on new or an adjustment of compensation for TxDOT under this Agreement) or deny the application. If TxDOT approves the application with conditions, Developer may withdraw the application and continue with the then-existing User Classifications. A complete application shall be deemed to have been approved by TxDOT without conditions unless TxDOT advises Developer that it has denied the application or approved the application with conditions within 120 days after receipt of the application. If the application is approved, Developer may implement the approved change as of the proposed effective date set forth in the application (subject to any conditions imposed by TxDOT) and subject to first giving public notice of the change in the manner provided in Exhibit 10, and the Parties shall promptly amend Exhibit 10 to incorporate the approved change and (if applicable) other provisions of this Agreement to conform to the accepted conditions.

14.3 Emergency Suspension of Tolls

14.3.1 Evacuation Route for Disaster Proclaimed by Governor. TxDOT shall have the right to order immediate suspension of tolling of the Toll Lanes or any portion thereof if TxDOT designates the Project or a portion thereof for immediate use as an emergency evacuation route or as a route to respond to a disaster proclaimed by the Governor of Texas or his or her designee. Notwithstanding any other provision of this Agreement to the contrary, TxDOT shall have no liability to Developer for the loss of Toll Revenues or the increase in costs and expenses attributable to an order under this Section 14.3.1 so long as (a) TxDOT concurrently suspends tolling on all other TxDOT-operated tolled facilities that are situated to directly facilitate travel from the area designated for evacuation or from the proclaimed disaster area, (b) TxDOT concurrently orders suspension of tolling on all other tolled facilities operated by other Persons that are situated to directly facilitate travel from such area and over which TxDOT has the authority to order such suspension and (c) TxDOT lifts such order as soon as the need to use the Project for emergency evacuation or disaster response ceases.

14.3.2 Emergency or Natural Disaster Declared by TxDOT Executive Director. TxDOT shall have the right to order immediate suspension of tolling of the Toll Lanes or any portion thereof in any time of a declared emergency or natural disaster, as determined by the Executive Director.

14.3.3 Suspension by Other Governmental Entities. Notwithstanding any other provision of this Agreement to the contrary, TxDOT shall have no liability to Developer for the loss of Toll Revenues or the increase in costs and expenses attributable to any order to suspend tolling by any Governmental Entity other than TxDOT to facilitate emergency evacuation issued pursuant to applicable Law or to respond to a disaster proclaimed by the Governor of Texas or his or her designee.

14.4 Toll Revenues

14.4.1 Right to Toll Revenues. Except as otherwise provided in this Agreement, at all times during the Term, Developer shall have the exclusive right, title, entitlement and interest in and to the Toll Revenues (including tolls and other charges permitted hereunder as they accrue with respect to Transactions occurring during the Term), subject to the terms and conditions of the CDA Documents (including TxDOT's rights to compensation in accordance with this Agreement) and the security interests in Toll Revenues under the Security Documents.

14.4.2 Deposit Account. Subject to the Tolling Services Agreement, Toll Revenues shall be deposited to the account of Developer.

14.4.3 Use of Toll Revenues

(a) Toll Revenues shall be used first to pay all due and payable operations and maintenance costs, including all amounts due to TxDOT under Sections 4.2 and 4.4, before they may be used and applied for any other purpose.

(b) Developer may use Toll Revenues to service debt required for the Project. Developer shall have no right to use Toll Revenues to pay any debt, obligation or liability unrelated to this Agreement, the Lease, the Project, the Work or Developer's services under this Agreement.

(c) Developer may use Toll Revenues to make Distributions in accordance with Developer's governing instruments and subject to the following limitations: Developer may not use Toll Revenues to make any Distribution or to pay non-competitive fees and charges of Affiliates unless Developer has first paid (i) all current and delinquent amounts due to TxDOT under this Agreement or the Lease, (ii) all current and delinquent costs and expenses of O&M Work or of otherwise operating and maintaining the Project (including premiums for insurance, bonds and other performance security and the costs of Safety Compliance work and Handback Requirements work), (iii) current and delinquent debt service and other amounts due under any Funding Agreement or Security Document, (iv) all currently required or delinquent deposits to the Handback Requirements Reserve, (v) all Taxes currently due and payable or delinquent (except to the extent being contested in good faith and for which appropriate reserves have been established in accordance with US GAAP), and (vi) all current and delinquent costs and expenses of Renewal Work; *provided*, however, that Developer shall be permitted to use up to $500,000 of Toll Revenues per year to pay non-competitive fees and charges of Affiliates determined through arm's-length negotiations. If Developer makes any Distribution or payment to an Affiliate in violation of this provision, the same shall be deemed to be held in trust by the recipient for the benefit of TxDOT and the Collateral Agent under the senior Security Documents and shall be payable to TxDOT or the Collateral Agent on demand. If TxDOT collects any such amounts held in trust, it shall make them available for any of the purposes set forth above and, at the request of the Collateral Agent, deliver them to the Collateral Agent net of any amounts under clause (i) above.

14.4.4 Return on Investment. Developer acknowledges and agrees that it is not entitled to receive any compensation, return on investment or other profit for providing the services contemplated by this Agreement and the Lease other than those resulting from cost savings, Toll Revenues, Administrative Fees, Compensation Amounts and Termination Compensation in accordance with the provisions of this Agreement and earnings thereon. The Parties acknowledge that this Agreement and the Lease contain commercially reasonable provisions and allow Developer a reasonable rate of return and compensation commensurate with risk.

14.5 Toll Handling, Collection and Enforcement

14.5.1 Developer Responsibility. Commencing on the Service Commencement Date for each Project Segment and continuing throughout the Term, Developer shall be responsible for toll collection, violation processing, revenue handling and accounting, and customer service and support for the Toll Lanes. Developer shall conduct its violation processing and enforcement activities in compliance with applicable Laws; *provided, however*, that whenever Developer retains a public agency to perform toll violation processing and enforcement, the Laws applicable to such agency's violation processing and enforcement activities, including those pertaining to fees, costs and penalties it may charge to Users, shall apply.

14.5.2 Electronic Toll Collection System; Transponders. Commencing on the Service Commencement Date for each Project Segment and continuing throughout the Term, Developer shall provide all Electronic Toll Collection Systems and related services for the Toll Lanes in accordance with the requirements set forth in Section 21 of the Technical Provisions. Commencing on the Service Commencement Date for each Project Segment and continuing throughout the Term, Developer shall maintain and operate an Electronic Toll Collection System for the Toll Lanes.

(a) Such Electronic Toll Collection System shall meet all applicable TxDOT statewide interoperability and compatibility standards, requirements and protocols, if any, including any pertaining to any clearinghouse system TxDOT participates in, implements or operates. Interoperability is required as to (i) functionality, enabling use of a single transponder across all highways, (ii) customer account maintenance, management and reconciliation, and (iii) funds transfers among all participants, enabling a customer to have a single transponder to pay for tolled travel on all highways.

(b) If TxDOT is a party to any agreement or memorandum of understanding with any other public agency or private party operating tolled highway facilities within the State for interoperability with TxDOT's electronic toll collection system, then Developer's Electronic Toll Collection System also shall be interoperable with the electronic toll collection system and violation enforcement system and protocols utilized or to be utilized on such other highway facilities, to the extent such systems and protocols are in common with or substantially similar to those of TxDOT. TxDOT will promptly provide to Developer a copy of any such agreement or memorandum of understanding. TxDOT shall keep Developer reasonably informed and seek Developer's comments regarding any changes to interoperability standards with respect to any such agreement or memorandum of understanding.

(c) If prior to commencement of toll operations TxDOT has in place statewide interoperability and compatibility standards, requirements and protocols for electronic tolling, then Developer shall demonstrate or cause to be demonstrated interoperability of its Electronic Toll Collection System prior to commencement of the toll operations. Developer shall submit to TxDOT and the Independent Engineer test results from the demonstration verifying compliance with the applicable interoperability standards, and by reasonable field verification and testing in compliance with Good Industry Practice.

(d) Notwithstanding anything in this Agreement to the contrary, Developer shall not issue any transponders (other than acting as a distributor of transponders issued by a Transponder Issuer). TxDOT shall issue TxTags to Users for as long as TxTags are otherwise made available to toll road users in the State, regardless of whether the TxDOT Tolling Services Agreement is in effect.

14.5.3 TxDOT Tolling Services Agreement. Developer has retained TxDOT to perform certain obligations with respect to customer service and the collection of Toll Revenues from Transponder Issuers and Users pursuant to the provisions set forth in that certain tolling services agreement, the form

of which is set out in Exhibit 11 (the "**TxDOT Tolling Services Agreement**"), and which the Parties shall execute as of the Effective Date. Notwithstanding anything in this Agreement to the contrary, any event of TxDOT default or other breach by TxDOT of its obligations under the TxDOT Tolling Services Agreement shall not give rise to a default, breach, or liability by TxDOT under this Agreement or a claim for a Relief Event or a Compensation Event, except as specifically provided in Section 29.6.1 and in clause (r) of the definition of "Compensation Event".

14.5.4 Remittance of Toll Revenues. For so long as the TxDOT Tolling Services Agreement is in effect, the terms thereof shall govern the remittance to Developer of Toll Transaction payments in respect thereof collected by TxDOT. Otherwise, if such agreement is not in effect, TxDOT, in its capacity as a Transponder Issuer, will electronically remit payments to Developer (or its tolling services Contractor) for Transponder Transactions by TxDOT transponder customers within the earlier of (a) five Business Days after the Toll Transaction is received at TxDOT's CSC Host or (b) the period for such remittances provided in TxDOT's interoperability and compatibility standards, requirements, protocols, agreements or memoranda of understanding, except where the account has insufficient funds or TxDOT does not receive any necessary data in accordance with its Interface Control Document. If such account lacks sufficient funds, TxDOT will resubmit the Transaction for settlement once per day until the first to occur of (i) the date it is settled, (ii) the date TxDOT closes the account or (iii) 30 days after the first debit is attempted.

14.5.5 Section 228.055 Provisions. The following provisions shall apply only (x) during any portion of the period commencing on each Service Commencement Date and ending at the end of the Term (an "applicable period") in which (i) Section 228.055 of the Texas Transportation Code, as the same may be amended from time to time, or any statute of similar import ("**Section 228.055**"), is in effect, (ii) Developer lacks statutory authority comparable to that available to TxDOT under Section 228.055 and (iii) Developer has no agreement in effect for customer service and other toll collection and enforcement services for the Project with TxDOT or a Governmental Entity that has statutory authority under or comparable to that under Section 228.055 or (y) if any Transaction occurring during an applicable period remains in processing, enforcement and collection after the applicable period as a Video Transaction (a "tail period Video Transaction"), during the tail period Transactions for a period up to but not exceeding one year after the end of the applicable period (the "tail period"):

(a) TxDOT appoints Developer as TxDOT's agent during the applicable period, and during the tail period as to tail period Video Transactions, for the sole and limited purpose of (i) delivering notices of nonpayment to Video Transaction Users under Section 228.055, (ii) imposing an administrative fee under Section 228.055, (iii) using and approving automated enforcement technology under Section 228.058, (iv) pursuing any misdemeanor offenses against Video Transaction Users under Section 228.055, and (v) instructing all courts and public officials to deliver all tolls and Administrative Fees recovered under Section 228.055 with respect to Video Transactions to Developer. Such appointment shall be exclusive and irrevocable during the applicable period, and during the tail period as to tail period Video Transactions; *provided* that such appointment is deemed automatically suspended during any period that TxDOT exercises step-in rights under Section 29.4.5 involving TxDOT's performance of toll operations, and except for tail period Video Transactions deemed automatically revoked upon termination of this Agreement.

(b) At Developer's request, TxDOT shall cooperate with Developer in connection with (i) confirming to courts and public officials Developer's authority as TxDOT's agent under subsection (a) above, and (ii) any proceedings Developer initiates under Section 228.055. At Developer's request, TxDOT will deliver instructions to such public officials and courts as reasonably necessary for them to deliver tolls and Administrative Fees recovered under Section 228.055 with respect to Video

Transactions to Developer. Developer shall reimburse TxDOT for all costs, including TxDOT's Recoverable Costs, it incurs in connection with such cooperation.

(c) TxDOT will promptly deliver to Developer a copy of all notices, other communications and documentation from Video Transaction Users that TxDOT receives in response to notices of violation Developer issues under Section 228.055; *provided* that TxDOT shall have no liability to Developer for compensation or other damages if it does not promptly deliver such notices, communications or documentation.

(d) If any court or public official remits to TxDOT any tolls or Administrative Fees collected via proceedings brought under Section 228.055, or if any Video Transaction User in response to or settlement of a violation notice or any such proceeding remits to TxDOT any such tolls or Administrative Fees, then the amounts so remitted to TxDOT shall constitute Developer's property, shall be deemed received by TxDOT merely as a bailee or agent, and shall not constitute funds or property of TxDOT or the State; and TxDOT shall forthwith remit such payments to Developer.

14.5.6 Vehicle Registration. For the sole purpose of enabling processing and collection of Transactions, so long as it is authorized under Section 730.007(a)(2)(J) of the Texas Transportation Code, as the same may be amended from time to time, or any other statute of similar import, TxDOT will cause the Texas Department of Motor Vehicles to (a) provide Developer with electronic access to all vehicle registration records and information maintained by the Texas Department of Motor Vehicles, and (b) provide Developer with the same access that TxDOT has to vehicle registration records and information for vehicles that are not registered in Texas. The foregoing rights of access shall survive until 90 days after expiration or earlier termination of the Term solely for the purpose of processing and collecting Transactions occurring during the Term. As conditions to receiving access to such records and information, Developer shall (i) submit any request form and enter into any form agreement that the Texas Department of Motor Vehicles may require for obtaining access and (ii) pay all fees, costs and charges that the Texas Department of Motor Vehicles customarily imposes from time to time for providing access. Developer acknowledges that all such records and information constitute Patron Confidential Information subject to Section 14.6.

14.5.7 Cessation of HCTRA Interoperability. If, and only if, (x) the HCTRA-TxDOT Interoperable Relationship is terminated (with respect to the SH 288 Toll Lanes) and not promptly replaced with a new HCTRA-TxDOT Interoperable Relationship, (y) at the time immediately prior to the announcement of such termination, as measured in the most recent 90-day period, a majority of Toll Transactions of the (SH 288) Toll Lanes are HCTRA Transactions, and (z) such termination is reasonably expected to have a material adverse effect on Net Project Cash Flows, then notwithstanding anything in this Agreement or the TxDOT Tolling Services Agreement to the contrary:

(a) **Image-Based Billing.** TxDOT shall authorize and direct implementation of Image-Based Billing, as contemplated by Section 10(a) of Exhibit 10.

(b) **Continued Efforts to Collect from HCTRA Users.** If the TxDOT Tolling Services Agreement is in effect, TxDOT shall continue to undertake to collect tolls payable for HCTRA Transactions and to pursue Violations, as applicable, as provided in the TxDOT Tolling Services Agreement. If the TxDOT Tolling Services Agreement is no longer in effect, Developer shall continue to use, or cause its tolling services contractor to use, its best efforts to collect tolls payable for HCTRA Transactions and to pursue Violations, as applicable.

(c) **Selection of Independent Firm.** The Parties shall jointly select and retain an independent, qualified firm that is recognized by Rating Agencies as having expertise in analyzing and

forecasting traffic and toll revenue. Such firm (within this Section 14.5.7, the "independent firm") shall have a duty of care to both TxDOT and Developer. TxDOT and Developer shall share equally the cost of the independent firm. The independent firm may have a prior relationship with one or both Parties only so long as the firm is jointly approved by both Parties, otherwise meets the foregoing qualifications, and complies with any applicable TxDOT conflict policies.

(d) **Preparation of Cash Flows.** The independent firm shall prepare a report of forecasted Net Project Cash Flows for (i) each month during the three-year period following termination of the HCTRA-TxDOT Interoperable Relationship and (ii) each year thereafter (as required for purposes of Section 4.8). The report shall be based upon forecasts of traffic and Toll Revenues made at that time, as opposed to assumptions included in Developer's Proposal, but shall assume that the HCTRA-TxDOT Interoperable Relationship is maintained rather than terminated and shall not take into account the impact of Image-Based Billing. The report shall be supported by a traffic and revenue study and analysis.

(e) **Acceptance of the Report.** The report prepared pursuant to Section 14.5.7(d) shall be subject to acceptance by both Parties. If either Party has a good faith reason to believe that the report does not represent a view that could reasonably be taken by an independent, qualified firm with the requisite expertise, that Party shall promptly notify the other Party of its concerns and the basis for its concerns. The initial report prepared by the independent firm shall not be altered except with permission of both Parties to address such concerns. If the Parties are ultimately unable to accept the report prepared by the independent firm, (i) the Parties may jointly retain a different independent, qualified firm (meeting the criteria of Section 14.5.7(c)) to prepare a new report, which report shall be subject to acceptance by the Parties, or else (ii) the Dispute shall be resolved according to the Dispute Resolution Procedures.

(f) **Remittance.** For each month during the liquidity period (as defined below): (i) Net Project Cash Flows shall continue to be remitted to Developer in accordance with this Agreement, the TxDOT Tolling Services Agreement (if in effect), and the Master Lockbox and Custodial Account Agreement, in each case as applicable; (ii) if the amounts remitted to Developer under clause (i) above for such month exceed the amount of Net Project Cash Flows specified in the accepted report for that month, Developer shall remit to TxDOT, within 10 Business Days after the end of such month, an amount equal to the absolute value of such difference; and (iii) if the amounts remitted to Developer under clause (i) above for such month are less than the amount of Net Project Cash Flows specified in the accepted report for that month, TxDOT shall remit to Developer, within 10 Business Days after the end of such month, an amount equal to the absolute value of such difference. For the purposes of this Section 14.5.7, the "accepted report" means the report prepared by the independent firm and accepted by the Parties pursuant to Section 14.5.7(e) or determined pursuant to Dispute Resolution Procedures, as the case may be.

(g) **Liquidity Period.** For purposes of this Section 14.5.7, the "liquidity period" means the period beginning as of the date of termination of the HCTRA-TxDOT Interoperable Relationship (or the first Service Commencement Date, whichever is later) and ending as of the earlier of (i) the third anniversary of such date or (ii) if actual quarterly Net Project Cash Flows (as defined below) exceed forecasted quarterly Net Project Cash Flows (as defined below) for any two non-overlapping quarters (whether or not such quarters are consecutive), the last day of the second such quarter. For this purpose, (1) "quarter" means any three-month period, regardless of the starting month; (2) "actual quarterly Net Project Cash Flows" means for any quarter, all Toll Revenues and Violation Fees actually collected, less Transaction Fees and Interoperability Fees paid in respect of such actual Toll Transactions and the portion of Violation Fees that would be shared with TxDOT under the TxDOT Tolling Services Agreement had the sharing provisions of the TxDOT Tolling Services Agreement remained in effect; and (3) "forecasted quarterly Net Project Cash Flows" means the Net Project Cash Flows, as specified in the accepted report, for the same quarter.

14.6 User Privacy

14.6.1 Developer shall provide an Electronic Toll Collection System and procedures designed to maintain the toll account and travel records of Users as confidential information and in compliance with applicable Laws on notice of privacy practices. In addition, unless otherwise approved by TxDOT, if Developer, its Affiliate or any private entity under Contract with Developer to provide customer service and other toll collection and enforcement services issues transponders and manages transponder customer accounts, Developer shall provide, and cause its Affiliate or such private entity Contractor to provide, to such customers who request it, as an option, anonymous accounts and/or other techniques that enhance motorists' privacy, consistent with applicable Laws. Developer shall not, however, be required to maintain account anonymity when providing information as necessary to others to process tolls for Video Transactions or toll violations or attempting to resolve customer disputes regarding toll charges, or when the intrinsic nature of the technology requires establishment of customer identity (e.g. cellular telephones), provided customers requesting anonymity are clearly advised of the circumstances under which Developer, its Affiliate or such private entity Contractor is not required to maintain account anonymity.

14.6.2 Developer acknowledges that the data generated by, or accumulated or collected in connection with, operation of Developer's Electronic Toll Collection System or Developer's toll collection and enforcement activities, including customer lists, customer identification numbers, customer contact information, customer account information and billing records and other customer specific information, including use and enforcement data, origin and destination information, system performance statistics, and real time traffic flow information may consist of or include information that identifies an individual who is a patron of the Project and that is exempt from disclosure to the public or other unauthorized persons under applicable Law ("**Patron Confidential Information**"). Patron Confidential Information includes names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, vehicle registration information, medical data, law enforcement records, agency Source Code or object code, agency security data, or other information that relates to any of these types of information.

14.6.3 Developer shall comply with all applicable Laws, Technical Provisions and TxDOT statewide interoperability and compatibility standards, requirements and protocols limiting, restricting or pertaining to collection, use, confidentiality, privacy, handling, retention, reporting, disclosure or dissemination of Patron Confidential Information.

14.6.4 Developer agrees to hold Patron Confidential Information in strictest confidence and not to make use of Patron Confidential Information for any purpose other than the performance of this Agreement, including toll violation processing and collection. Developer shall release Patron Confidential Information only to (a) TxDOT if requested, (b) the Independent Engineer if requested in connection with its auditing functions, (c) authorized employees or Contractors requiring such information for the purpose of carrying out obligations under this Agreement, (d) authorized collection agencies as necessary to assist their collection of toll violations, (e) the Texas Department of Public Safety as necessary to assist its enforcement of toll violation traffic infractions, and (f) any Lender or Substituted Entity that succeeds to Developer's Interest. Developer shall not release, divulge, publish, transfer, sell or disclose Patron Confidential Information, or otherwise make it known, to any other Person without TxDOT's express prior consent in its discretion except as required by applicable Laws. Developer may provide such information and material only to employees of Developer-Related Entities who have signed a nondisclosure agreement, the terms of which have been previously approved by TxDOT. Developer agrees to implement physical, electronic and managerial safeguards to prevent unauthorized access to Patron Confidential Information and to implement destruction of records containing Patron Confidential

Information in accordance with the records retention provisions of the Technical Provisions. Developer shall maintain all Patron Confidential Information solely in the State.

14.6.5 Immediately upon expiration or termination of this Agreement, Developer shall, at TxDOT's option, (a) certify to TxDOT that Developer has destroyed all Patron Confidential Information, (b) return all Patron Confidential Information to TxDOT or (c) take whatever other steps TxDOT reasonably requires of Developer to protect Patron Confidential Information. This provision shall not apply to Patron Confidential Information needed to bill, enforce and collect a Video Transaction occurring prior to expiration or termination of this Agreement until the earlier of (i) payment of the applicable tolls or (ii) one year after the date the Video Transaction occurs.

14.6.6 Developer shall describe in the Operations Management Plan or operating manual or procedures prepared thereunder (a) the Patron Confidential Information received in the performance of this Agreement, (b) the purpose(s) for which the Patron Confidential Information is received, (c) who receives, maintains and uses the Patron Confidential Information and (d) the final disposition of the Patron Confidential Information.

14.6.7 The rights of TxDOT and the Independent Engineer to audit and inspect under this Agreement shall include the right to monitor, audit and investigate Developer's books and records and Developer's systems, practices and procedures concerning Patron Confidential Information. If the Independent Engineer requests access to Patron Confidential Information, Developer may require the Independent Engineer to execute and deliver an appropriate confidentiality agreement consistent with the provisions of this Section 14.6.

14.6.8 Developer shall disclose in writing to each User for whom Developer holds Patron Confidential Information Developer's policies regarding privacy of Patron Confidential Information, consistent with this Section 14.6. For each User having an account with Developer or its Affiliate for automatic payment of tolls, Developer shall deliver such disclosure within 30 days after any User first opens the account. In addition, for all Users, Developer shall maintain such disclosure on the Project web site. Developer shall comply with the provisions of any applicable Law prescribing disclosure of Developer's privacy policies, including provisions on the content of disclosures and when disclosure must be given, as deemed compliance with the disclosure requirements of this Section 14.6.8. The content of the form of disclosure, and any changes thereto that Developer may make from time to time, shall be subject to TxDOT's prior approval.

14.6.9 In the event Developer retains any Governmental Entity to provide customer service and other toll collection and enforcement services, Developer shall have no obligation or liability regarding such Governmental Entity's handling of Patron Confidential Information. Developer shall, however, use commercially reasonable efforts to include in its Contract with such Governmental Entity covenants by the Governmental Entity comparable to those in this Section 14.6, other than (a) the anonymous account provisions and (b) Section 14.6.6.

ARTICLE 15
OPERATIONS AND MAINTENANCE

15.1 Developer and TxDOT Obligations; Transition of Operations. At all times during the Operating Period, Developer shall carry out the O&M Work in accordance with (a) Good Industry Practice, as it evolves from time to time, (b) the requirements, terms and conditions set forth in the CDA Documents (including the Technical Provisions), as the same may change from time to time, (c) all

applicable Laws, (d) the requirements, terms and conditions set forth in all Governmental Approvals, (e) the approved Project Management Plan and all component parts, plans and documentation prepared or to be prepared thereunder, and (f) all other applicable safety, environmental and other requirements, taking into account the Project Right of Way limits and other constraints affecting the Project. Developer is responsible for keeping itself informed of current Good Industry Practice.

15.2 Performance, Operation and Maintenance Standards

15.2.1 Developer, at its sole cost and expense unless expressly provided otherwise in this Agreement, shall comply with all Technical Provisions, including Safety Standards, during the Operating Period.

15.2.2 TxDOT shall have the right to adopt at any time by notice to Developer, and Developer acknowledges it must comply with all, changes and additions to, and replacements of, Technical Provisions and Safety Standards relating to the O&M Work of general application to Comparable Limited Access Highways that are or become tolled or the subject of concession or public-private partnership agreements. If such changed, added or replacement Technical Provisions or Safety Standards encompass matters that are addressed in the then-existing Technical Provisions, they shall replace and supersede inconsistent provisions of the Technical Provisions to the extent designated by TxDOT in its discretion. TxDOT will identify the superseded provisions in its notice to Developer.

15.2.3 If compliance with a non-Discriminatory changed, added or replacement Technical Provision or Safety Standard relating to the O&M Work requires major repair, reconstruction, rehabilitation, restoration, renewal or replacement of any Element or other component of the Project, Developer shall commence performance of the major repair, reconstruction, rehabilitation, restoration, renewal or replacement not later than the first to occur of (a) any deadline recommended or prescribed in the changed or added Technical Provision or Safety Standard, (b) the date when Developer first performs or (if earlier) is first obligated to perform Renewal Work on such Element or other component and (c) the date TxDOT first applies the change, addition or replacement to other Comparable Limited Access Highways that TxDOT manages or operates, as determined pursuant to Section 15.2.8. If, however, TxDOT adopts the changed, added or replacement Technical Provision or Safety Standard prior to the Service Commencement Date for a Project Segment, in the absence of a TxDOT Change, clauses (a) and (c) above shall not apply in determining when Developer must implement the changed, added or replacement Technical Provision or Safety Standard with respect to the Project Segment (and corresponding portions of the Frontage Roads and General Purpose Lanes).

15.2.4 If compliance with a non-Discriminatory changed, added or replacement Technical Provision or Safety Standard relating to the O&M Work requires construction or installation of new improvements at, for or on the Project, Developer shall complete construction and installation of the new improvements according to the implementation period recommended or prescribed by the changed, added or replacement Technical Provision or Safety Standard. If no such implementation period is recommended or prescribed, Developer shall submit to the Independent Engineer and TxDOT for TxDOT's approval, within 90 days after adoption of the changed, added or replacement Technical Provision or Safety Standard, a proposed schedule for completing the new improvements. The proposed schedule shall be reasonable and conform to Good Industry Practice, taking into account the scope, complexity and cost of the work required. Any Dispute regarding the proposed schedule shall be resolved according to the Dispute Resolution Procedures. Developer shall diligently prosecute the Work until completion in accordance with the approved schedule.

15.2.5 Developer shall be obligated to implement a Discriminatory changed, added or replacement Technical Provision or Safety Standard related to the O&M Work only after TxDOT issues a

Change Order or Directive Letter therefor. If a Discriminatory changed, added or replacement Technical Provision or Safety Standard relating to the O&M Work requires major repair, reconstruction, rehabilitation, restoration, renewal or replacement of any Element or other component of the Project during the Operating Period, or requires construction or installation of new improvements, Developer shall perform the major repair, reconstruction, rehabilitation, restoration, renewal or replacement or the new improvement work according to the schedule therefor adopted in the Change Order for such work. If Discriminatory changed, added or replacement Technical Provision or Safety Standard requires implementation not entailing such work, Developer shall implement it from and after the date TxDOT issues the Change Order.

15.2.6 Section 25.5 establishes the timing by which Developer must implement Safety Compliance during the Operating Period.

15.2.7 In the case of any other changed, added or replacement Technical Provision or Safety Standard, Developer shall be obligated to comply from and after the date it becomes effective and Developer is notified or otherwise obtains knowledge of the change or addition. For the avoidance of doubt, Developer shall comply with all changes or additions to such Technical Provisions that are in effect and noticed or known to Developer on or prior to the date Developer commences maintenance, routine repair or routine replacement of damaged, worn or obsolete Project components or materials.

15.2.8 For purposes of Section 15.2.3(c), a change, addition or replacement shall be deemed to have been first applied by TxDOT if and when TxDOT commences implementing actions on other Comparable Limited Access Highways that TxDOT manages or operates. Developer shall not be entitled to delay commencement or completion of its work on grounds that TxDOT is delayed in commencing or completing implementing actions on Comparable Limited Access Highways where (a) TxDOT is delayed due to the extensive system of Comparable Limited Access Highways for which TxDOT is responsible or (b) the changed, added or replacement Technical Provision or Safety Standard applies only upon the occurrence of a condition or circumstance that has not yet occurred in respect of a Comparable Limited Access Highway that TxDOT manages or operates.

15.2.9 New or revised statutes or regulations adopted after the Financial Proposal Due Date that change, add to or replace applicable standards, criteria, requirements, conditions, procedures, specifications and other provisions, including Safety Standards, relating to the O&M Work, as well as revisions to Technical Provisions to conform to such new or revised statutes or regulations, shall be treated as Changes in Law (including, to the extent expressly provided under other sections of this Agreement, Discriminatory Change in Law) rather than a TxDOT Change; however, the foregoing shall not apply to new or revised statutes or regulations that also cause or constitute changes in Adjustment Standards.

15.2.10 Developer may apply for TxDOT approval of (and without such approval shall not undertake) Deviations from applicable Technical Provisions regarding O&M Work. TxDOT shall consider in its discretion, but have no obligation to approve, any such application, and Developer shall bear the burden of persuading TxDOT that the Deviation sought constitutes sound and safe practices consistent with Good Industry Practice and achieves or substantially achieves TxDOT's applicable Safety Standards and criteria. No Deviation shall be deemed approved or be effective unless and until stated in writing signed by TxDOT's Authorized Representative. TxDOT's denial or disapproval of a requested Deviation shall be final and not subject to the Dispute Resolution Procedures. TxDOT may elect to process the application as a Change Request under Section 14.2 rather than as an application for a Deviation.

15.3 Hazardous Materials Management. Without limiting TxDOT's role or responsibilities as set forth in Article 12 and except as provided otherwise in Section 12.3, during the Operating Period, Developer shall manage, treat, handle, store, remediate, remove, transport (where applicable) and dispose of all Hazardous Materials and Recognized Environmental Conditions, including contaminated groundwater, for which Developer is responsible under Article 12, to the extent required by and in accordance with applicable Law, Governmental Approvals, the Hazardous Materials Management Plan, and all applicable provisions of the CDA Documents. The provisions of Article 12 shall apply throughout the Operating Period.

15.4 Environmental Compliance. Throughout the Operating Period, Developer shall perform or cause to be performed all environmental mitigation measures required under the Environmental Approvals, including the NEPA Approval and similar Governmental Approvals for the Project, or under the CDA Documents, and shall comply with all other conditions and requirements of the Environmental Approvals. Refer to Section 4 of the Technical Provisions for further provisions, requirements and obligations regarding environmental compliance.

15.5 Utility Accommodation

15.5.1 It is anticipated that during the course of the Operating Period, from time to time Utility Owners will apply for additional utility permits to install new Utilities that would cross or longitudinally occupy the Project Right of Way, or to modify, repair, upgrade, relocate or expand existing Utilities within the Project Right of Way. In such circumstances, the provisions of Section 11.7 shall apply, including the application of Section 24.2 to those circumstances where TxDOT is pursuing a Business Opportunity involving a Utility in the Project Right of Way.

15.5.2 Throughout the Operating Period, Developer shall monitor Utilities and Utility Owners within the Project Right of Way for compliance with applicable utility permits, Utility Joint Use Acknowledgments/Agreements, easements, the Utility Accommodation Rules and other applicable Law, and shall use diligent efforts to obtain the cooperation of each Utility Owner having Utilities within the Project Right of Way. If (a) Developer reasonably believes that any Utility Owner is not complying with the terms of a utility permit, Utility Joint Use Acknowledgment/Agreement, easement, the Utility Accommodation Rules or other applicable Law affecting a Utility within the Project Right of Way, or (b) any other dispute arises between Developer and a Utility Owner with respect to a Utility within the Project Right of Way, despite Developer having exercised its diligent efforts to obtain the Utility Owner's cooperation, Developer shall promptly notify TxDOT, and TxDOT and Developer shall work together in the manner described in Section 11.6, including Developer's obligation to reimburse TxDOT for TxDOT's Recoverable Costs in connection with providing assistance to Developer; *provided, however*, that the "conditions to assistance" (as that term is used in Section 11.6) are that Developer shall provide evidence reasonably satisfactory to TxDOT that (i) Developer's position in the dispute is reasonable, (ii) Developer has made diligent efforts to obtain the Utility Owner's cooperation, and (iii) the Utility Owner is not cooperating. With respect to the Parties' rights and obligations described in Section 11.6.3, for purposes of this Section 15.5.2 the conditions to assistance described in clause (i) of the preceding sentence shall be treated in the same manner as those described in Sections 11.6.2(a), (b) and (c), and the conditions to assistance described in clauses (ii) and (iii) of the preceding sentence shall be treated in the same manner as those described in Sections 11.6.2(d) and (e).

15.6 Frontage Road Access. TxDOT shall be solely responsible, at its expense, for handling requests and permitting for adjacent property access to frontage roads of the Project. Nothing in the CDA Documents shall restrict TxDOT from granting access permits or determining the terms and conditions of such permits. TxDOT will keep Developer regularly informed of access permit applications and will deliver to Developer a copy of each issued access permit within five days after it is issued. Developer

shall have no claim for a Relief Event or Compensation Event by reason of TxDOT's grant of access permits, the terms and conditions thereof, or the actions of permit holders or their employees, agents, representatives and invitees. Developer at its expense shall cooperate and coordinate with permit holders to enable them to safely construct, repair and maintain access improvements allowed under their access permits.

15.7 Speed Studies and Speed Limits

15.7.1 TxDOT at its expense will conduct a speed study of the Toll Lanes in each Project Segment and the corresponding portions of the General Purpose Lanes and Frontage Roads between six to eight weeks after the Service Commencement Date of the Project Segment (to allow time for traffic patterns to stabilize). TxDOT will conduct the speed study in accordance with applicable Law and TxDOT's standards, procedures and methodology applicable to speed studies of frontage roads and main lanes, including those set forth in TxDOT's manual entitled "Procedures for Establishing Speed Zones," as the same may be revised, updated or replaced from time to time (collectively the "**TxDOT speed study standards**"). TxDOT will work with local governments on ordinances enacting the appropriate posted speeds based on the study. TxDOT will keep Developer informed of study schedules and provide Developer a copy of the study results.

15.7.2 Thereafter, in lieu of speed studies by TxDOT, Developer shall have the right and obligation to conduct, at its expense, further speed studies of the Toll Lanes, General Purpose Lanes and Frontage Roads. Developer shall conduct such studies at the three-year intervals provided by applicable Law. In addition, Developer will have the right to conduct a speed study of the Toll Lanes, General Purpose Lanes and Frontage Roads earlier than the three-year interval, but in no event sooner than 18 months after completion of the immediately preceding speed study for the same portion of the Toll Lanes, General Purpose Lanes or Frontage Roads, if Developer in good faith believes that significant changes have occurred in the interim that will or may affect posted speed limits. Developer shall conduct the studies according to the TxDOT speed study standards. Each speed study shall be subject to TxDOT approval to verify compliance with the TxDOT speed study standards. TxDOT at its expense will process each such approved speed study, including working with local governments as described above. TxDOT will coordinate such processing with Developer where Developer also desires to work with local governments on speed ordinances.

15.7.3 Nothing in the CDA Documents authorizes Developer to adjust posted speed limits on the Toll Lanes, General Purpose Lanes, Frontage Roads or other lanes of the Project, except temporary reductions during construction with TxDOT's prior approval, as set forth in Section 18.3.1 of the Technical Provisions. Such authority is reserved solely to TxDOT and applicable Governmental Entities.

15.8 Updates of Record Drawings. Within 30 days after undertaking any O&M Work that results in a significant change to the Project, Developer shall update the Record Drawings to reflect such change.

ARTICLE 16
O&M CONTRACTS

16.1 O&M Contracts. If Developer elects not to self-perform any aspect of the operations and maintenance of the Project, including toll operations, it shall enter into an O&M Contract for such O&M Work. Each O&M Contract will be a Principal Project Document. Each O&M Contractor, if any, shall have the expertise, qualifications, experience, competence, skills and know-how to perform the O&M Work and related obligations of Developer in accordance with this Agreement.

16.2 Transition of Operations and Maintenance Responsibilities

16.2.1 TxDOT will be responsible for operation and maintenance for the Project until the Operating Commencement Date. During the period TxDOT retains operation and maintenance responsibility for any portion of the Project, TxDOT shall maintain such portion in accordance with current TxDOT maintenance standards and conduct traffic management activities on such portion in accordance with TxDOT's standard traffic management practices and procedures.

16.2.2 Upon the Operating Commencement Date, Developer shall assume full responsibility for the O&M Work for the Project. The Parties shall carry out transition of operation and maintenance responsibilities in accordance with the Traffic Management Plan and other applicable portions of the Project Management Plan.

ARTICLE 17
MEETINGS; INSPECTION

17.1 By Independent Engineer. The Independent Engineer will perform oversight, inspection, testing and auditing respecting the O&M Work in accordance with Section 22.3 and the Independent Engineer Agreement.

17.2 By TxDOT. TxDOT's rights of oversight, inspection, testing and auditing with respect to the O&M Work are set forth in Sections 22.3 and 34.4.

17.3 General Inspections. Developer shall carry out General Inspections in accordance with the Technical Provisions and the Project Management Plan. Developer shall use the results of General Inspections to develop and update the Renewal Work Schedule, to maintain asset condition and service levels, and to develop programs of maintenance and Renewal Work to minimize the effect of O&M Work on Users.

17.4 Meetings

17.4.1 At TxDOT's request, Developer shall conduct regular quarterly meetings with TxDOT during the Operating Period. At TxDOT's request, Developer will require each O&M Contractor, if any, to attend the quarterly meetings. Such meetings shall be in addition to any meetings required by Section 8.3 during the Operating Period.

17.4.2 In addition, TxDOT and Developer, through their respective Authorized Representatives, shall meet from time to time at the other Party's request to discuss and resolve matters relating to the O&M Work or Project.

17.4.3 Developer shall schedule all meetings with TxDOT at a date, time and place reasonably convenient to both Parties and, except in the case of urgency, shall provide TxDOT with notice and a meeting agenda at least three Business Days in advance of each meeting. Developer shall prepare and submit to TxDOT minutes of each meeting with TxDOT within 10 Business Days after the meeting.

ARTICLE 18
POLICING, SECURITY AND INCIDENT RESPONSE

18.1 Police Services

18.1.1 Developer, without expense to TxDOT, shall permit the Texas Department of Public Safety and any other public law enforcement agency with jurisdiction to provide traffic patrol, traffic law enforcement and the other police and public safety services in accordance with applicable Laws and agreements with State and local agencies, including permitting at least the type and level of service that the Texas Department of Public Safety provides on Comparable Limited Access Highways owned and operated by TxDOT, and TxDOT will request the Texas Department of Public Safety to provide such policing services to the level of service provided in Comparable Limited Access Highways. In addition, Developer, without expense to TxDOT, shall engage, on mutually acceptable reasonable terms and conditions, either the Texas Department of Public Safety or another qualified public law enforcement agency with jurisdiction to provide enhanced levels of traffic patrol, traffic law enforcement services, special traffic operations services, accident assistance and investigation, and other enhanced police and Emergency services as needed due to any Developer-Related Entity's construction, operation, maintenance or other activities on or affecting the Project.

18.1.2 Developer shall not engage, or otherwise permit the engagement of, private security services to provide traffic patrol or traffic law enforcement services on the Project unless otherwise approved by TxDOT in its discretion. Notwithstanding the foregoing, Developer may engage private security firms or employ passive security devices or technology to protect, collect, accumulate, transfer and deposit tolls and Administrative Fees or to identify toll violators; *provided, however*, that services to physically apprehend toll violators may be performed only by the Texas Department of Public Safety unless otherwise approved by TxDOT in its discretion. In providing such policing services through a private security firm, Developer shall comply and cause the firm to comply with applicable Laws, including the regulations of the Texas Department of Public Safety. The foregoing does not in any way limit Developer's enforcement of private rights and civil remedies respecting toll violations.

18.1.3 At Developer's request and expense, TxDOT shall assist Developer in securing the agreement of the Texas Department of Public Safety to perform enhanced services. Such assistance may include accompanying Developer to meetings with the Texas Department of Public Safety, requesting the involvement of the director of TxDOT and taking any other reasonable action within its powers.

18.1.4 Nothing in this Section 18.1 shall be construed as conferring upon TxDOT in any way responsibility for funding policing services.

18.1.5 Developer acknowledges that the Texas Department of Public Safety is empowered to enforce all applicable Laws and to enter the Project at any and all times to carry out its law enforcement duties. No provision of this Agreement is intended to surrender, waive or limit any police powers of the Texas Department of Public Safety or any other Governmental Entity, and all such police powers are hereby expressly reserved.

18.1.6 TxDOT shall not have any liability or obligation to Developer resulting from, arising out of or relating to the failure of the Texas Department of Public Safety or any other public law enforcement agency to provide services, or its negligence or misconduct in providing services.

18.1.7 TxDOT and third parties with responsibility for traffic regulation and enforcement shall have the right to install, operate, maintain and replace cameras or other equipment on the Project that

relate to traffic regulation or enforcement. Developer, at its expense, shall coordinate and cooperate, and require its Contractors to coordinate and cooperate, with any such installation, maintenance and replacement activities.

18.2 Security and Incident Response

18.2.1 Developer is responsible for the safety and security of the Project and the workers and public thereon during all construction, operation and maintenance activities under the control of any Developer-Related Entity.

18.2.2 Developer shall comply with all rules, directives and guidance of the U.S. Department of Homeland Security and comparable State agency, and shall coordinate and cooperate with all Governmental Entities providing security, first responder and other public emergency response services. Without limiting the foregoing, whenever the Homeland Security Advisory System (HSAS) or successor system is raised to "orange" or "red" or comparable level of threat or alert for any region in which the Project is located or which the Project serves, Developer, at its expense, shall assign management personnel with decision-making authority to be personally present at the relevant emergency operations center serving the region. Developer shall provide such service 24 hours a day, seven days a week, until such level or threat or alert is reduced below the "orange", "red" or comparable level, or until the lead agency at the operations center determines such staffing level is no longer necessary.

18.2.3 Developer shall perform and comply with the provisions of the Technical Provisions concerning Incident response, safety and security.

18.2.4 Developer shall implement all Incident response, safety and security procedures, protocols and requirements set forth in the Incident Management Plan.

ARTICLE 19
RENEWAL WORK

19.1 Renewal Work

19.1.1 The Performance and Measurement Table and related provisions of the Technical Provisions set forth Performance Requirements for the Elements of the Project. Developer shall diligently perform Renewal Work as and when necessary to maintain compliance with such Performance Requirements. Developer also shall perform Renewal Work according to the other applicable terms of the Technical Provisions, including, when applicable, the Handback Requirements. Developer shall use the Renewal Work Schedule, as updated from time to time, as the principal guide for scheduling and performing Renewal Work.

19.1.2 Not later than 90 days after the end of each calendar year, Developer shall deliver to TxDOT and the Independent Engineer a report of the Renewal Work performed in the immediately preceding calendar year. The report shall describe by location, Element as listed in the Renewal Work Schedule and other component the type of work performed, the dates of commencement and completion and the cost, as well as the total cost of all Renewal Work performed during the calendar year. During the period the Handback Requirements Reserve is in effect, the report also shall set forth the total draws from the Handback Requirements Reserve in the immediately preceding calendar year and the date, amount and use of each draw (including any use for Safety Compliance work).

19.2 Renewal Work Schedule

19.2.1 Using the results of its Project inspections under Section 19.3 of the Technical Provisions, Developer shall set forth in the Renewal Work Schedule, by Element, (a) the estimated Useful Life, (b) the estimated Residual Life, (c) a brief description of the type of Renewal Work anticipated to be performed at the end of the Element's Residual Life, (d) a brief description of any Renewal Work anticipated to be performed before the end of the Element's Residual Life, including reasons why this work should be performed at the proposed time, (e) the estimated cost of such Renewal Work and (f) the total estimated cost of Renewal Work in each of the years Renewal Work is anticipated to be performed under the Renewal Work Schedule.

19.2.2 Developer shall estimate the Useful Life of each Element within the Renewal Work Schedule based on (a) Developer's reasonable expectations respecting the manner of use, levels of traffic, and wear and tear and (b) the assumption that, when subject to routine maintenance of a type which is normally included as an annually recurring cost in highway maintenance and repair budgets, the Element will comply throughout its Useful Life with each applicable Performance Requirement. Developer shall estimate the Residual Life of each Element within the Renewal Work Schedule based on its Age and whether (i) the Element has performed in service in the manner and with the levels of traffic and wear and tear originally expected by Developer (ii) Developer has performed the type of routine maintenance of the Element which is normally included as an annually recurring cost in highway maintenance and repair budgets, and (iii) the Element has complied throughout its Age with each applicable Performance Requirement.

19.2.3 Not later than 90 days before the beginning of each calendar year thereafter, Developer shall prepare and submit to the Independent Engineer and TxDOT for their review and comment either (a) a revised Renewal Work Schedule or (b) the then-existing Renewal Work Schedule accompanied by a statement that Developer intends to continue in effect the then-existing Renewal Work Schedule without revision (in either case, referred to as the "updated Renewal Work Schedule"). Developer shall make revisions as reasonably indicated by experience and then-existing conditions respecting the Project, the factors described in Section 19.2.2, changes in estimated costs of Renewal Work, changes in technology, changes in Developer's planned means and methods of performing Renewal Work, and other relevant factors. The updated Renewal Work Schedule shall show the revisions, if any, to the prior Renewal Work Schedule and include an explanation of reasons for revisions. If no revisions are proposed, Developer shall include an explanation of the reasons no revisions are necessary. During the period the Handback Requirements Reserve is in effect, the updated Renewal Work Schedule also shall set forth, by Element, Developer's planned draws from the Handback Requirements Reserve during the forthcoming calendar year.

19.2.4 At TxDOT's or the Independent Engineer's request, Developer and its O&M Contractors, if any, shall promptly meet and confer with TxDOT or the Independent Engineer to review and discuss the original or updated Renewal Work Schedule.

19.2.5 The Independent Engineer's duties shall include delivering to TxDOT and Developer, within 30 days after receipt of the original and each updated Renewal Work Schedule, comments, objections and recommendations with respect thereto. Within 30 days after receiving such comments, objections and recommendations, TxDOT shall have the right to object to or disapprove the original or updated Renewal Work Schedule or any elements thereof. In addition to the grounds for disapproval set forth in Section 8.1.6(a), comments, objections and disapprovals by the Independent Engineer or TxDOT shall be based on whether the original or updated Renewal Work Schedule and underlying assumptions are reasonable, realistic and consistent with Good Industry Practice, Project experience and condition, applicable Technical Provisions, Governmental Approvals and Laws.

19.2.6 Within 30 days after receiving notice of comments, objections, recommendations and disapprovals from the Independent Engineer or TxDOT, Developer shall submit to TxDOT and the Independent Engineer a revised original or updated Renewal Work Schedule rectifying such matters and, for matters it disagrees with, a notice setting forth those comments, objections, recommendations and disapprovals that Developer disputes, which notice shall give details of Developer's grounds for dispute. If Developer fails to give such notice within such time period, it shall be deemed to have accepted the comments, objections and recommendations and the original or updated Renewal Work Schedule, as applicable, shall thereupon be deemed revised to incorporate the comments and recommendations and to rectify the objections. After timely delivery of any such notice, Developer and TxDOT shall endeavor in good faith to reach agreement as to the matters listed in the notice. If no agreement is reached as to any such matter within 30 days after Developer delivers its notice, either Party may refer the Dispute to the Disputes Resolution Procedures for determination. The comments, objections, recommendations and disapprovals of the Independent Engineer shall receive substantial weight in resolving the Dispute.

19.2.7 Until resolution of any portion of the original or updated Renewal Work Schedule that is in Dispute, the treatment of that portion in the immediately preceding Renewal Work Schedule shall remain in effect and govern.

ARTICLE 20
HANDBACK REQUIREMENTS AND RESERVE

20.1 Handback Requirements

20.1.1 Handback Condition. Subject to Section 20.1.3, on the Termination Date Developer shall transfer the Project, including all Upgrades, to TxDOT, at no charge to TxDOT, in the condition and meeting all of the requirements for Residual Life at Handback specified in the Handback Requirements.

20.1.2 Handback Inspections. The Parties shall conduct inspections of the Project at the times and according to the terms and procedures specified in the Handback Requirements, for the purposes of (a) determining and verifying the condition of all Elements and their Residual Lives, (b) adjusting, to the extent necessary based on inspection and analysis, Element Useful Lives, Ages, Residual Lives, estimated costs of Renewal Work and timing of Renewal Work, (c) revising and updating the Renewal Work Schedule to incorporate such adjustments, (d) determining the Renewal Work required to be performed and completed prior to reversion of the Project to TxDOT, based on the requirements for Residual Life at Handback specified in the Handback Requirements, the foregoing adjustments and the foregoing changes to the Renewal Work Schedule, (e) verifying that such Renewal Work has been properly performed and completed in accordance with the Handback Requirements, and (f) adjusting Developer's funding of the Handback Requirements Reserve so that it is funded according to the schedule and amounts required under Section 20.2.

20.1.3 Renewal Work under Handback Requirements. Developer shall diligently perform and complete all Renewal Work required to be performed and completed prior to reversion of the Project to TxDOT, based on the required adjustments and changes to the Renewal Work Schedule resulting from the inspections and analysis under the Handback Requirements. Developer shall complete all such work (a) prior to the Termination Date, if transfer of the Project is to occur at the expiration of the full Term, or (b) as close as possible to the Early Termination Date. If Developer, despite diligent efforts, is unable to complete such work prior to the Early Termination Date, then, in lieu of completion of such work, any applicable measure of Termination Compensation based on (i) Fair Market Value shall take into

consideration such non-completion and (ii) other than Fair Market Value shall be adjusted as provided in Section 31.4.4(b)(vi) and comparable provisions of Article 31.

20.2 Handback Requirements Reserve

20.2.1 Establishment

(a) Beginning five full calendar years before the end of the Term, Developer shall establish and fund a reserve account (the "**Handback Requirements Reserve**") exclusively available for the uses set forth in Section 20.2.4. The Handback Requirements Reserve shall be established under an arrangement that, to the maximum extent practicable, precludes it from being an asset of Developer or TxDOT, so that it will be available to TxDOT or Lenders (subject to Section 3.5.2(h)) regardless of any bankruptcy event. Such arrangement shall be subject to TxDOT's and Developer's prior approval each in its discretion. Such arrangement shall include the holding of the Handback Requirements Reserve in an account with a financial institution nominated by Developer and approved by TxDOT, which institution may include any Lender that is and continues to qualify as an Institutional Lender.

(b) Developer shall provide to TxDOT the details regarding the account, including the name, address and contact information for the depository institution and the account number. Developer shall inform the depository institution of all TxDOT's rights and interests with respect to the Handback Requirements Reserve, including TxDOT's right to draw on the Handback Requirements Reserve as provided in Section 29.4.9. Developer shall deliver such notices to the depository institution and execute such documents as may be required to establish and perfect TxDOT's interest in the Handback Requirements Reserve under the Uniform Commercial Code as adopted in the State, including TxDOT's right to make direct draws against the Handback Requirements Reserve as provided in Section 29.4.9.

(c) In lieu of establishing the Handback Requirements Reserve, Developer may deliver to TxDOT Handback Requirements Letters of Credit, on the terms and conditions set forth in Section 20.2.6.

20.2.2 Funding. Developer shall make deposits to the Handback Requirements Reserve as follows:

(a) Commencing with the first calendar quarter of the fifth full calendar year before the end of the Term, Developer shall make quarterly deposits to the Handback Requirements Reserve by the last day of each calendar quarter. The sum of such quarterly deposits in a calendar year shall equal one-fourth of the amount required to be deposited in such year as determined under clause (b) below; *provided* that if Developer's aggregate actual draws during a calendar year (including draws to fund Safety Compliance work allowed under Section 20.2.4) exceed the planned draws by more than 10%, Developer shall adjust its quarterly deposits for the remainder of the calendar year in order to make up the excess draws.

(b) The amount of such quarterly deposits shall be sufficient so that by the first day of each of the last four years during Term the Handback Requirements Reserve will contain an amount equal to: (i) the summation across all Elements that have a number of years stated in the "Residual Life at Handback" column in Table 19-2 of the Technical Provisions of the estimated cost to perform the Renewal Work on each other Element that is to be performed prior to expiration of the Term in accordance with the Handback Requirements multiplied by a fraction the numerator of which is four minus the number of full calendar years until the year in which the Renewal Work is scheduled to be performed pursuant to the Renewal Work Schedule (as it may be revised pursuant to the Handback

Requirements) and the denominator of which is four; plus (ii) 10% of the amounts under clause (i) above as a contingency. In determining the amount of Developer's deposits to be made in a calendar year, the Parties shall take into account the total amount in the Handback Requirements Reserve at the end of the immediately preceding year and Developer's planned draws from the Handback Requirements Reserve during the calendar year.

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

20.2.3 Investment of Funds. Funds held in the Handback Requirements Reserve may be invested and reinvested only in Eligible Investments. Eligible Investments in the Handback Requirements Reserve must mature, or the principal of and accrued interest on such Eligible Investments must be available for withdrawal without penalty, not later than such times as shall be necessary to provide funds when needed for payment of draws to Developer, and in any event not later than the end of the Term. All interest earned or profits realized from the investment of funds in the Handback Requirements Reserve shall be retained therein.

20.2.4 Use. Developer will have the right to payments from the Handback Requirements Reserve to be used only for the following purposes, provided the Handback Requirements Reserve is not at any time reduced below the amount of funds then required under Section 20.2.2: (a) Costs of Renewal Work for those Elements that have a number of years stated in the "Residual Life at Handback" column in Table 19-2 of the Technical Provisions, to the extent such Renewal Work is necessary in order to return the Element to TxDOT at the end of the Term with a Residual Life equal to or greater than such number of years; and (b) Costs of Safety Compliance work. Not later than five years before the end of the Term, the Parties shall establish reasonable protocols and procedures for requesting and funding draws from the Handback Requirements Reserve.

20.2.5 Disposition at End of Term

(a) At the expiration or any earlier termination of the Term for any reason, including termination due to TxDOT Default, all funds in the Handback Requirements Reserve (except as provided in subsection (b) below) shall automatically be and become the sole property of TxDOT, free and clear of all liens, pledges and encumbrances. Thereupon, Developer shall deliver such transfers, assignments and other documents, and take such other actions, as TxDOT or the depository institution for the Handback Requirements Reserve shall require to confirm transfer to TxDOT of the Handback Requirements Reserve and funds therein, free and clear of all liens, pledges and encumbrances.

(b) In the event the Handback Requirements Reserve at such time is different from the amount then required pursuant to Section 20.2.2, Developer shall be obligated to pay any shortfall to TxDOT upon demand, or TxDOT shall, promptly on demand, authorize release to Developer of any excess, as the case may be. TxDOT at its election may offset any Termination Compensation owing to Developer by the amount of the Handback Requirements Reserve owing to TxDOT. TxDOT at its election also may offset any excess to be released to Developer by any amount Developer still owes TxDOT for the cost of the independent inspections conducted pursuant to the Handback Requirements. For the avoidance of doubt, if at the expiration of the Term Developer has completed and paid in full all Renewal Work required on all Elements that have a number of years stated in the "Residual Life at Handback" column in Table 19-2 of the Technical Provisions and funds in the Handback Requirements Reserve exceed the total amount required under clause (i) of Section 20.2.2(b) and the 10% contingency thereon required under clause (ii) of Section 20.2.2(b), then TxDOT shall, promptly on demand, authorize

release of such excess to Developer or, at Developer's direction, the Collateral Agent, subject to the foregoing offset rights.

20.2.6 Handback Requirements Letters of Credit

(a) In lieu of establishing the Handback Requirements Reserve, Developer may deliver to TxDOT one or more letters of credit (each, a "**Handback Requirements Letter of Credit**"), on the terms and conditions set forth in this Section 20.2.6 and Section 26.3. If the Handback Requirements Reserve has been previously established, Developer at any time thereafter may substitute one or more Handback Requirements Letters of Credit for all or any portion of the amounts required to be on deposit in the Handback Requirements Reserve, on the terms and conditions set forth in this Section 20.2.6 and Section 26.3. Promptly after receipt of the required substitute Handback Requirements Letter of Credit, TxDOT shall authorize the release to Developer of amounts in the Handback Requirements Reserve equal to the face amount of the substitute Handback Requirements Letter of Credit, such released funds to be applied as set forth in Section 14.4. If the face amount of any Handback Requirements Letter of Credit falls below the total amount required to be funded to the Handback Requirements Reserve prior to expiry of the Handback Requirements Letter of Credit, Developer shall be obligated to pay, when due, the shortfall into the Handback Requirements Reserve. Alternately, Developer may deliver a Handback Requirements Letter of Credit with a face amount equal to at least the total amount required to be funded to the Handback Requirements Reserve during the period up to the expiry of the Handback Requirements Letter of Credit, or may deliver additional Handback Requirements Letters of Credit or cause the existing Handback Requirements Letter of Credit to be amended to cover the shortfall before deposits of the shortfall to the Handback Requirements Reserve are due.

(b) At the beginning of each year, Developer shall have the right and obligation (in lieu of funding the Handback Requirements Reserve) to adjust the amount of the Handback Requirements Letter of Credit to equal the maximum amount required to be funded in the Handback Requirements Reserve during the forthcoming year under Section 20.2.2, taking into account the most recent Renewal Work Schedule and Renewal Work performed to date under the Handback Requirements.

(c) The Handback Requirements Letter(s) of Credit last issued before the end of the Term shall have an expiration date not earlier than 90 days after the end of the Term.

(d) TxDOT shall have the right to draw on the Handback Requirements Letter of Credit (i) as provided in Section 26.3.1(b) or (ii) upon expiration or earlier termination of the Term for any reason, including termination due to TxDOT Default, as necessary to obtain the Handback Requirements Reserve funds to which TxDOT is then entitled under Section 20.2.5.

(e) If TxDOT draws on the Handback Requirements Letter of Credit due to Developer's failure for any reason to deliver to TxDOT a new or replacement Handback Requirements Letter of Credit, on the same terms, or at least a one year extension of the expiration date of the existing Handback Requirements Letter of Credit, not later than 45 days before such expiration date, TxDOT shall deposit the proceeds from drawing on the expiring Handback Requirements Letter of Credit into the Handback Requirements Reserve.

PART D
OTHER DEVELOPER OBLIGATIONS

ARTICLE 21
FEDERAL REQUIREMENTS

21.1 Compliance with Federal Requirements. Developer shall comply and require its Contractors to comply with all federal requirements applicable to transportation projects that receive federal credit or funds, including those set forth in Exhibit 12. If Developer uses TIFIA credit or loans to finance the Project or any portion thereof, Developer shall provide any compliance certifications and milestone payment schedules required in connection with TIFIA, as specified in the TIFIA Funding Agreements and TIFIA Security Documents. In the event of any conflict between any applicable federal requirements and the other requirements of the CDA Documents, the federal requirements shall prevail, take precedence and be in force over and against any such conflicting provisions.

21.2 Role of and Cooperation with FHWA. Developer acknowledges and agrees that FHWA will have certain approval rights with respect to the Project, including the right to provide certain oversight and technical services with respect to the Work. Developer shall cooperate with FHWA in the reasonable exercise of FHWA's duties and responsibilities in connection with the Project.

ARTICLE 22
MANAGEMENT SYSTEMS AND OVERSIGHT

22.1 Project Management Plan

22.1.1 Developer is responsible for all quality assurance and quality control activities necessary to manage the Work, including the Utility Adjustment Work. Developer shall undertake all aspects of quality assurance and quality control for the Project and Work in accordance with the approved Project Management Plan and Good Industry Practice.

22.1.2 Developer shall develop the Project Management Plan and its component parts, plans and other documentation in accordance with the requirements set forth in Section 2 of the Technical Provisions and Good Industry Practice.

22.1.3 Developer shall submit to TxDOT for approval in its discretion in accordance with the procedures described in Section 8.1 (of this Agreement) and the time line set forth in Attachment 2-1 to the Technical Provisions each component part, plan and other documentation of the Project Management Plan and any proposed changes or additions to or revisions of any such component part, plan or other documentation. TxDOT may propose any change required to comply with Good Industry Practice or to reflect a change in working practice to be implemented by Developer.

22.1.4 Developer shall not commence or permit the commencement of any aspect of the design, construction, tolling, operation or maintenance before the relevant component parts, plans and other documentation of the Project Management Plan applicable to such Work have been submitted to and approved by TxDOT in accordance with the procedures described in Section 8.1 (of this Agreement) and the time line set forth in Attachment 2-1 to the Technical Provisions. The schedule for submission of each

component part, plan and other documentation of the Project Management Plan or any proposed changes or additions thereto is included in the Technical Provisions.

22.1.5 If any part, plan or other documentation of the Project Management Plan refers to, relies on or incorporates any manual, plan, procedure or like document then all such referenced or incorporated materials shall be submitted to TxDOT for approval in its discretion at the time that the relevant part, plan or other documentation of the Project Management Plan or change, addition or revision to the Project Management Plan is submitted to TxDOT.

22.1.6 Developer shall ensure that the Project Management Plan meets all requirements set out in ISO standards relating to quality systems, plans and audits, including BS EN ISO 9001 and BS EN ISO 14001 as appropriate.

22.1.7 Developer shall carry out internal audits of the Project Management Plan at the times prescribed in the Project Management Plan.

22.1.8 Developer shall contractually require each of its Contractors at every level to comply with the applicable requirements of the approved Project Management Plan.

22.1.9 The Quality Manager shall, irrespective of his other responsibilities, have defined authority for ensuring the establishment and maintenance of the Project Management Plan and reporting to TxDOT and the Independent Engineer on the performance of the Project Management Plan.

22.1.10 Without in any way diminishing Developer's responsibility for the work including quality assurance and quality control of the Project and the Work, at Developer's request, TxDOT may participate in Developer's quality assurance and quality control process by performing certain materials inspection and testing services pursuant to the terms of and as more particularly described in Exhibit 9. **NOTWITHSTANDING ANY OTHER PROVISION OF THIS CDA, DEVELOPER ACKNOWLEDGES AND AGREES THAT TXDOT WILL NOT BE RESPONSIBLE OR BEAR ANY LIABILITY FOR, AND HEREBY RELEASES TXDOT FROM, ANY DAMAGES, INCREASED COSTS, REVENUE LOSSES, DELAYS OR OTHER IMPACTS TO DEVELOPER OR TO ANY THIRD PARTY, ARISING AS A RESULT OF THE SERVICES PERFORMED BY TXDOT PURSUANT TO EXHIBIT 9, INCLUDING THOSE ARISING FROM ANY NEGLIGENT ACT OR OMISSION OF TXDOT, OR FAILURE OF OR DEFECT IN ANY MATERIAL OR PRODUCT INSPECTED OR TESTED, REGARDLESS OF WHEN SUCH FAILURE OR DEFECT MAY OCCUR OR BE DISCOVERED.**

22.2 Traffic Management

22.2.1 During the Operating Period, Developer shall be responsible for the general management of traffic on the Project. Developer shall manage traffic so as to preserve and protect safety of traffic on the Project and Related Transportation Facilities and, to the maximum extent practicable, to avoid disruption, interruption or other adverse effects on traffic flow, throughput or level of service on the Project and Related Transportation Facilities. Developer shall conduct traffic management in accordance with all applicable Technical Provisions, Laws and Governmental Approvals, and in accordance with the Traffic Management Plan.

22.2.2 Developer shall prepare and submit to TxDOT and the Independent Engineer for TxDOT approval a Traffic Management Plan for managing traffic on the Project and Related Transportation Facilities after the commencement of traffic operations on any portion of the Project, addressing (a) orderly and safe movement and diversion of traffic on Related Transportation Facilities during Project

construction, (b) orderly and safe movement of traffic on the Project and (c) orderly and safe diversion of traffic on the Project and Related Transportation Facilities necessary in connection with field maintenance and repair work or Renewal Work or in response to Incidents, Emergencies and lane closures. Developer shall prepare the Traffic Management Plan according to the schedule set forth in the Technical Provisions. The Traffic Management Plan shall comply with the Technical Provisions concerning traffic management and traffic operations. Developer shall carry out all traffic management during the Term in accordance with the approved Traffic Management Plan.

22.2.3 Developer shall implement the Traffic Management Plan to promote safe and efficient operation of the Project and Related Transportation Facilities at all times during the course of any construction or operation of the Project and during the Utility Adjustment Work.

22.2.4 TxDOT shall have at all times, without obligation or liability to Developer, the right to (a) issue Directive Letters to Developer regarding traffic management and control (with which Developer shall comply), or directly assume traffic management and control, of the Project during any period that (i) tolling is suspended under Section 14.3 or (ii) the Executive Director determines such action will be in the public interest as a result of an emergency or natural disaster; and (b) provide on the Project, via message signs or other means consistent with Good Industry Practice, non-Discriminatory traveler and driver information, and other public information (e.g. amber alerts); *provided* that the means to disseminate such information does not materially interfere with the functioning of the ETCS.

22.3 Oversight, Inspection and Testing

22.3.1 Oversight by Independent Engineer

(a) From and after the Effective Date, the Independent Engineer shall have the right and responsibility to conduct the monitoring, reviewing, inspection, testing, reporting, auditing and other oversight functions set forth in the CDA Documents and the Independent Engineer Agreement. The Parties shall cause the Independent Engineer Agreement to include all the rights and responsibilities of the Independent Engineer set forth in the CDA Documents.

(b) The Independent Engineer's rights and responsibilities shall include throughout the Term the following:

(i) Monitoring and auditing Developer and its books and records to determine compliance with requirements of the CDA Documents and the approved Project Management Plan, including (1) audit review of Design Documents, Construction Documents and other Submittals and (2) audit review regarding Patron Confidential Information; as provided in Section 14.6.7;

(ii) Conducting field monitoring and inspections on an audit basis as indicated in the CDA Documents and Independent Engineer Agreement, including in connection with TxDOT's certifications of Substantial Completion, Service Commencement and Final Acceptance;

(iii) Conducting Owner Verification Tests ("OVT") to verify Developer's compliance with all testing frequencies and requirements, including performance and acceptance testing, set forth in the CDA Documents and the approved Project Management Plan. The Independent Engineer's OVT effort during construction will focus on materials, components, systems and Elements where Nonconforming Work, Deviations, Defects or other non-compliance could affect safety, compliance with Governmental Approvals or the Residual Life at Handback. Notwithstanding any contrary provisions hereof, the Independent Engineer will perform OVT as the express agent of TxDOT, under TxDOT's

exclusive direction and control, and TxDOT will pay for all costs of the Independent Engineer's OVT services;

(iv) Providing simultaneously to Developer, TxDOT and the Collateral Agent reports, quality reports, regular audit reports, reports on Performance Requirements, Targets and Defects, other reports, and findings, opinions, evaluations, comments, objections and recommendations, all as more particularly set forth in the CDA Documents and the Independent Engineer Agreement;

(v) Reviewing and commenting on all Submittals for which TxDOT review and comment or approval is required under the CDA Documents, unless expressly provided otherwise in the CDA Documents or Independent Engineer Agreement, or unless waived by the Parties for a specific Submittal or type of Submittal;

(vi) Reviewing, commenting on and giving recommendations, objections or disapprovals regarding the Renewal Work Schedule and revisions thereto, as provided in Section 19.2.5;

(vii) Reviewing the establishment and plans of Auditable Sections submitted for approval in accordance with Section 19.5.2 of the Technical Provisions, reviewing the random selection procedures for selecting Auditable Sections and ensuring that the Auditable Sections are selected in accordance with the random selection procedures, accompanying Developer on physical inspections associated with Developer's Audit Inspections, conducting audit inspections, assessing and scoring Developer's O&M Records, and assessing and scoring the condition of Elements, as provided in Section 19.5 of the Technical Provisions;

(viii) Attending and witnessing Developer's other tests and inspections;

(ix) Auditing the books and records of Key Contractors for the sole purpose of confirming compliance with the CDA Documents and applicable Law;

(x) Investigating, analyzing and reporting on Safety Compliance and performance of Safety Compliance Orders;

(xi) Making recommendations on Relief Event Determinations;

(xii) Evaluating and reporting to TxDOT on Developer's estimates of cost impacts attributable to Compensation Events, Developer's projected impacts of proposed TxDOT Changes on the Project Schedule and Milestone Deadlines, and Change Requests;

(xiii) Recommending suspension of work if circumstances exist that would entitle TxDOT to order suspension of work under Section 29.4.10; and

(xiv) Notifying TxDOT of any Developer breach or failure specified in Exhibit 18, recommending assessment of Noncompliance Points, and reporting on Developer's cure or failure to cure, as provided in Article 28.

(c) The Independent Engineer shall be required to report and give notices to TxDOT, Developer and Lenders in accordance with the terms of the Independent Engineer Agreement.

(d) Except as provided in Section 22.3.1(b)(iii), costs and expenses for the Independent Engineer shall be allocated equally between Developer and TxDOT, as set forth in the Independent Engineer Agreement.

(e) Wherever in the CDA Documents it is stated that the Independent Engineer shall or may perform an action, function or task, it means that the Parties agree that the Independent Engineer has been or will be given the right and obligation to perform the same under the Independent Engineer Agreement.

(f) The Independent Engineer is procured by TxDOT, with input from Developer, to assist them with fair and objective oversight and administration of this Agreement and the Work. Nothing in this Agreement, the Technical Provisions or the Independent Engineer Agreement is intended or shall be construed as vesting in the Independent Engineer any powers or authority to (i) arbitrate or render binding decisions or judgments; (ii) approve or disapprove Submittals or Work (unless expressly provided otherwise in the CDA Documents or Independent Engineer Agreement for specific Submittals); (iii) conduct "over-the-shoulder" reviews of Design Documents or other Submittals; (iv) conduct formal prior reviews of Design Documents except to the extent necessary or advisable to comply with FHWA, U.S. Army Corps of Engineers or other applicable federal agency requirements or unless TxDOT chooses to have the Independent Engineer do so pursuant to Section 28.5; (v) direct design, construction, operations or maintenance of the Project, or order suspensions of Work, except to give such direction or order or take such action as in its opinion is necessary to remove an immediate and present threat to the safety of life or property; (vi) undertake Developer's primary responsibility for quality assurance and quality control; or (vii) act as an agent of TxDOT or Developer, except as provided in Section 22.3.1(b)(iii).

(g) In the event the Parties determine that the Independent Engineer Agreement for any reason is inconsistent with the provisions of the CDA Documents on the scope of work, roles, responsibilities or compensation of the Independent Engineer, or fails to include any such scope of work, role, responsibility or compensation terms, the Parties shall use diligent efforts to amend the Independent Engineer Agreement to correct the inconsistency or failure.

22.3.2 Oversight by TxDOT, FHWA

(a) TxDOT and its Authorized Representative shall have the right at all times to monitor, inspect, sample, measure, attend, observe or conduct tests and investigations, and conduct any other oversight respecting any part or aspect of the Project or the Work, to the extent necessary or advisable (a) to comply with FHWA, U.S. Army Corps of Engineers or other applicable federal agency requirements, (b) to verify on an audit basis Developer's compliance with the CDA Documents and Project Management Plan as provided in Section 34.4 and (c) to verify the Independent Engineer's proper performance of its responsibilities and obligations. TxDOT shall conduct such activity in accordance with Developer's safety procedures and manuals, and in a manner that does not unreasonably interfere with normal construction activity or normal operation and maintenance of the Project.

(b) Refer to Section 34.4 for TxDOT's rights to audit Developer and its Contractors. Developer acknowledges and agrees that TxDOT will have the right to audit, monitor and inspect the Independent Engineer and its compliance with Good Industry Practice and its responsibilities and obligations under the Independent Engineer Agreement.

(c) TxDOT will not conduct formal prior reviews of Design Documents or Construction Documents except to the extent necessary or advisable to comply with FHWA, U.S. Army Corps of Engineers or other applicable federal agency requirements or unless TxDOT chooses to do so pursuant to Section 28.5. TxDOT does not intend to conduct "over-the-shoulder" reviews of Design Documents or other Submittals but reserves the right to do so pursuant to Section 28.5. TxDOT shall have no obligation to conduct "over-the-shoulder" reviews.

(d) Nothing in the CDA Documents shall preclude, and Developer shall not interfere with, any review or oversight of Submittals or of Work that the FHWA may desire to conduct.

22.3.3 Rights of Cooperation and Access; Increased Oversight

(a) Developer at all times shall coordinate and cooperate, and require its Contractors to coordinate and cooperate, with the Independent Engineer to facilitate the full, efficient, effective and timely performance by the Independent Engineer of his or her monitoring, inspection, sampling, measuring, testing, reporting, auditing, and other oversight functions.

(b) Developer at all times shall coordinate and cooperate, and require its Contractors to coordinate and cooperate, with TxDOT and its Authorized Representative to facilitate TxDOT's oversight activities. Developer shall cause its representatives to be available at all reasonable times for consultation with TxDOT and the Independent Engineer.

(c) Without limiting the foregoing, Developer shall afford TxDOT, its Authorized Representative and the Independent Engineer (i) safe and unrestricted access to the Project at all times, (ii) safe access during normal business hours to Developer's Project offices and operations buildings and (iii) unrestricted access to data respecting the Project design, construction, operations and maintenance, and the Utility Adjustment Work. Without limiting the foregoing, Developer shall deliver to TxDOT and the Independent Engineer upon request accurate and complete books, records, data and information regarding Work, the Project and the Utility Adjustment Work, in the format required by the Technical Provisions.

(d) TxDOT and the Independent Engineer shall have the right to increase the type and level of their oversight as provided in Section 28.5.

22.3.4 Testing and Test Results. Each of the Independent Engineer and TxDOT shall have the right to attend and witness any tests and verifications to be conducted pursuant to the Technical Provisions and applicable components of the Project Management Plan. Developer shall provide to the Independent Engineer and TxDOT all test results and reports (which may be provided in electronic format in accordance with the Technical Provisions) within 10 days after Developer receives them.

ARTICLE 23
CONTRACTING AND LABOR PRACTICES

23.1 Disclosure of Contracts and Contractors

23.1.1 Developer shall provide TxDOT and the Independent Engineer a monthly report listing (a) all Key Contracts in effect, (b) all Contracts in effect to which Developer is a party and (c) where Developer is a party to a Contract in effect with an Affiliate, all Contracts in effect to which such Affiliate is a party and under which all or a substantial portion of the Affiliate's responsibilities or obligations under its Contract with Developer are delegated to the Contractor. Developer also shall list in the monthly report the Contractors under such Contracts, guarantees of Key Contracts in effect and the guarantors thereunder. Developer shall allow TxDOT and the Independent Engineer ready access to all Contracts and records regarding Contracts, including amendments and supplements to Contracts and guarantees thereof.

23.1.2 As soon as Developer identifies a potential Contractor for a potential Contract described in the first sentence of Section 23.1.1, but in no event later than five days after Contract execution,

Developer shall notify TxDOT of the name, address, telephone number and authorized representative of such Contractor.

23.2 Responsibility for Work, Contractors and Employees

23.2.1 Developer shall retain or cause to be retained only Contractors that are qualified, experienced and capable in the performance of the portion of the Work assigned. Developer shall assure that each Contractor has at the time of execution of the Contract, and maintains at all times during performance of the assigned Work, all licenses required by applicable Laws.

23.2.2 The retention of Contractors by Developer will not relieve Developer of its responsibilities hereunder or for the quality of the Work or materials or services provided by it.

23.2.3 Each Contract shall include terms and conditions sufficient to ensure compliance by the Contractor with the applicable requirements of the CDA Documents, and shall include those terms that are specifically required by the CDA Documents to be included therein, including, to the extent applicable, those set forth in Exhibit 12 and any other applicable federal requirements.

23.2.4 Nothing in this Agreement will create any contractual relationship between TxDOT and any Contractor. No Contract entered into by or under Developer shall impose any obligation or liability upon TxDOT to any Contractor or any of its employees.

23.2.5 Developer shall supervise and be fully responsible for the actions, omissions, negligence, willful misconduct, or breach of applicable Law or contract by any Developer-Related Entity or by any member or employee of Developer or any Developer-Related Entity, as though Developer directly employed all such individuals.

23.3 Contracts; Key Contracts; Contractor Qualifications

23.3.1 Use of and Change in Key Contractors

(a) Developer shall retain, employ and utilize the firms and organizations specifically listed in the Project Management Plan to fill the corresponding Key Contractor positions listed therein. For Key Contractors not known as of the Effective Date, Developer's selection thereof shall be subject to TxDOT's prior approval.

(b) Developer shall not terminate any Contract with a Key Contractor, or permit or suffer any substitution or replacement of a Key Contractor, unless the Key Contractor (i) is no longer in business, is unable to fulfill its legal, financial, or business obligations, or can no longer meet the terms of the relevant agreement with Developer; (ii) voluntarily removes itself from Developer's team; or (iii) fails to provide a sufficient number of qualified personnel to fulfill the duties identified during the Proposal stage. If Developer makes changes to a Key Contractor in violation of this subsection (b), Developer shall pay to TxDOT 100% of any cost savings resulting from the change.

23.3.2 Contract Requirements. Each Key Contract, Contract with a single contractor in excess of $5,000,000, and Contract with an Affiliate shall:

(a) Set forth a standard of professional responsibility or a standard for commercial practice equal to the requirements of the CDA Documents and Good Industry Practice for work of similar scope and scale and shall set forth effective procedures for claims and change orders;

(b) Require the Contractor to carry out its scope of work in accordance with the CDA Documents, the Governmental Approvals and applicable Law, including the applicable requirements of the DBE Performance Plan;

(c) Expressly include the requirements and provisions set forth in this Agreement applicable to Contractors regarding Intellectual Property rights and licenses;

(d) Without cost to Developer or TxDOT and subject to the rights of the Collateral Agent set forth in any Lenders' Direct Agreement, expressly permit assignment to TxDOT or its successor, assign or designee of all Developer's rights under the Key Contract, contingent only upon delivery of request from TxDOT following termination of this Agreement, allowing TxDOT or its successor, assign or designee to assume the benefit of Developer's rights with liability only for those remaining obligations of Developer accruing after the date of assumption, such assignment to include the benefit of all Key Contractor warranties, indemnities, guarantees and professional responsibility;

(e) Expressly state that any acceptance of assignment of the Contract to TxDOT or its successor, assign or designee shall not operate to make the assignee responsible or liable for any breach of the Contract by Developer or for any amounts due and owing under the Contract for work or services rendered prior to assumption (but without restriction on the Contractor's rights to suspend work or demobilize due to Developer's breach);

(f) Expressly include a covenant to recognize and attorn to TxDOT upon receipt of notice from TxDOT that it has exercised its rights under this Agreement, without necessity for consent or approval from Developer or to determine whether TxDOT validly exercised its rights, and Developer's covenant to waive and release any claim or cause of action against the Contractor arising out of or relating to its recognition and attornment in reliance on any such notice;

(g) Not be assignable by the Contractor to any Person other than TxDOT (or its assignee) or the Collateral Agent (or its assignee) without Developer's prior consent;

(h) Expressly include requirements that the Contractor will: (i) maintain usual and customary books and records for the type and scope of operations of business in which it is engaged (e.g., constructor, equipment Supplier, designer, service provider); (ii) permit audit thereof with respect to the Project or Work by each of Developer and TxDOT pursuant to Section 34.4.1 and; (iii) provide progress reports to Developer appropriate for the type of work it is performing sufficient to enable Developer to provide the reports it is required to furnish TxDOT under this Agreement;

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

(j) Include an agreement by the Contractor to give evidence in any dispute resolution proceeding pursuant to Article 30, if such participation is requested by either TxDOT or Developer;

(k) Expressly provide that all Liens, claims and charges of the Contractor and its Contractors at any time shall not attach to any interest of TxDOT in the Project or the Project Right of Way;

(l) With respect to Key Contracts, expressly include a covenant, expressly stated to survive termination of the Key Contract, to promptly execute and deliver to TxDOT a new contract between the Key Contractor and TxDOT on the same terms and conditions as the Key Contract, in the event (i) the Key Contract is rejected by Developer in bankruptcy or otherwise wrongfully terminated by Developer and (ii) TxDOT delivers request for such new contract following termination or expiration of this Agreement (this subsection (l) shall not apply to Key Contracts with TxDOT or Governmental Entities);

(m) Include the right of Developer to terminate the Contract in whole or in part upon any Termination for Convenience of this Agreement and the Lease or any termination of this Agreement and the Lease due to Force Majeure Event or TxDOT Default, in each case without liability of Developer or TxDOT for the Contractor's lost profits or business opportunity; and

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

Developer shall not amend any Contract with respect to any of the matters addressed in this Section 23.3.2 without the prior consent of TxDOT. Developer shall not enter into any Contracts with any Person then debarred or suspended from submitting bids by any agency of the State.

23.3.3 Additional Requirements for Design-Build and O&M Contracts

(a) Before entering into a Design-Build Contract or O&M Contract (other than O&M Contracts for routine janitorial services and routine supply of materials) or any supplement or amendment thereto, Developer shall submit a true and complete copy of the proposed Design-Build Contract or O&M Contract to TxDOT for review and comment. TxDOT may disapprove only if the Design-Build Contract or O&M Contract (i) does not comply, or is inconsistent, in any material respect with the applicable requirements of the CDA Documents, including that it does not comply or is inconsistent with this Article 23 or with the applicable requirements of Article 34 regarding maintenance of books and records, does not incorporate the applicable federal requirements set forth in Exhibit 12, or is inconsistent with the requirements of the relevant scope of Work, (ii) increases TxDOT's liability or (iii) adversely affects TxDOT's step-in rights.

(b) The Design-Build Contract and each O&M Contract also shall expressly require the personal services of and not be assignable by the Design-Build Contractor or O&M Contractor without Developer's and TxDOT's prior consent, each in its discretion; *provided* that this provision shall not prohibit the subcontracting of portions of the Work.

23.4 Key Personnel

23.4.1 Developer shall retain, employ and utilize the individuals specifically listed in Exhibit 7 to fill the corresponding Key Personnel positions listed therein. Developer shall not change or substitute any such individuals except due to retirement, death, disability, incapacity, or voluntary or involuntary termination of employment, or as otherwise approved by TxDOT pursuant to Section 23.4.2.

23.4.2 Developer shall notify TxDOT of any proposed replacement for any Key Personnel position. TxDOT shall have the right to review the qualifications and character of each individual to be appointed to a Key Personnel position (including personnel employed by Contractors to fill any such position) and to approve or disapprove use of such individual in such position prior to the commencement of any Work by such individual.

23.4.3 Developer shall cause each individual filling a Key Personnel position to dedicate the full amount of time necessary for the proper prosecution and performance of the Work.

23.4.4 Developer shall provide TxDOT and the Independent Engineer telephone numbers and email addresses for all Key Personnel. TxDOT and the Independent Engineer require the ability to contact Key Personnel 24 hours per day, seven days per week.

23.5 Contracts with Affiliates

23.5.1 Developer shall have the right to have Work and services performed by Affiliates only under the following terms and conditions:

(a) Developer shall execute a Contract with the Affiliate;

(b) The Contract shall comply with all applicable provisions of this Article 23, be consistent with Good Industry Practice, and be in form and substance substantially similar to Contracts then being used by Developer or Affiliates for similar Work or services with unaffiliated Contractors;

(c) The Contract shall set forth the scope of Work and services and all the pricing, terms and conditions respecting the scope of Work and services;

(d) The pricing, scheduling and other terms and conditions of the Contract shall be no less favorable to Developer than those that Developer could reasonably obtain in an arms' length, competitive transaction with an unaffiliated contractor. Developer shall bear the burden of proving that the same are no less favorable to Developer; and

(e) No Affiliate (other than the Design-Build Contractor if it is an Affiliate) shall be engaged to perform any Work or services that any CDA Documents or the Project Management Plan or any component part, plan or other documentation thereunder indicates are to be performed by an independent or unaffiliated party. No Affiliate shall be engaged to perform any Work or services which would be inconsistent with Good Industry Practice.

23.5.2 Before entering into a Contract with an Affiliate or any supplement or amendment thereto, Developer shall submit a true and complete copy of the proposed Contract to TxDOT for review and comment. TxDOT shall have 20 days after receipt to deliver its comments to Developer. If the Contract with the Affiliate is a Key Contract, and such Affiliate's selection as a Key Contractor is not known as of the Effective Date, the Affiliate shall be subject to TxDOT's approval as provided in Section 23.3.1.

23.5.3 Developer shall make no payments to Affiliates for work or services in advance of provision of such work or services, except for reasonable mobilization payments or other payments consistent with arm's length, competitive transactions of similar scope. Advance payments in violation of this provision shall be excluded from the calculation of Termination Compensation.

23.6 Labor Standards

23.6.1 In the performance of its obligations under the CDA Documents, Developer at all times shall comply, and require by contract that all Contractors and vendors comply, with all applicable federal and State labor, occupational safety and health standards, rules, regulations and federal and State orders.

23.6.2 All individuals performing the Work shall have the skill and experience and any licenses or certifications required to perform the Work assigned to them.

23.6.3 If any individual employed by Developer or any Contractor is not performing the Work in a proper, safe and skillful manner, then Developer shall, or shall cause such Contractor to, remove such individual and such individual shall not be re-employed on the Work. If, after notice and reasonable opportunity to cure, such individual is not removed or if Developer fails to ensure that skilled and experienced personnel are furnished for the proper performance of the Work, then TxDOT may suspend the affected portion of the Work by delivering to Developer notice of such suspension. Such suspension shall in no way relieve Developer of any obligation contained in the CDA Documents or entitle Developer to any additional compensation or time extension hereunder.

23.7 Ethical Standards

23.7.1 Within 90 days after the Effective Date, Developer shall adopt policies establishing ethical standards of conduct for all Developer-Related Entities, including Developer's supervisory and management personnel, in dealing with (x) TxDOT and the Independent Engineer and (y) employment relations. Such policies shall be subject to review and comment by TxDOT prior to adoption. Such policies shall include standards of ethical conduct concerning the following:

(a) Restrictions on gifts and contributions to, and lobbying of, TxDOT, the Commission, the Independent Engineer and any of their respective commissioners, directors, officers and employees;

(b) Protection of employees from unethical practices in selection, use, hiring, compensation or other terms and conditions of employment, or in firing, promotion and termination of employees;

(c) Protection of employees from retaliatory actions (including discharge, demotion, suspension, threat, harassment, pay reduction or other discrimination in the terms and conditions of employment) in response to reporting of illegal (including the making of a false claim), unethical or unsafe actions or failures to act by any Developer-Related Entity;

(d) Restrictions on directors, members, officers or supervisory or management personnel of any Developer-Related Entity engaging in any transaction or activity, including receiving or offering a financial incentive, benefit, loan or other financial interest, that is, or to a reasonable person appears to be, in conflict with or incompatible with the proper discharge of duties or independence of judgment or action in the performance of duties, or adverse to the interests of the Project or employees;

(e) Restrictions on use of office or job position for a purpose that is, or would to a reasonable person appear to be, primarily for the private benefit of a director, member, officer or supervisory or management person, rather than primarily for the benefit of Developer or the Project, or primarily to achieve a private gain or an exemption from duty or responsibility for a director, member, officer or supervisory or management person; and

(f) Restrictions on directors, members, officers or employees of any Developer-Related Entity performing any of the Work if the performance of such services would be prohibited under TxDOT's published conflict of interest rules and policies applicable to TxDOT's comprehensive development agreement program, or would be prohibited under Section 572.054, Texas Government Code.

23.7.2 Developer shall cause its directors, members, officers and supervisory and management personnel, and require those of all other Developer-Related Entities, to adhere to and enforce the adopted policy on ethical standards of conduct. Developer shall establish reasonable systems and procedures to promote and monitor compliance with the policy.

23.8 Non-Discrimination; Equal Employment Opportunity

23.8.1 Developer shall not, and shall cause the Contractors to not, discriminate on the basis of race, color, national origin, sex, age, religion or handicap in the performance of the Work under the CDA Documents. Developer shall carry out, and shall cause the Contractors to carry out, applicable requirements of 49 CFR Part 26. Failure by Developer to carry out these requirements is a material breach of this Agreement, which may result in a Default Termination Event and the termination of this Agreement and the Lease or such other remedy permitted hereunder as TxDOT deems appropriate (subject to Developer's and Lenders' rights to notice and opportunity to cure set forth in this Agreement).

23.8.2 Developer shall include the immediately preceding paragraph in every Contract (including purchase orders and in every Contract of any Developer-Related Entity for Work), and shall require that they be included in all Contracts at lower tiers, so that such provisions will be binding upon each Contractor.

23.8.3 Developer confirms for itself and all Contractors that Developer and each Contractor has an equal employment opportunity policy ensuring equal employment opportunity without regard to race, color, national origin, sex, age, religion or handicap; and that Developer and each Contractor maintains no employee facilities segregated on the basis of race, color, national origin, sex, age, religion or handicap. Developer shall comply with all applicable Equal Employment Opportunity and nondiscrimination provisions, including those set forth in Exhibit 12, and shall require its Contractors to comply with such provisions.

23.9 Disadvantaged Business Enterprise

23.9.1 General. TxDOT's Disadvantaged Business Enterprise (DBE) Special Provisions applicable to the Project are set forth in Exhibit 13. The purpose of the DBE Special Provisions is to ensure that DBEs shall have an equal opportunity to participate in the performance of contracts financed in whole or in part with federal funds. Developer shall comply with all applicable requirements set forth in the DBE Special Provisions and TxDOT's Disadvantaged Business Enterprise Program adopted pursuant to 49 CFR Part 26, and the provisions in Developer's approved DBE Performance Plan, set forth in Exhibit 14. Developer shall include provisions to effectuate the DBE Special Provisions in every Contract to which it is a party (including purchase orders and task orders for Work), and shall require that they be included in all Contracts at lower tiers (including purchase orders and task orders for Work), so that such provisions will be binding upon each Contractor.

23.9.2 DBE Participation Goals. The goal for DBE participation in the Work required under this Agreement for professional services and construction of the Project shall be 12%. Developer shall exercise good faith efforts to achieve such DBE participation goal for the Project through implementation of Developer's approved DBE Performance Plan. Developer agrees to use good faith efforts to encourage DBE participation in the O&M Work.

23.9.3 Cancellation of DBE Contracts. Developer shall not cancel or terminate any Contract with a DBE firm except in accordance with all requirements and provisions applicable to cancellation or termination of Contracts with DBE firms set forth in the DBE Special Provisions in Exhibit 13.

23.10 Job Training and Small Business Opportunity

23.10.1 Developer's Job Training Plan and Small Business Opportunity Plan applicable to the Project are each set forth in Exhibit 15. The purpose of the Job Training and the Small Business Opportunity Plans is to ensure that inexperienced and untrained workers have a substantial opportunity to participate in the performance of the Work through apprenticeships, training and similar measures to maintain and grow a diverse, skilled work force. Developer shall perform and comply with all requirements set forth in the Small Business Opportunity Plan. Developer may elect to provide on the job training. If Developer makes the election, it shall provide a notice to the Contract Compliance Section of the Office of Civil Rights of the Texas Department of Transportation at 125 East 11th St., Austin, Texas 78701-2483, with a copy to TxDOT as provided in Section 35.12.1(b), and Developer shall perform and comply with all requirements set forth in the Job Training Plan.

23.10.2 Developer shall include provisions to effectuate the Job Training Plan (if the election is made) and Small Business Opportunity Plan in every Contract to which it is a party (including purchase orders and task orders for Work), and shall require that they be included in all Contracts at lower tiers (including purchase orders and task orders for Work), so that such provisions will be binding upon each Contractor. The foregoing shall not apply to Contracts at any tier with TxDOT or Governmental Entities.

23.11 State Use Program. Developer shall comply with the provisions of Chapter 122 of the Texas Human Resources Code that are placed on TxDOT with respect to O&M Work. The use of Community Rehabilitation Programs (CRPs) is outlined in Chapter 122 and 40 Texas Administrative Code §189 and is strongly encouraged by TxDOT. Specifically, Section 122.008 (Procurement at Determined Prices) states: "A suitable product or service that meets applicable specifications established by the state or its political subdivisions and that is available within the time specified must be procured from a CRP at the price determined by the council to be the fair market price." Developer will make a good faith effort to negotiate with CRPs and the Texas Industries for the Blind and Handicapped (TIBH) for subcontracts at a fair market price. TxDOT reserves the right to facilitate disputes involving subcontracts or potential subcontracts with CRPs and TIBH.

23.12 Prevailing Wages

23.12.1 Developer shall pay or cause to be paid to all applicable workers employed by it or its Contractors to perform the Work not less than the prevailing rates of wages, as provided in the statutes and regulations applicable to public work contracts, including Chapter 2258 of the Texas Government Code and the Davis-Bacon Act, and as provided in Exhibit 12. Developer shall comply and cause its Contractors to comply with all applicable Laws pertaining to prevailing wages. For the purpose of applying such Laws, the Project shall be treated as a public work paid for in whole or in part with public funds (regardless of whether public funds are actually used to pay for the Project). The foregoing shall not apply to Contracts at any tier with TxDOT or Governmental Entities.

23.12.2 It is Developer's sole responsibility to determine the wage rates required to be paid. In the event rates of wages and benefits change while this Agreement is in effect, Developer shall bear the cost of such changes and shall have no Claim against TxDOT on account of such changes. Without limiting the foregoing, no Claim will be allowed that is based upon Developer's lack of knowledge or a misunderstanding of any such requirements or Developer's failure to include in the Base Case Financial Model or Base Case Financial Model Updates adequate increases in such wages over the duration of this Agreement and the Lease.

23.12.3 Any issue between Developer or a Contractor, other than TxDOT or a Governmental Entity acting as a Contractor, and any affected worker relating to any alleged violation of Section

2258.023 of the Texas Government Code that is not resolved before the 15th day after the date TxDOT makes its initial determination under Section 2258.052 of the Texas Government Code (as to whether good cause exists to believe that a violation occurred) shall be submitted to binding arbitration in accordance with the Texas General Arbitration Act, Chapter 171 of the Civil Practice and Remedies Code.

23.12.4 Developer shall comply and cause its Contractors, other than TxDOT or Governmental Entities acting as Contractors, to comply with all Laws regarding notice and posting of intent to pay prevailing wages, of prevailing wage requirements and of prevailing wage rates.

23.13 Prompt Payment to Contractors. Developer shall require, as part of the Design-Build Contract, that the Design-Build Contractor pay each subcontractor for Work satisfactorily performed within 10 days after receiving payment from Developer for the Work satisfactorily performed by the subcontractor and pay any retainage on a subcontractor's Work within 10 days after satisfactory completion of all of the subcontractor's Work. Completed subcontractor work includes vegetative establishment, test, maintenance, performance, and other similar periods that are the responsibility of the subcontractor. For the purpose of this Section 23.13, satisfactory completion is accomplished when (a) the subcontractor has fulfilled the requirements of both the Design-Build Contract and the subcontract for the subcontracted Work, including the submittal of all information required by the specifications and the Design-Build Contractor, and (b) the work done by the subcontractor has been inspected and approved by Developer and the final quantities of the subcontractor's work have been determined and agreed upon. The foregoing payment requirements apply to all tiers of subcontractors and shall be incorporated into all subcontracts.

23.14 Uniforms. Any uniforms, badges, logos and other identification worn by personnel of Developer-Related Entities shall bear colors, lettering, design or other features to assure clear differentiation from those of TxDOT and its employees.

ARTICLE 24
RELATED AND OTHER FACILITIES

24.1 Integration with Related Transportation Facilities

24.1.1 Developer's Responsibility. Developer shall locate, configure, design, operate and maintain the termini, interchanges, entrances and exits of the Project so that the Project will be compatible and integrated with the location, configuration, design, operation and maintenance of, and provide a smooth, safe transition of traffic to and from, Related Transportation Facilities. The design and Right of Way Acquisition Plan for the Project shall include and provide for such compatibility, integration and transition. The design, construction, operation and maintenance of the Project shall satisfy all provisions of the Technical Provisions and Project Management Plan relating to compatibility, integration and transition with or at Related Transportation Facilities, including those concerning signage, signaling and User communications. Developer shall not block or restrict, partially or wholly, access to or from the Project from or to any Related Transportation Facility without the prior express consent of, and on such terms and conditions as may be specified by, TxDOT and the applicable local agency or other party, as the case may be. Developer shall cooperate and coordinate with TxDOT and any third party that owns, constructs, manages, operates or maintains a Related Transportation Facility with regard to the construction, maintenance and repair programs and schedules for the Project and the Related Transportation Facilities, in order to minimize disruption to the operation of the Project and the Related Transportation Facilities.

24.1.2 TxDOT Assistance. TxDOT shall provide to Developer during normal working hours, reasonable access to plans, surveys, drawings, as-built drawings, specifications, reports and other documents and information in the possession of TxDOT or its contractors and consultants pertaining to Related Transportation Facilities. Developer, at its expense, shall have the right to make copies of the same. Developer, at its expense, shall conduct such other inspections, investigations, document searches, surveys and other work as may be necessary to identify the Related Transportation Facilities and achieve such compatibility, integration and transition. TxDOT shall provide reasonable assistance to Developer, upon Developer's request and at Developer's expense, in obtaining cooperation and coordination from third parties that own, manage, operate or maintain Related Transportation Facilities and in enforcing rights, remedies and warranties that Developer may have against any such third parties. Such assistance may include TxDOT's participation in meetings and discussions. In no event shall TxDOT be required to bring any legal action or proceeding against any such third party.

24.1.3 Traffic Management Activities. TxDOT shall have at all times, without obligation or liability to Developer, the right to conduct traffic management activities on TxDOT's Related Transportation Facilities and all other facilities of the State transportation network in the area of the Project in accordance with its standard traffic management practices and procedures in effect from time to time.

24.1.4 Brazoria County Project

(a) **Project Tie-In.** Any change to the location or configuration of the tie-in of the Brazoria County Project and the Toll Lanes, as described in Section 1.3.5 of the Technical Provisions, shall be considered a TxDOT Change, unless initiated by Developer pursuant to Section 13.2.

(b) **Timing of Project Opening.** If the Brazoria County Project is not reasonably expected to open to service at or prior to the Service Commencement Date for the Project Segment adjoining the Brazoria County Project, then TxDOT shall permit, or shall cause Brazoria County or the Brazoria County Toll Road Authority, as the case may be, to permit, Developer to construct and operate temporary slip ramps to connect the SH 288 general purpose lanes in Brazoria County to the Toll Lanes until the Brazoria County Project is open to service. TxDOT shall bear the cost of construction of such temporary slip ramps and temporary signage if, and only if, the Brazoria County Project opening is delayed beyond the Service Commencement Date for the Project Segment adjoining the Brazoria County Project set out Form M to the Proposal; otherwise such cost shall be borne by Developer. Any such temporary ramps shall be removed by TxDOT or Brazoria County or the Brazoria County Toll Road Authority, as the case may be, at TxDOT's expense (which expense may be charged to Brazoria County or the Brazoria County Toll Road Authority), once the Brazoria County Project is open to service.

(c) **Release.** Without prejudice to any Claim that Developer may have against TxDOT or any claim or cause of action that TxDOT may have against Brazoria County or the Brazoria County Toll Road Authority, Developer shall waive and release, and shall require each Contractor to waive and release, any claim or cause of action against Brazoria County and the Brazoria County Toll Road Authority arising out of any adverse impact on the Project or Toll Revenues from the design, construction, project schedule, and opening of the Brazoria County Project.

24.2 Reserved Airspace and Business Opportunities

24.2.1 Limitation on Developer's Interests. Developer's rights and interests in the Project and Project Right of Way are and shall remain specifically limited only to such real and personal property rights and interests that are necessary or required for developing, permitting, designing, financing, constructing, installing, equipping, operating, maintaining, tolling, repairing, reconstructing,

rehabilitating, restoring, renewing or replacing the Project and Developer's timely fulfillment of its obligations under the CDA Documents. Developer's rights and interests specifically exclude any and all Airspace and any and all improvements and personal property above, on or below the surface of the Project Right of Way which are not necessary and required for such purposes. Unless expressly authorized by TxDOT in its discretion, Developer will not grant permission for any Person (other than TxDOT) to use or occupy the Project for any ancillary or collateral purpose, whether through a sublease or otherwise. Developer is prohibited from placing or permitting any outdoor advertising within the boundaries of the Project Right of Way. In respect of a Developer Default for breach of this Section 24.2, TxDOT shall be entitled to (in addition to any other remedies) disgorgement of all Developer's profits from the prohibited activity, together with interest thereon, at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, from the date of collection until the date disgorged, and to sole title to and ownership of the prohibited assets and improvements and revenues derived therefrom.

24.2.2 Reserved Business Opportunities. TxDOT reserves to itself, and Developer hereby relinquishes, all right and opportunity to develop and pursue anywhere in the world entrepreneurial, commercial and business activities that are ancillary or collateral to (x) the use, enjoyment and operation of the Project and Project Right of Way as provided in this Agreement and the Lease and (y) subject to Developer's rights hereunder, the collection, use and enjoyment of Toll Revenues as provided in this Agreement and the Lease (collectively, "**Business Opportunities**"); *provided* that the foregoing is not intended to preclude Developer or any Affiliate, Contractor or other Developer-Related Entity from (i) carrying out the Project Plan of Finance, (ii) arranging and consummating Refinancings, (iii) creating and using brochures and other promotional and marketing material, responses to requests for qualifications or proposals, and similar communications that include descriptions, presentations and images of the Project or the Work for the purpose of promoting its business of developing, financing and operating infrastructure projects, or (iv) proposing to TxDOT joint Business Opportunities, including expected financial and other terms, for TxDOT's consideration in TxDOT's discretion. The Business Opportunities reserved to TxDOT include all the following:

(a) All rights to finance, design, construct, operate and maintain any passenger or freight rail facility, roads and highways or other mode of transportation in the Airspace, including tunnels, flyovers, frontage roads, local roads, interchanges and fixed guide-ways, and to grant to others such rights, subject to the provisions of Sections 24.3.2;

(b) All rights to install, use, lease, grant indefeasible rights of use, sell and derive revenues from electrical and fiber optic conduit, cable, capacity, towers, antennas and associated equipment or other telecommunications equipment, hardware and capacity, existing over, on, under or adjacent to any portion of the Project Right of Way installed by anyone, whether before or after the Effective Date, and all software which executes such equipment and hardware and related documentation, except for the capacity of any such improvement installed by Developer that is necessary for and devoted exclusively to the operation of the Project. For the avoidance of doubt, (i) if Developer installs any such improvements, all use and capacity thereof not necessary for operation of the Project is reserved to, and shall be the sole property of, TxDOT and (ii) Developer shall be entitled to install a reasonable excess of capacity in its communications network devoted exclusively to the operation of the Project as a safety reserve, which shall not be considered as a Business Opportunity reserved to TxDOT;

(c) All rights to use, sell and derive revenues from traffic data and other data generated from operation of the Project or any Electronic Toll Collection System except use of such data as required solely for operation of the Project and enforcement and collection of tolls;

(d) All ownership, possession and control of, and all rights to develop, use, operate, lease, sell and derive revenues from, the Airspace, including development and operation of service areas,

rest areas and any other office, retail, commercial, industrial, residential, retail or mixed use real estate project within the Airspace;

(e) All rights to install, use and derive information, services, capabilities and revenues from Intelligent Transportation Systems and applications, except installation and use of any such systems and applications by Developer as required solely for operation of the Project. For avoidance of doubt, if Developer installs any such systems or applications, all use and capacity thereof not necessary for operation of the Project is reserved to, and shall be the sole property of, TxDOT;

(f) All rights to market, distribute, sell and derive revenues from any goods, products or merchandise depicting, utilizing or exploiting any name, image, logo, caricature or other representation, in any form or medium, of TxDOT or the Project, or that may be confused with those of TxDOT or the Project;

(g) All rights and opportunities to grant to others sponsorship, advertising and naming rights with respect to the Project or any portion thereof; *provided* that in any sponsorship or naming rights transaction TxDOT shall cause to be granted to Developer a non-exclusive license to use the name in connection with Project operations;

(h) All rights to revenues and profits derived from the right or ability of electronic toll account customers to use their accounts or transponders to purchase services or goods other than payment of tolls;

(i) Any other commercial or noncommercial development or use of the Airspace or electronic toll collection technology for other than operation of the Project; and

(j) All ownership, possession and control of, and all rights to develop, use, lease, sell and derive revenues from, carbon credits or other environmental benefits generated by or arising out of development, use, operation or maintenance of the Project.

24.3 Unplanned Revenue Impacting Facilities

24.3.1 TxDOT Rights. Except for the limited rights to compensation provided under Section 24.3.2, TxDOT has the unfettered right in its discretion, at any time and without liability, regardless of impacts on Toll Revenues, to finance, develop, approve, expand, improve, modify, upgrade, add capacity to, reconstruct, rehabilitate, restore, renew and replace any existing and new transportation or other facilities (including free roads, connecting roads, service roads, frontage roads, turnpikes, managed lanes, toll lanes, high occupancy vehicle lanes, high occupancy toll lanes, light rail, freight rail and bus lanes). Such right extends to facilities both within the Airspace and outside the Project Right of Way, whether identified or not identified in transportation plans, and whether adjacent to, nearby or otherwise located as to affect the Project, its operation and maintenance (including the costs and expenses thereof), its vehicular traffic or its revenues. The foregoing facilities include those (a) owned or operated by TxDOT, including those owned or operated by a private entity pursuant to a contract with TxDOT, (b) owned or operated by a joint powers authority or similar entity to which TxDOT is a member, (c) owned or operated by a Governmental Entity pursuant to a contract with TxDOT, including regional mobility authorities, joint powers authorities, counties and municipalities, and (d) owned or operated by a Governmental Entity (including regional mobility authorities, joint powers authorities, counties and municipalities) with respect to which TxDOT has contributed funds, in-kind contributions or other financial or administrative support. The foregoing rights include the ability to institute, increase or decrease tolls on such facilities or modify, change or institute new or different operation and maintenance procedures. TxDOT has the right, without liability, to make discretionary and non-discretionary

distributions of federal and other funds for any transportation projects, programs and planning, to analyze revenue impacts of potential transportation projects, and to exercise all its authority to advise and recommend on transportation planning, development and funding.

24.3.2 Compensation Amount. The material adverse effect of the operation of an Unplanned Revenue Impacting Facility on Toll Revenues constitutes a Compensation Event, for which Developer's sole and exclusive right and remedy is to seek a Compensation Amount equal to (a) the loss of Toll Revenues due to traffic disruption during, and directly caused by, construction, reconstruction, renewal, replacement or expansion activities for the Unplanned Revenue Impacting Facility, plus (b) the increase in Developer's costs directly caused by construction or operating activities for the Unplanned Revenue Impacting Facility, plus (c) the loss of Toll Revenues attributable to the Unplanned Revenue Impact Facility, minus (d) the increase in Toll Revenues attributable to (i) the Unplanned Revenue Impacting Facility and (ii) future additions or expansions of access points to the Toll Lanes by TxDOT or a Governmental Entity that are not included as part of the Work if they are in operation at the time Developer first delivers its Claim for compensation to TxDOT.

24.3.3 IH 610 Interchange Work. TxDOT reserves the right to complete the IH 610 Interchange Work, directly or through a third party, at any time during the Term. In such case, the IH 610 Interchange shall not be considered an Unplanned Revenue Impacting Facility, and neither such work (including the construction, completion, operation and maintenance of the IH 610 Interchange) nor the impact of such work or the IH 610 Interchange shall be considered a Compensation Event entitling Developer to relief, damages or other compensation, except as provided in clause (t) of the definition of Compensation Event.

24.3.4 Notice and Claim; Waiver

(a) TxDOT may, but is not obligated to, deliver to Developer a notice of a potential Unplanned Revenue Impacting Facility at any time from and after the selection thereof as the preferred alternative under a NEPA decision or local project decision and prior to opening of the potential Unplanned Revenue Impacting Facility to traffic. Such notice shall include (i) a reasonable description of the Unplanned Revenue Impacting Facility, including any right of way alignments, number of lanes, location and other pertinent features, (ii) a statement whether the potential Unplanned Revenue Impacting Facility will be tolled, and if so the intended tolling requirements, including, if applicable, toll rate schedule by vehicle classification, and (iii) any traffic and revenue studies and analyses available to TxDOT for the potential Unplanned Revenue Impacting Facility.

(b) If TxDOT delivers such notice to Developer, Developer shall deliver to TxDOT (within 90 days of receipt of such notice from TxDOT) notice of any Claim attributable to the potential Unplanned Revenue Impacting Facility, which shall include a true and complete copy of a preliminary traffic and revenue study and analysis showing the projected effects (including data on past Toll Revenues and projected future Toll Revenues with and without the potential Unplanned Revenue Impacting Facility) and a reasonably detailed statement quantifying such effects. If Developer fails to timely deliver such notice of Claim, Developer shall be deemed to have irrevocably and forever waived and released any Claim or right to compensation for any adverse effect on Toll Revenues attributable to the construction, operation and use of the subject potential Unplanned Revenue Impacting Facility or any Unplanned Revenue Impacting Facility that is not substantially different from the potential Unplanned Revenue Impacting Facility. For this purpose, an Unplanned Revenue Impacting Facility ultimately constructed and operated shall be considered "substantially different" from the subject potential Unplanned Revenue Impacting Facility if (i) the route is substantially different, (ii) the number of lanes is different, (iii) the number of high occupancy vehicle, high occupancy toll, truck or other special purpose or restricted use lanes is different or their length is substantially different, (iv) the total length is

substantially different, (v) TxDOT stated in its notice that the potential Unplanned Revenue Impacting Facility would be tolled and the actual Unplanned Revenue Impacting Facility is not tolled or is tolled at materially lower toll rates for the predominant classifications of vehicles than the rates described in TxDOT's notice (if applicable), (vi) the means for collecting tolls is substantially different (e.g. barrier only vs. barrier-free or open lane tolling), (vii) the number of access points to the Unplanned Revenue Impacting Facility is different or the design capacity of access points to the Unplanned Revenue Impacting Facility is substantially different or (viii) there are other differences similar in scale or effect to the foregoing differences. At Developer's request within such 90-day period, TxDOT shall grant reasonable extensions of time, not to exceed 60 additional days, for Developer to deliver the notice of Claim, so long as Developer is making good faith, diligent progress in completing its traffic and revenue analysis and Toll Revenue impact analysis.

(c) Regardless of whether TxDOT delivers such notice to Developer, and subject to any earlier deadline that may apply (such as set forth in clause (b) above), Developer may not assert, and shall be deemed to have irrevocably and forever waived and released any Claim or other right to compensation for any adverse effect, past or future, on Toll Revenues attributable to the Unplanned Revenue Impacting Facility upon and after the fourth anniversary of the opening of traffic operations thereon; *provided* that if the Unplanned Revenue Impacting Facility is modified physically or operationally after opening for traffic operations so that it is substantially different from the original Unplanned Revenue Impacting Facility and as a result thereof Developer experiences a further adverse effect on the amount of Toll Revenues, then the foregoing deadline shall be extended, but only as it applies to a Claim in respect of the additional net adverse impact of the modification, until the fourth anniversary of the opening of traffic operations on the modified facility.

24.3.5 Waiver of Rights and Remedies Regarding Unplanned Revenue Impacting Facilities. Developer acknowledges that TxDOT has a paramount public interest and duty to develop and operate whatever transportation facilities it deems to be in the best interests of the State, and that the compensation to which Developer is entitled on account of Unplanned Revenue Impacting Facilities is a fair and adequate remedy. Accordingly, Developer shall not have, and irrevocably waives and relinquishes, any and all rights to institute, seek or obtain any injunctive relief or pursue any action, order or decree to restrain, preclude, prohibit or interfere with TxDOT's rights to plan, finance, develop, operate, maintain, toll or not toll, repair, improve, modify, upgrade, reconstruct, rehabilitate, restore, renew or replace Unplanned Revenue Impacting Facilities; *provided*, *however*, that the foregoing shall not preclude Developer from enforcing its rights to compensation regarding Unplanned Revenue Impacting Facilities. The filing of any such action seeking to restrain preclude, prohibit or interfere with TxDOT's rights shall automatically entitle TxDOT to recover all costs and expenses, including attorneys' fees, of defending such action and any appeals.

24.3.6 Positive Impact of Unplanned Revenue Impacting Facilities. If it is determined that operation of an Unplanned Revenue Impacting Facility increases or will increase Toll Revenues to Developer, TxDOT shall be entitled to receive from Developer the full increase in Toll Revenues, net of Developer's increased operating and maintenance costs, attributable to such Unplanned Revenue Impacting Facility. Any Dispute regarding such amount shall be resolved according to the Dispute Resolution Procedures. For the purpose of any discounting, Section 27.2.3(c) shall apply.

ARTICLE 25
UPGRADES, TECHNOLOGY ENHANCEMENTS AND SAFETY COMPLIANCE

25.1 General Purpose Lane Capacity Improvements

25.1.1 Monitoring Traffic Congestion on Existing Lanes. Commencing January 1 of the year that is five years prior to the GPLCI Conformity Year, and until the issuance of NTP3, Developer shall monitor traffic in the General Purpose Lanes in each direction (northbound and southbound) between Beltway 8 and IH 610 by collecting vehicle class traffic counts and speed data every mile (or at distance intervals not greater than a mile apart) every 15 minutes (or at time intervals not longer than 15 minutes apart). The information collected pursuant to this Section 25.1.1 shall be shared with TxDOT and used to make the determinations under Section 25.1.2.

25.1.2 Notice to Proceed. Developer shall be obligated to make the General Purpose Lane Capacity Improvements upon (and shall not undertake any GPLCI Work until) the issuance by TxDOT of a notice to proceed with such improvements ("**NTP3**"). TxDOT may, but is not obligated to, issue NTP3 within one year after, but not before, the satisfaction of all of the following criteria (except that, for the reasons described in Section 25.1.3, in no event shall TxDOT issue such notice to proceed prior to January 1 of the year that is five years prior to the GPLCI Conformity Year):

(a) Any one-mile interval of the northbound General Purpose Lanes between IH 610 and Beltway 8 experiences Level of Service F traffic congestion during the heaviest traveled 60-minute period of each of five Business Days during any period of 10 consecutive Business Days;

(b) Any one-mile interval of the southbound General Purpose Lanes between IH 610 and Beltway 8 experiences Level of Service F traffic congestion during the heaviest traveled 60-minute period of each of any five Business Days during any period of 10 consecutive Business Days;

(c) With respect to any one-mile interval of the northbound Toll Lanes between IH 610 and Beltway 8, (i) such interval experiences average traffic speed of less than 45 MPH during the heaviest traveled 30-minute period of each of any five Business Days during any period of 10 consecutive Business Days and (ii) the tolls for such interval were increased during each of the three most recent opportunities to increase tolls for such interval; and

(d) With respect to any one-mile interval of the southbound Toll Lanes between IH 610 and Beltway 8, (i) such interval experiences average traffic speed of less than 45 MPH during the heaviest traveled 30-minute period of each of any five Business Days during any period of 10 consecutive Business Days and (ii) the tolls for such interval were increased during each of the three most recent opportunities to increase tolls for such interval.

The Parties shall make the foregoing determinations not sooner than the GPLCI Conformity Year. In making such determinations, the Parties shall exclude the effects of anomalous events that cause traffic congestion, such as traffic accidents and unusual weather.

25.1.3 Transportation Improvement Program. As of the Effective Date, the General Purpose Lane Capacity Improvements are listed as a project in the 2035 Regional Transportation Plan Update adopted by the Houston-Galveston Area Council for air conformity year 2035. In connection with a subsequent update of the Regional Transportation Plan, the air conformity year for the General Purpose Lane Capacity Improvements may be modified. For the purposes of this Agreement, "**GPLCI Conformity Year**" means the air conformity year for the General Purpose Lane Capacity Improvements

as it may be modified from time to time. The GPLCI Conformity Year is the earliest year in which the General Purpose Lane Capacity Improvements may be put into service; consequently, given the five-year period provided in Section 25.1.5(a) to complete the GPLCI Design-Build Contract procurement process and to complete the GPLCI Work, TxDOT may not issue NTP3 until January 1 of the year that is five years prior to the GPLCI Conformity Year (and until satisfaction of all of the criteria set out in subsections (a)-(d) of Section 25.1.2). Upon the issuance of NTP3, Developer shall work with TxDOT and the Houston-Galveston Area Council to move such project from such plan to the Transportation Improvement Program.

25.1.4 General Obligations of Developer with Respect to the GPLCI Work. Except as otherwise provided in this Section 25.1, all the provisions of the CDA Documents, including all Technical Provisions, concerning permitting, Project Right of Way acquisition, design, construction, insurance, Utility Adjustments, Substantial Completion, Service Commencement, Final Acceptance, tolling, operation, maintenance, Renewal Work and Handback Requirements for the Project shall apply, mutatis mutandis, to the General Purpose Lane Capacity Improvements. For the avoidance of doubt, from and after the Service Commencement Date for the General Purpose Lane Capacity Improvements and for the balance of the Term, the General Purpose Lane Capacity Improvements shall be operated and maintained by Developer as, and subject to the requirements otherwise applicable to, the General Purpose Lanes.

25.1.5 Milestone Deadlines

(a) **Substantial Completion.** Developer shall achieve Substantial Completion with respect to the General Purpose Lane Capacity Improvements within five years after the issuance of NTP3.

(b) **Service Commencement.** Developer shall achieve Service Commencement with respect to the General Purpose Lane Capacity Improvements by the date that is 90 days after the achievement of Substantial Completion of the General Purpose Lane Capacity Improvements. Failure to achieve Service Commencement by such date shall entitle TxDOT to per diem liquidated damages, the amount and other terms of which shall be the same as set forth in Section 29.5.2, except that the amount per day shall be increased by the percentage increase in CPI between CPI for the month in which Financial Close occurred (or the first month most immediately preceding such month for which CPI is available) and CPI for the month in which NTP3 was issued (or the first month most immediately preceding such month for which CPI is available).

(c) **Final Acceptance.** Developer shall achieve Final Acceptance with respect to the General Purpose Lane Capacity Improvements by the date that is 90 days after the Service Commencement Date for the General Purpose Lane Capacity Improvements. Failure to achieve Final Acceptance by such date shall entitle TxDOT to per diem liquidated damages, the amount and other terms of which shall be the same as set forth in Section 29.5.3, except that the amount per day shall be increased by the percentage increase in CPI between CPI for the month in which Financial Close occurred (or the first month most immediately preceding such month for which CPI is available) and CPI for the month in which NTP3 was issued (or the first month most immediately preceding such month for which CPI is available).

(d) **Effect of Relief Events.** For the avoidance of doubt, the foregoing deadlines in this Section 25.1.5 are subject to extension in respect of the occurrence of a Relief Event as and to the extent provided in Article 27.

25.1.6 GPLCI Design-Build Contract Procurement. Developer shall procure a lump-sum, fixed-price, design-build contract (the "**GPLCI Design-Build Contract**") for the GPLCI Design-Build Work through an open, competitive procurement, as follows:

(a) Developer shall develop procurement and contract documents to solicit proposals for the GPLCI Design-Build Contract and shall set forth the terms and requirements of the GPLCI Design-Build Work. Such documents shall be subject to review, comment and approval by TxDOT prior to issuance. The procurement documents shall include qualifications consistent with then-prevailing qualifications established by TxDOT for design-build work on TxDOT projects of comparable scope and complexity as the GPLCI Design-Build Work.

(b) Developer shall invite at least five design-build contractors to submit qualifications for the GPLCI Design-Build Work, of which not more than one may be an Affiliate (or a consortium with one or more Affiliates). Developer shall provide TxDOT with the list of contractors and an explanation of why Developer believes each is potentially qualified for the GPLCI Design-Build Work. The procurement shall be conducted such that no contractor receives an unfair competitive advantage.

(c) After receipt of proposals from interested contractors, the Parties shall meet and confer to discuss the proposals, documents and information received. TxDOT shall have the right to remove any contractor from further consideration in TxDOT's discretion; *provided* that TxDOT may not remove an Affiliate unless the Affiliate is not qualified for the GPLCI Design-Build Work.

(d) Developer shall recommend to TxDOT which contractor should be selected to perform under the GPLCI Design-Build Contract based on the scoring factors included in the procurement documents and approved by TxDOT. TxDOT shall approve the recommended contractor (and upon such approval Developer shall enter into the GPLCI Design-Build Contract with such contractor) so long as (i) there appears to be no material irregularities in the conduct of the procurement or in the evaluation and scoring of the responsive proposals and (ii) TxDOT, in its discretion, accepts the pricing. TxDOT may direct Developer to cancel the procurement at any time and for any reason before the execution of the GPLCI Design-Build Contract, without penalty.

(e) The foregoing procurement process shall be completed within one year after the issuance of NTP3, unless (i) TxDOT cancels the procurement or (ii) TxDOT does not accept the pricing (in which case, Developer shall initiate a new procurement at TxDOT's direction).

(f) Nothing in this Section 25.1.6 is intended or shall be construed as an appointment or approval of Developer as an agent of TxDOT for the purpose or procuring or entering into the GPLCI Design-Build Contract. The sole purpose of this Section 25.1.6 is to provide TxDOT with the most competitive pricing available for the GPLCI Design-Build Work from well-qualified and experienced design-build contractors. Developer and the selected contractor shall be the sole parties to the GPLCI Design-Build Contract, and TxDOT shall owe no obligations to, and shall have no contractual relationship with, the GPLCI Design-Build Contractor. For the avoidance of doubt, the GPLCI Design-Build Contract is subject to the applicable provisions of Article 23.

25.1.7 Costs and Financing

(a) Except as provided by Sections 25.1.7(b)-(d), Developer acknowledges and represents that the cost of the General Purpose Lane Capacity Improvements, including any potential impact on Toll Revenues, and future financing therefor are incorporated in the Base Case Financial Model. Accordingly, except as provided by Sections 25.1.7(b)-(d), the development and operation of the General Purpose Lane Capacity Improvements in accordance with the CDA Documents, and the resulting impact therefrom, shall be at Developer's sole cost and expense and shall not be treated as a Compensation Event or otherwise entitle Developer to any Claim against TxDOT.

(b) As sole and exclusive compensation for the development, operation and maintenance of the General Purpose Lane Capacity Improvements and any other costs or impacts resulting therefrom, TxDOT agrees to pay to Developer compensation comprising (i) "Component A" (as calculated and paid in accordance with Section 25.1.7(c)) and (ii) "Component B" (as calculated and paid in accordance with Section 25.1.7(d)).

(c) For the purposes of Section 25.1.7(b), "Component A" shall equal the amount set forth in Table 3 of Exhibit 8; *provided*, *however*, that such amount shall be replaced with the amount equal to actual lump-sum, fixed-price amount owing to the GPLCI Design-Build Contractor under the GPLCI Design-Build Contract procured and accepted by TxDOT pursuant to Section 25.1.6. TxDOT shall remit "Component A" payments to Developer at least two Business Days prior to the date each such payment is required to be made by Developer to the GPLCI Design-Build Contractor under the terms of the GPLCI Design-Build Contract; *provided* that, as a condition to TxDOT's obligation to make or remit any such payments, TxDOT may require evidence of construction progress sufficient to justify such payments consistent with TxDOT's standard practices for design-build work (which condition shall be included as a term in the GPLCI Design-Build Contract).

(d) For the purposes of Section 25.1.7(b), "Component B" shall equal the schedule of annual payments set forth in Table 4 of Exhibit 8; *provided*, *however*, that the amounts of such payments shall be replaced with the schedule of annual payments determined as follows:

(i) First, the Parties shall jointly select and retain an independent, qualified firm that is recognized by Rating Agencies as having expertise in analyzing and forecasting traffic and toll revenue. Such independent firm (within this Section 25.1.7(d), the "independent firm") shall have a duty of care to both TxDOT and Developer. TxDOT and Developer shall share equally the cost of the independent firm. The independent firm may have a prior relationship with one or both Parties only so long as the firm is jointly approved by both Parties, otherwise meets the foregoing qualifications, and complies with any applicable TxDOT conflict policies. Within 180 days after the issuance of NTP3 (or, if TxDOT desires to obtain this information prior to issuing NTP3, within 180 days after Developer receives TxDOT's request for this information), the independent firm shall prepare two financial models for the Project for the period from issuance of NTP3 until the end of the Term (such period is referred to in this subsection (d) as the "measuring period"). The two financial models shall use the same formulas, data, economic indicators, inputs and assumptions, except that the first financial model shall assume that the General Purpose Lane Capacity Improvements are not undertaken, completed or put into service during the Term, and the second financial model shall assume that the General Purpose Lane Capacity Improvements are undertaken, completed and put into service at a specific Service Commencement Date during the GPLCI Conformity Year (to be mutually agreed by Developer and TxDOT based upon the expected GPLCI Design-Build Work schedule). The financial models shall be based upon forecasts (made at that time, as opposed to assumptions included in Developer's Proposal) of traffic, Toll Revenues, operating costs, and lifecycle and maintenance costs; all such forecasts (1) shall be supported by a traffic and revenue study and analysis produced by an independent consultant retained by Developer and (2) shall be subject to acceptance by both TxDOT and Developer.

(ii) Second, the parties shall calculate the schedule of "Component B" annual payments (calculated in the same manner as required for Form J-3 of the Proposal and otherwise meeting the criteria described in this subsection (d)) that if paid to Developer would cause the Project IRR resulting from the second financial model to be equal to the Project IRR resulting from the first financial model. Such schedule shall assume an annual payment on March 31 of each year for the remainder of the Term.

(iii) Third, the parties shall adjust the financial models and calculations described in clauses (i) and (ii) above to account for the actual date on which Service Commencement of the General Purpose Lane Capacity Improvements is achieved.

25.2 Technology Enhancements. Developer, at its expense, shall be obligated to make Technology Enhancements on the systems it provides as and when necessary (a) to correct Defects, (b) under the Renewal Work Schedule or (c) to maintain interoperability in accordance with the CDA Documents. The foregoing notwithstanding, Developer shall have no obligation to undertake Technology Enhancements during the last 15 years of the Term in the following circumstances**:**

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

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

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

25.3 Discretionary Upgrades

25.3.1 Proposals by Developer. Developer shall have the right to propose Capacity Improvements that are not required pursuant to Section 25.1 or 25.2. Any such proposed Capacity Improvements shall be treated as a Change Request subject to Section 13.2; *provided* that if the Capacity Improvements are part of the Ultimate Configuration, only review and comment of TxDOT and the Independent Engineer shall be required. To the extent proposed Capacity Improvements require further environmental review under NEPA, Developer shall reimburse TxDOT for all costs, including TxDOT's Recoverable Costs, it incurs in connection with the NEPA process and any litigation arising therefrom.

25.3.2 General Obligations of Developer. Except as otherwise provided in this Section 25.3, all the provisions of the CDA Documents, including all Technical Provisions, concerning permitting, Project Right of Way acquisition, design, construction, insurance, Utility Adjustments, Substantial Completion, Service Commencement, Final Acceptance, tolling, operation, maintenance, Renewal Work and Handback Requirements for the Project shall apply, mutatis mutandis, to Capacity Improvements.

25.3.3 Pre-Conditions to Contracting; Schedule. Before Developer enters into any design-build Contract or other Contract or amendment of an existing design-build Contract or other Contract for the construction of Capacity Improvements, Developer shall submit to TxDOT and the Independent Engineer a proposed reasonable, logic-driven preliminary schedule for performing and completing the Capacity Improvements, including deadlines for Service Commencement and Final Acceptance, per diem liquidated damages to TxDOT for failure to achieve the deadline for Service Commencement or Final Acceptance, a Long Stop Date and proposed amounts of Payment and Performance Bonds or letters of credit. Such schedule, the deadlines for Service Commencement and Final Acceptance, the liquidated damages, the Long Stop Date and the amounts of the Payment and Performance Bonds or letters of credit shall be subject to review, analysis and recommendation by the Independent Engineer and to TxDOT's prior approval; and any Dispute regarding the same shall be resolved according to the Dispute Resolution

Procedures. The opinion of the Independent Engineer shall be given substantial weight in resolving any Dispute, except with respect to the appropriate measure of liquidated damages and amount of Payment and Performance Bonds or letters of credit.

25.4 Other Upgrades Directed by TxDOT. TxDOT may at any time issue a Directive Letter or Change Order for Developer to undertake Upgrades, subject to compensation in accordance with the change provisions of this Agreement for non-mandatory Upgrades. Developer shall diligently carry out any such Directive Letter or Change Order in accordance with its terms and conditions and the CDA Documents.

25.5 Safety Compliance

25.5.1 Safety Compliance Orders. TxDOT shall use good faith efforts to inform Developer at the earliest practicable time of any circumstance or information relating to the Project which in TxDOT's reasonable judgment is likely to result in a Safety Compliance Order. Except in the case of Emergency, TxDOT shall consult with Developer and the Independent Engineer prior to issuing a Safety Compliance Order concerning the risk to public or worker safety, alternative compliance measures, cost impacts, and the availability of Developer resources to fund the Safety Compliance work. The Independent Engineer's duties shall include monitoring and inspecting for the purpose of determining whether any circumstances exist that warrant issuance of a Safety Compliance Order, and giving reports and recommendations to TxDOT and Developer with respect thereto. Subject to conducting such prior consultation, TxDOT may issue Safety Compliance Orders to Developer at any time from and after the Effective Date.

25.5.2 Duty to Comply. Subject to Section 25.5.1, Developer shall implement all Safety Compliance as expeditiously as reasonably possible following issuance of the Safety Compliance Order. Developer shall diligently prosecute the work necessary to achieve such Safety Compliance until completion. Developer shall perform all work required to implement Safety Compliance at Developer's sole cost and expense. Without limiting the foregoing and for the avoidance of doubt, in no event shall Developer be entitled to (a) issue a Change Request or, except as provided in Section 25.5.3, claim that a Compensation Event has occurred as a result of the existence of a Safety Compliance Order or (b) claim that a Force Majeure Event or, except as provided in Section 25.5.3, that a Relief Event has occurred or resulted from the existence of a Safety Compliance Order. Developer shall undertake best efforts to overcome any inability to comply with any Safety Compliance Order caused by a Force Majeure Event or Relief Event.

25.5.3 Contesting Safety Compliance Orders. Developer may contest a Safety Compliance Order by delivering to TxDOT notice setting forth (a) Developer's claim that no Safety Compliance conditions exist to justify the Safety Compliance Order, (b) Developer's explanation of its claim in reasonable detail and (c) Developer's estimate of impacts on costs, Toll Revenues and schedule attributable to the contested Safety Compliance Order. If TxDOT does not receive such notice prior to issuance of a Safety Compliance Order, or within 15 days after TxDOT issues an emergency Safety Compliance Order, then Developer thereafter shall have no right to contest. If Developer timely contests a Safety Compliance Order, Developer nevertheless shall implement the Safety Compliance Order, but if it is finally determined under the Dispute Resolution Procedures that Safety Compliance conditions did not exist, then the Safety Compliance Order shall be treated as a Directive Letter for a TxDOT Change.

ARTICLE 26
INSURANCE; PERFORMANCE SECURITY; INDEMNITY

26.1 Insurance

26.1.1 Insurance Policies and Coverage. At minimum Developer shall procure and keep in effect the Insurance Policies, or cause them to be procured and kept in effect, and in each case satisfy the requirements therefor set forth in this Section 26.1 and Exhibit 16. Developer shall also procure or cause to be procured and kept in effect the Contractors' insurance coverages as required in Section 26.1.2(e) and Exhibit 16.

26.1.2 General Insurance Requirements

(a) **Qualified Insurers.** Each of the Insurance Policies required hereunder shall be procured from an insurance carrier or company that, at the time coverage under the applicable policy commences is (i) licensed or authorized to do business in the State and has a current policyholder's management and financial size category rating of not less that "A-, VII" according to A.M. Best's Insurance Reports Key Rating Guide or (ii) otherwise approved by TxDOT.

(b) **Deductibles and Self-Insured Retentions.** TxDOT shall have no liability for deductibles, self-insured retentions and amounts in excess of the coverage provided, unless part of a Compensation Amount or Termination Compensation. In the event that any required coverage is provided under a self-insured retention, the entity responsible for the self-insured retention shall have an authorized representative issue a letter to TxDOT, at the same time the Insurance Policy is to be procured, stating that it shall protect and defend TxDOT to the same extent as if a commercial insurer provided coverage for TxDOT.

(c) **Primary Coverage.** Each Insurance Policy shall provide that the coverage thereof is primary and noncontributory coverage with respect to all named or additional insureds, except for coverage that by its nature cannot be written as primary. Any insurance or self-insurance beyond that specified in this Agreement that is maintained by an insured or any such additional insured shall be excess of such insurance and shall not contribute with it.

(d) **Verification of Coverage**

(i) At each time Developer is required to initially obtain or cause to be obtained each Insurance Policy, including insurance coverage required of Contractors, and thereafter not later than 15 days prior to the expiration date of each Insurance Policy, Developer shall deliver to TxDOT a certificate evidencing required insurances. The certificate of insurance shall be on the most recent ACORD form, without disclaimer. Each required certificate must be in standard form, state the identity of all carriers, named insureds and additional insureds, state the type and limits of coverage, deductibles and cancellation provisions of the policy, include as attachments all additional insured endorsements, include a statement of non-cancellation consistent with Section 26.1.2(g)(i) and be signed by an authorized representative of the insurance company shown on the certificate or its agent or broker.

(ii) In addition, within 15 days after availability, Developer shall deliver to TxDOT a complete certified copy of each such Insurance Policy or modification, or renewal or replacement Insurance Policy and all endorsements thereto.

(iii) If Developer has not provided TxDOT with the foregoing proof of coverage within five days after TxDOT delivers to Developer notice of a Developer Default under Section 29.1.9 and demand for the foregoing proof of coverage, TxDOT may, in addition to any other available remedy, without obligation or liability and without further inquiry as to whether such insurance is actually in force, (1) obtain such an Insurance Policy; and Developer shall reimburse TxDOT for the cost thereof upon demand, and (2) suspend all or any portion of Work and close the Project until TxDOT receives from Developer such proofs of coverage in compliance with this Section 26.1 (or until TxDOT obtains an Insurance Policy, if it elects to do so).

(e) **Contractor Insurance Requirements.** Developer's obligations regarding Contractors' insurance are contained in Exhibit 16. If any Contractor fails to procure and keep in effect the insurance required of it under Exhibit 16 and TxDOT gives notice of such failure as a potential default under Section 29.1.9, Developer may, within the applicable cure period under Section 29.1.9, cure such failure by (i) causing such Contractor to obtain the requisite insurance and providing to TxDOT proof of insurance, (ii) procuring the requisite insurance for such Contractor and providing to TxDOT proof of insurance or (iii) terminating the Contractor and removing its personnel from the Site.

(f) **Policies with Insureds in Addition to Developer.** All Insurance Policies that are required to insure Persons (whether as named or additional insureds) in addition to Developer shall comply or be endorsed to comply with the following provisions:

(i) The Insurance Policy shall be written or endorsed so that no acts or omissions of an insured shall vitiate coverage of the other insureds. Without limiting the foregoing, any failure on the part of a named insured to comply with reporting provisions or other conditions of the Insurance Policies, any breach of warranty, any action or inaction of a named insured or others, or any change in ownership of all or any portion of the Project or Developer's Interest shall not affect coverage provided to the other named insureds or additional insureds (and their respective members, directors, officers, employees, agents and Project consultants, to the extent covered thereby).

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

(iii) All endorsements adding additional insureds to required Insurance Policies shall contain no limitations, conditions, restrictions or exceptions to coverage in addition to those that apply under the Insurance Policy generally, and shall state that the interests and protections of each additional insured shall not be affected by any misrepresentation, act or omission of a named insured or any breach by a named insured of any provision in the policy which would otherwise result in forfeiture or reduction of coverage. Additional insured endorsements may exclude liability due to the sole negligence of the additional insured party. The commercial general liability and builder's third-party liability insurance shall include completed operations coverage.

(g) **Additional Terms and Conditions**

(i) Each Insurance Policy shall be endorsed to state that coverage cannot be canceled, voided, suspended, adversely modified, or reduced in coverage or in limits (including for non-payment of premium) except after 30 days' prior notice (or 10 days in the case of cancellation for non-payment of premium) by registered or certified mail, return receipt requested, has been given to TxDOT and each other insured or additional insured party required by the CDA Documents; *provided* that Developer may obtain as comparable an endorsement as possible if it establishes unavailability of this

endorsement as set forth in Section 26.1.2(l). Such endorsement shall not include any limitation of liability of the insurer for failure to provide such notice.

(ii) The commercial general liability Insurance Policy and any builder's third-party liability Insurance Policy shall cover liability arising out of the acts or omissions of Developer's employees engaged in the Work and employees of Contractors that are enrolled and provided coverage under such liability policy.

(iii) If Developer's or any Contractor's activities involve transportation of Hazardous Materials, the automobile liability Insurance Policy for Developer or such Contractor shall be endorsed to include for private, non-commercial vehicles Motor Carrier Act Endorsement-Hazardous Materials Clean up (MCS-90).

(iv) Each Insurance Policy shall provide coverage on an "occurrence" basis and not a "claims made" basis (with the exception of any professional liability and pollution liability Insurance Policies).

(h) **Waivers of Subrogation.** TxDOT waives all rights against the Developer-Related Entities, and Developer waives all rights against the Indemnified Parties, for any claims to the extent covered by valid and collectible insurance obtained pursuant to this Section 26.1, except such rights as they may have to the proceeds of such insurance. If Developer is deemed to self-insure a claim or loss under Section 26.1.4(c), then Developer's waiver shall apply as if it carried the required insurance. Developer shall require all Contractors to provide similar waivers in writing each in favor of all other parties enumerated above. Subject to Section 26.1.2(l), each Insurance Policy, including workers' compensation if permitted under the applicable worker's compensation insurance Laws, shall include a waiver of any right of subrogation against the Indemnified Parties or a consent to the insured's waiver of recovery in advance of loss; *provided* that with respect to auto liability policies that Developer is to cause non-Key Contractors to obtain pursuant to Exhibit 16, Developer's obligation is limited to using diligent efforts to cause each such Contractor to include in the policy an agreement of the insurer to waive any subrogation rights the insurer may have against the Indemnified Parties or the insurer's consent to the insured's waiver of recovery in advance of loss.

(i) **No Recourse.** There shall be no recourse against TxDOT or the Independent Engineer for payment of premiums or other amounts with respect to the Insurance Policies required hereunder, except to the extent of increased premium costs recoverable under Section 13.1 or 27.2.

(j) **Support of Indemnifications.** The Insurance Policies shall support but are not intended to limit Developer's indemnification obligations under the CDA Documents.

(k) **Adjustments in Coverage Amounts**

(i) Upon the later of Final Acceptance for the last Project Segment of the Initial Configuration or the fifth anniversary of the Effective Date, and at least once every five years thereafter during the Term, TxDOT and Developer shall review and increase, as appropriate, the per occurrence and aggregate limits or combined single limits for the Insurance Policies that have stated dollar amounts set forth in Exhibit 16 for per occurrence, aggregate or combined single limits. At the same frequency TxDOT and Developer shall review and adjust, as appropriate, the deductibles or self-insured retentions for the Insurance Policies.

(ii) Developer shall retain a qualified and reputable insurance broker or advisor, experienced in insurance brokerage and underwriting practices for major highway projects, to

analyze and recommend increases, if any, in such limits and adjustments to deductibles or self-insured retentions. Developer shall deliver to TxDOT, not later than 120 days before each fifth year anniversary of the Effective Date, a report including such analysis and recommendations for TxDOT's approval. TxDOT shall have 45 days after receiving such report to approve or disapprove the proposed increases in limits and adjustments to deductibles or self-insured retentions.

(iii) In determining increases in limits and adjustments to deductibles or self-insured retentions, Developer and TxDOT shall take into account (1) claims and loss experience for the Project; *provided* that premium increases due to adverse claims experience shall not be a basis for justifying increased deductibles or self-insured retentions, (2) the condition of the Project, (3) the Safety Compliance and Noncompliance Points record for the Project, (4) then-prevailing Good Industry Practice for insuring comparable transportation projects and (5) the provisions regarding unavailability of increased coverage set forth in Section 26.1.2(l).

(iv) Any Dispute regarding increases in limits or adjustments to deductibles or self-insured retentions shall be resolved according to the Dispute Resolution Procedures.

(l) **Inadequacy and Unavailability of Required Coverages**

(i) TxDOT makes no representation that the limits of liability specified for any Insurance Policy to be carried pursuant to this Agreement or approved variances therefrom are adequate to protect Developer against its undertakings under this Agreement, to TxDOT, or any third party. No such limits of liability or approved variances therefrom shall preclude TxDOT from taking any actions as are available to it under the CDA Documents or the Lease, or otherwise at Law.

(ii) If Developer demonstrates to TxDOT's reasonable satisfaction that it has used diligent efforts in the global insurance and reinsurance markets to place the insurance coverages it is required to provide hereunder, and if despite such diligent efforts and through no fault of Developer any of such coverages (or any of the required terms of such coverages, including Insurance Policy limits) are or become unavailable on commercially reasonable terms, TxDOT will grant Developer an interim variance from such requirements under which Developer shall obtain and maintain or cause to be obtained and maintained alternative insurance packages and programs that provide risk coverage as comparable to that contemplated in this Section 26.1 as is commercially reasonable under then-existing insurance market conditions.

(iii) Developer shall not be excused from satisfying the insurance requirements of this Section 26.1 merely because premiums for such insurance are higher than anticipated. To establish that the required coverages (or required terms of such coverages, including Insurance Policy limits) are not available on commercially reasonable terms, Developer shall bear the burden of proving either that (1) the same is not available at all in the global insurance and reinsurance markets or (2) the premiums for the same have so materially increased over those previously paid for the same coverage that no reasonable and prudent risk manager for a Person seeking to insure comparable risks would conclude that such increased premiums are justified by the risk protection afforded. For the purpose of clause (2) above, the only increases in premiums that may be considered are those caused by changes in general market conditions in the insurance industry affecting insurance for project-financed highway facilities, and Developer shall bear the burden of proving that premium increases are the result of such changes in general market conditions. For the avoidance of doubt, no increase in insurance premiums attributable to particular conditions of the Project or Project Right of Way, or to claims or loss experience of any Developer-Related Entity or Affiliate, whether under an Insurance Policy required by this Section 26.1 or in connection with any unrelated work or activity of Developer-Related Entities or Affiliates, shall be considered in determining whether required insurance is commercially unavailable.

(m) **Defense Costs.** No defense costs shall be included within or erode the limits of coverage of any of the Insurance Policies, except that defense costs may be included within the limits of coverage of professional and pollution liability policies.

(n) **Contesting Denial of Coverage.** If any insurance carrier under an Insurance Policy denies coverage with respect to any claims reported to such carrier, upon Developer's request, TxDOT and, to the extent necessary, the other Indemnified Parties shall cooperate in good faith to establish whether and to what extent to contest, and how to fund the cost of contesting, the denial of coverage; *provided* that if the reported claim is a matter covered by an indemnity from Developer under this Agreement in favor of an Indemnified Party, then Developer shall bear all costs of contesting the denial of coverage.

26.1.3 Lender Insurance Requirements; Additional Insurance Policies

(a) If under the terms of any Funding Agreement or Security Document Developer is obligated to, and does, carry insurance coverage with higher limits, lower deductibles or self-insured retentions, or broader coverage than required under this Agreement, Developer's provision of such insurance shall satisfy the applicable requirements of this Agreement provided such Insurance Policy meets all the other applicable requirements of this Section 26.1.

(b) If Developer carries insurance coverage in addition to that required under this Agreement, then Developer shall include TxDOT, the Independent Engineer and their respective members, directors, officers, employees, agents and Project consultants as additional insureds thereunder, if available, if and to the extent they have an insurable interest. The additional insured endorsements shall be as described in Section 26.1.2(f)(iii); and Developer shall provide to TxDOT the proofs of coverage and copy of the policy described in Section 26.1.2(d). If, however, Developer demonstrates to TxDOT that inclusion of such Persons as additional insureds will increase the premium, TxDOT shall elect either to pay the increase in premium or forego additional insured coverage. The provisions of subsections (d), (f), (h), (i) and (n) of Section 26.1.2 and Section 26.1.4 shall apply to all such policies of insurance coverage, as if they were within the definition of Insurance Policies.

26.1.4 Prosecution of Claims

(a) Unless otherwise directed by TxDOT with respect to TxDOT's insurance claims, Developer shall be responsible for reporting and processing all potential claims by TxDOT or Developer against the Insurance Policies required hereunder. Developer agrees to report timely to the insurer(s) under such Insurance Policies any and all matters which may give rise to an insurance claim by Developer or TxDOT or another Indemnified Party and to promptly and diligently pursue such insurance claims in accordance with the claims procedures specified in such Insurance Policies, whether for defense or indemnity or both. Developer shall enforce all legal rights against the insurer under the applicable Insurance Policies and applicable Laws in order to collect thereon, including pursuing necessary litigation and enforcement of judgments; *provided* that Developer shall be deemed to have satisfied this obligation if a judgment is not collectible through the exercise of lawful and diligent means.

(b) TxDOT agrees to promptly notify Developer of TxDOT's incidents, potential claims against TxDOT, and matters which may give rise to an insurance claim against TxDOT, to tender to the insurer TxDOT's defense of the claim under such Insurance Policies, and to cooperate with Developer as necessary for Developer to fulfill its duties hereunder. If solely as a result of a TxDOT delay TxDOT loses coverage under a required insurance policy, then Developer shall be relieved of any obligation otherwise owing to TxDOT to the extent of the required coverage. Developer shall ensure that the defense of the claim is coordinated by the insurer with TxDOT and the Texas Office of the Attorney

General and shall ensure that the insurer does not agree to any settlement without first obtaining the concurrence of the Texas Office of the Attorney General.

(c) If in any instance Developer has not performed its obligations respecting insurance coverage set forth in this Agreement or is unable to enforce and collect any such insurance for failure to assert claims in accordance with the terms of the Insurance Policies or to prosecute claims diligently, then for purposes of determining Developer's liability and the limits thereon or determining reductions in compensation due from TxDOT to Developer on account of available insurance, Developer shall be treated as if it has elected to self-insure up to the full amount of insurance coverage which would have been available had Developer performed such obligations and not committed such failure. Nothing in this Section 26.1.4 or elsewhere in this Section 26.1 shall be construed to treat Developer as electing to self-insure where Developer is unable to collect due to the bankruptcy or insolvency of any insurer which at the time the Insurance Policy is written meets the rating qualifications set forth in this Section 26.1.

(d) If in any instance Developer has not promptly performed its obligation to report to applicable insurers and process any potential insurance claim tendered by TxDOT or another Indemnified Party, then TxDOT or the other Indemnified Party may, but is not obligated to, (i) notify Developer of TxDOT's intent to report the claim directly with the insurer and thereafter process the claim, and (ii) proceed with reporting and processing the claim if TxDOT or the other Indemnified Party does not receive from Developer, within 10 days after so notifying Developer, proof that Developer has reported the claim directly to the insurer. TxDOT or the other Indemnified Party may dispense with such notice to Developer if TxDOT or the other Indemnified Party has a good faith belief that more rapid reporting is needed to preserve the claim.

26.1.5 Umbrella and Excess Policies. Developer shall have the right to satisfy the requisite insurance coverage amounts for liability insurance through a combination of primary policies and umbrella or excess policies. Umbrella and excess policies shall comply with all insurance requirements, terms and provisions set forth in this Agreement for the applicable type of coverage.

26.2 Payment and Performance Security. Developer shall provide payment and performance bonds to TxDOT securing Developer's obligations hereunder, and shall maintain such bonds in full force and effect as described below.

26.2.1 Performance Bond. On or before the issuance by TxDOT of NTP1, Developer shall deliver, or caused to be delivered by the Design-Build Contractor, to TxDOT one or multiple performance bonds (each, a "**Performance Bond**") in the initial aggregate amount of $20,000,000 to secure Developer's obligations for any work performed prior to NTP2 and in the form attached hereto as Exhibit 17A. Upon the issuance by TxDOT of NTP2, the amount of the Performance Bond shall increase to $703,411,115, securing Developer's obligations to perform the original Secured Work (under clause (a) of the definition thereof) in accordance with the Performance Bond rider included in Exhibit 17A effecting such increase. After Final Acceptance, such Performance Bond shall be released. Developer shall provide separate Performance Bonds for each undertaking of subsequent Secured Work, in an amount equal to 100% of the contracted cost, as security for Developer's obligations to perform the subsequent Secured Work throughout the remainder of the Term (including the General Purpose Lane Capacity Improvements, if and when TxDOT issues NTP3).

26.2.2 Payment Bond. On or before the issuance by TxDOT of NTP1, Developer shall deliver, or caused to be delivered by the Design-Build Contractor, to TxDOT one or multiple payment bonds (each, a "**Payment Bond**") in the initial aggregate amount of $20,000,000 to secure Developer's obligations for any work performed prior to NTP2 and in the form attached hereto as Exhibit 17B. Upon the issuance by TxDOT of NTP2, the amount of the Payment Bond shall increase to $703,411,115,

securing Developer's obligations to pay for the original Secured Work (under clause (a) of the definition thereof) in accordance with the Payment Bond rider included in Exhibit 17B effecting such increase. After Final Acceptance, such Payment Bond shall be released. Developer shall provide separate Payment Bonds for each undertaking of subsequent Secured Work, in an amount equal to 100% of the contracted cost, as security for Developer's obligations to pay for such subsequent Secured Work throughout the remainder of the Term (including the General Purpose Lane Capacity Improvements, if and when TxDOT issues NTP3).

26.2.3 Condition Precedent to Commencement of Work. Developer shall not commence or permit or suffer commencement of any Design Work or Construction Work until Developer obtains from its Sureties and provides to TxDOT confirmation that the Performance Bond and Payment Bond amounts have been increased in accordance with Sections 26.2.1 and 26.2.2.

26.2.4 Requirements for Bonds. Each bond required hereunder shall be issued by a Surety authorized to do business in the State with a rating of at least A minus (A-) or better and Class VIII or better by A.M. Best Company or rated in the top two categories by two nationally recognized rating agencies, or as otherwise approved by TxDOT in its discretion. If any bond previously provided becomes ineffective, or if the Surety that provided the bond no longer meets the requirements hereof, Developer shall provide a replacement bond in the same form issued by a surety meeting the foregoing requirements, or other assurance satisfactory to TxDOT in its sole discretion. If the cost of Construction Work is increased in connection with a Change Order, TxDOT may, in its discretion, require a corresponding proportionate increase in the amount of each bond or alternative security.

26.2.5 Security from O&M Contractors. In the event Developer obtains payment or performance security from any O&M Contractor, Developer shall cause TxDOT to be named at issuance of such payment and performance security as an additional obligee or beneficiary thereunder, and shall deliver a certified copy thereof, with the multiple obligee rider or other comparable documentation, to TxDOT within 10 days after issuance.

26.2.6 Bonds Provided by Contractors; Multiple Obligees

(a) With respect to each Payment Bond, Developer may elect (i) to procure the bond directly, so that it is security for Developer's payment obligations to Contractors and laborers performing the Secured Work, or (ii) deliver multiple Payment Bonds from each Design-Build Contractor and from any other prime Contractor performing the original Secured Work, so that each such Payment Bond is security for payment to subcontractors and laborers under its Contract.

(b) With respect to each Performance Bond, Developer may elect (i) to procure the bond directly, so that it is security for Developer's performance obligations under the CDA Documents respecting the Secured Work, or (ii) deliver multiple Performance Bonds from each Design-Build Contractor and from any other prime Contractor performing the original Secured Work, so that each such Performance Bond is security for performance of the respective entity's obligations under its Contract.

(c) If Developer makes the election under Section 26.2.6(a)(ii) or Section 26.2.6(b)(ii), then (i) a multiple obligee rider in which TxDOT is named as an additional obligee in the form set forth in Exhibit 17A or 17B, as applicable, under which all rights of Developer are subordinated to TxDOT also must be provided, (ii) the language of the bond form set forth in Exhibit 17A and 17B, as applicable, shall be adjusted to reflect this election, but only as necessary to identify the Design-Build Contract or other prime Contract as the bonded contract, to identify Design-Build Contractor or other prime Contractor as the principal, and to change the obligee to Developer, and (iii) such bond shall otherwise conform to the requirements set forth in this Section 26.2.

26.3 Letters of Credit

26.3.1 General Provisions. Wherever in the CDA Documents Developer has the option or obligation to deliver to TxDOT a letter of credit, the following provisions shall apply except to the extent expressly provided otherwise in the CDA Documents:

(a) The letter of credit shall (i) be a standby letter of credit; (ii) be issued by a financial institution with a credit rating of "A3" or better according to Moody's Investors Service or "A-" or better according to Standard & Poor's Rating Services, a division of The McGraw-Hill Companies, Inc. and with an office in Austin, Dallas, Houston or San Antonio at which the letter of credit can be presented for payment, or if such financial institution does not have an office in any of such cities at which the letter of credit may be presented for payment, then it must accept presentation of the letter of credit, sight draft and certificate by facsimile transmission to a location in the United States; (iii) be in form approved by TxDOT in its discretion (for the avoidance of doubt, TxDOT will accept a form substantially similar to the form TxDOT included in the Reference Information Documents (if any)); (iv) be payable immediately, conditioned only on presentment from TxDOT to the issuer of a sight draft drawn on the letter of credit and a certificate stating that TxDOT has the right to draw under the letter of credit in the amount of the sight draft, up to the amount due to TxDOT, without requirement to present the original letter of credit; (v) provide an expiration date not earlier than one year from date of issue; (vi) allow for multiple draws; and (vii) name TxDOT beneficiary.

(b) TxDOT shall have the right to draw on the letter of credit as and when provided in Section 29.4.9 for draws under clause (i) below and without prior notice to Developer for draws under clause (ii) below, unless otherwise expressly provided in the CDA Documents with respect to the letter of credit, if (i) Developer has failed to pay or perform when due the duty, obligation or liability under the CDA Documents for which the letter of credit is held or (ii) Developer for any reason fails to deliver to TxDOT a new or replacement letter of credit, on the same terms, or at least a one year extension of the expiration date of the existing letter of credit, by not later than 45 days before such expiration date, unless the applicable terms of the CDA Documents expressly require no further letter of credit with respect to the duty, obligation or liability in question. For all draws conditioned on prior notice from TxDOT to Developer, no such notice shall be required if it would preclude draw before the expiration date of the letter of credit. Draw on the letter of credit shall not be conditioned on prior resort to any other security of Developer. If TxDOT draws on the letter of credit under clause (i) above, TxDOT shall use and apply the proceeds as provided in the CDA Documents for such letter of credit. If TxDOT draws on the letter of credit under clause (ii) above, TxDOT shall be entitled to draw on the full face amount of the letter of credit and shall retain such amount as cash security to secure the obligations under the letter of credit without payment of interest to Developer.

(c) TxDOT shall use and apply draws on letters of credit toward satisfying the relevant obligation of Developer (or, if applicable, any other Person for which the letter of credit is performance security). If TxDOT receives proceeds of a draw in excess of the relevant obligation, TxDOT shall promptly refund the excess to Developer (or such other Person) after all relevant obligations are satisfied in full.

(d) Developer's sole remedy in connection with the improper presentment or payment of sight drafts drawn under letters of credit shall be to obtain from TxDOT a refund of the proceeds which are misapplied, interest thereon, at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, from the date of improper draw until repaid, and subject to Section 29.7.4, reimbursement of the reasonable costs Developer incurs as a result of such misapplication; *provided* that at the time of such refund Developer increases the amount of the letter of credit to the amount (if any) then required under applicable provisions of this Agreement. Developer acknowledges that the

presentment of sight drafts drawn upon a letter of credit could not under any circumstances cause Developer injury that could not be remedied by an award of money damages, and that the recovery of money damages would be an adequate remedy. Accordingly, Developer covenants (i) not to request or instruct the issuer of any letter of credit to refrain from paying any sight draft drawn under the letter of credit and (ii) not to commence or pursue any legal proceeding seeking, and Developer irrevocably waives and relinquishes any right, to enjoin, restrain, prevent, stop or delay any draw on any letter of credit.

(e) Developer shall obtain and furnish all letters of credit and replacements thereof at its sole cost and expense, and shall pay all charges imposed in connection with TxDOT's presentment of sight drafts and drawing against letters of credit or replacements thereof.

(f) In the event TxDOT makes a permitted assignment of its rights and interests under this Agreement, Developer shall cooperate so that concurrently with the effectiveness of such assignment, either replacement letters of credit for, or appropriate amendments to, the outstanding letters of credit shall be delivered to the assignee naming the assignee as beneficiary, at no cost to Developer.

(g) TxDOT acknowledges that if the letter of credit is performance security for a Person other than Developer (e.g., a Key Contractor), TxDOT's draw may only be based on the underlying obligations of such Person.

26.3.2 Special Letter of Credit Provisions. Any terms and conditions applicable to a particular letter of credit that Developer or a Lender is required to or may provide under this Agreement are set forth in the provisions of this Agreement describing such letter of credit.

26.4 Guarantees

26.4.1 Guarantees of Developer Obligations. In the event Developer is required under the terms of the ITP to deliver to TxDOT a guaranty of payment or performance of any of Developer's obligations under the CDA Documents, such guaranty shall remain in full force and effect in accordance with its terms.

26.4.2 Guarantees of Key Contractor Obligations. In the event Developer, any Affiliate or any Lender receives from any Person a guaranty of payment or performance of any obligation(s) of a Key Contractor, Developer shall cause such Person to (i) expressly include TxDOT as a guaranteed party under such guaranty, with the same protections and rights of notice, enforcement and collection as are available to any other guaranteed party, and (ii) deliver to TxDOT a duplicate original of such guaranty. Such guaranty shall provide that the rights and protections of TxDOT shall not be reduced, waived, released or adversely affected by the acts or omissions of any other guaranteed party, other than through the rendering of payment and performance to another guaranteed party. TxDOT agrees to forebear from exercising remedies under any such guaranty so long as Developer or a Lender is diligently pursuing remedies thereunder.

26.5 Indemnity by Developer

26.5.1 Subject to Section 26.5.4, Developer shall release, protect, defend, indemnify and hold harmless the Indemnified Parties from and against any and all claims, causes of action, suits, judgments, investigations, legal or administrative proceedings, demands and Losses, in each case, if asserted or incurred by or awarded to any third party, arising out of, relating to or resulting from:

(a) The breach or alleged breach of the CDA Documents by Developer;

(b) The failure or alleged failure by any Developer-Related Entity to comply with the Governmental Approvals, any applicable Environmental Laws or other Laws (including Laws regarding Hazardous Materials Management);

(c) Any alleged patent or copyright infringement or other allegedly improper appropriation or use by any Developer-Related Entity of trade secrets, patents, proprietary information, know-how, copyright rights or inventions in performance of the Work, or arising out of any use in connection with the Project of methods, processes, designs, information, or other items furnished or communicated to TxDOT or another Indemnified Party pursuant to the CDA Documents; *provided* that this indemnity shall not apply to any infringement resulting from TxDOT's failure to comply with specific instructions regarding use provided to TxDOT by Developer;

(d) The actual or alleged culpable act, culpable error or misconduct of any Developer-Related Entity in or associated with performance of the Work;

(e) Any and all claims by any governmental or taxing authority claiming taxes based on gross receipts, purchases or sales, the use of any property or income of any Developer-Related Entity with respect to any payment for the Work made to or earned by any Developer-Related Entity;

(f) Any and all stop notices, liens and claims filed in connection with the Work, including all expenses and attorneys', accountants' and expert witness fees and costs incurred in discharging any stop notice, lien or claim, and any other liability to Contractors, laborers and Suppliers for failure to pay sums due for their work, services, materials, goods, equipment or supplies; *provided* that TxDOT is not in default in payments owing (if any) to Developer with respect to such Work;

(g) Any actual or threatened Developer Release of Hazardous Materials;

(h) The claim or assertion by any other developer or contractor that any Developer-Related Entity interfered with or hindered the progress or completion of work being performed by the other contractor or developer, or failed to cooperate reasonably with the other developer or contractor, so as to cause inconvenience, disruption, delay or loss, except where the Developer-Related Entity was not in any manner engaged in performance of the Work;

(i) Any dispute between Developer and a Utility Owner, or any Developer-Related Entity's performance of, or failure to perform, the obligations under any Utility Agreement;

(j) (i) Any Developer-Related Entity's breach of or failure to perform an obligation that TxDOT owes to a third Person, including Governmental Entities, under Law or under any agreement between TxDOT and a third Person, where TxDOT has delegated performance of the obligation to Developer pursuant to the terms of the CDA Documents or (ii) the acts or omissions of any Developer-Related Entity that render TxDOT unable to perform or abide by an obligation that TxDOT owes to a third Person, including Governmental Entities, under any agreement between TxDOT and a third Person, where the agreement is previously disclosed or known to Developer;

(k) The fraud, bad faith, arbitrary or capricious acts, willful misconduct, negligence or violation of Law or contract by any Developer-Related Entity in connection with Developer's performance of real property acquisition services under the CDA Documents;

(l) Inverse condemnation, trespass, nuisance or similar taking of or harm to real property by reason of (i) the failure of any Developer-Related Entity to comply with Good Industry Practice, requirements of the CDA Documents, Project Management Plan or Governmental Approvals

respecting control and mitigation of construction activities and construction impacts, (ii) the intentional misconduct or negligence of any Developer-Related Entity, or (iii) the actual physical entry onto or encroachment upon another's property by any Developer-Related Entity; or

(m) If applicable, any violation of any federal or state securities or similar law by any Developer-Related Entity, or Developer's failure to comply with any requirement necessary to preserve the tax exempt status of interest paid on the PABs.

26.5.2 Subject to Section 26.5.4, Developer shall release, protect, defend, indemnify and hold harmless the Indemnified Parties from and against any and all claims, causes of action, suits, judgments, investigations, legal or administrative proceedings, demands and Losses, in each case if asserted or incurred by or awarded to any third party, arising out of, relating to or resulting from errors, inconsistencies or other Defects in the design or construction of the Project and/or of Utility Adjustments included in the Design Work or Construction Work, including any such Losses arising out of, relating to, or resulting from the performance by TxDOT of materials inspection and testing services pursuant to Exhibit 9 (if TxDOT performs such services).

26.5.3 Subject to Section 26.5.4, Developer shall release, protect, defend, indemnify and hold harmless TxDOT from and against any and all claims, causes of action, suits, judgments, investigations, legal or administrative proceedings, demands and Losses, in each case if asserted or incurred by or awarded to HCTRA, arising out of, relating to or resulting from the performance by TxDOT under the TxDOT Tolling Services Agreement to the extent TxDOT is acting at Developer's direction or on Developer's behalf.

26.5.4 Subject to the releases and disclaimers herein, Developer's indemnity obligation shall not extend to any claims, causes of action, suits, judgments, investigations, legal or administrative proceedings, demands and Losses, in each case if asserted or incurred by or awarded to any third party to the extent caused or contributed to by (a) the negligence, recklessness or willful misconduct, bad faith or fraud of the Indemnified Party; (b) TxDOT's breach of any of its obligations under the CDA Documents or any TxDOT Tolling Services Agreement; (c) an Indemnified Party's violation of any Laws or Governmental Approvals; or (d) any material defect inherent in a prescriptive design, construction, operations or maintenance specification included in the Technical Provisions, but only where prior to occurrence of the third-party Loss Developer complied with such specification and did not actually know, or would not reasonably have known, while exercising reasonable diligence, that it was deficient or, if Developer actually knew of the deficiency, unsuccessfully sought TxDOT's waiver or approval of a Deviation from such specification.

26.5.5 In claims by an employee of Developer, a Contractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section 26.5 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for Developer or a Contractor under workers' compensation, disability benefit or other employee benefits laws.

26.5.6 For purposes of this Section 26.5, "third party" means any person or entity other than an Indemnified Party and Developer, except that a "third party" includes any Indemnified Party's employee, agent or contractor who asserts a claim against an Indemnified Party that is within the scope of the indemnities and that is not covered by the Indemnified Party's worker's compensation program.

26.6 Defense and Indemnification Procedures

26.6.1 IF ANY OF THE INDEMNIFIED PARTIES RECEIVES NOTICE OF A CLAIM OR OTHERWISE HAS ACTUAL KNOWLEDGE OF A CLAIM THAT IT BELIEVES IS WITHIN THE SCOPE OF THE INDEMNITIES UNDER SECTION 26.5, TXDOT SHALL BY WRITING AS SOON AS PRACTICABLE AFTER RECEIPT OF NOTICE OF THE CLAIM, (A) INFORM DEVELOPER OF THE CLAIM, (B) SEND TO DEVELOPER A COPY OF ALL MATERIALS TXDOT HAS RECEIVED ASSERTING SUCH CLAIM AND (C) NOTIFY DEVELOPER THAT SHOULD NO INSURER ACCEPT DEFENSE OF THE CLAIM, THE INDEMNIFIED PARTY WILL CONDUCT ITS OWN DEFENSE UNLESS DEVELOPER ACCEPTS THE TENDER OF THE CLAIM IN ACCORDANCE WITH SECTION 26.6.3. AS SOON AS PRACTICABLE AFTER DEVELOPER RECEIVES NOTICE OF A CLAIM OR OTHERWISE HAS ACTUAL KNOWLEDGE OF A CLAIM, IT SHALL TENDER THE CLAIM IN WRITING TO THE INSURERS UNDER ALL POTENTIALLY APPLICABLE INSURANCE POLICIES. TXDOT AND OTHER INDEMNIFIED PARTIES ALSO SHALL HAVE THE RIGHT TO TENDER SUCH CLAIMS TO SUCH INSURERS.

26.6.2 IF THE INSURER UNDER ANY APPLICABLE INSURANCE POLICY ACCEPTS THE TENDER OF DEFENSE, TXDOT AND DEVELOPER SHALL COOPERATE IN THE DEFENSE AS REQUIRED BY THE INSURANCE POLICY. IF NO INSURER UNDER POTENTIALLY APPLICABLE INSURANCE POLICIES PROVIDES DEFENSE, THEN SECTION 26.6.3 SHALL APPLY.

26.6.3 IF THE DEFENSE IS TENDERED TO DEVELOPER, THEN WITHIN 30 DAYS AFTER RECEIPT OF THE TENDER IT SHALL NOTIFY THE INDEMNIFIED PARTY WHETHER IT HAS TENDERED THE MATTER TO AN INSURER AND (IF NOT TENDERED TO AN INSURER OR IF THE INSURER HAS REJECTED THE TENDER) SHALL DELIVER A NOTICE STATING THAT DEVELOPER (A) ACCEPTS THE TENDER OF DEFENSE AND CONFIRMS THAT THE CLAIM IS SUBJECT TO FULL INDEMNIFICATION HEREUNDER WITHOUT ANY "RESERVATION OF RIGHTS" TO DENY OR DISCLAIM FULL INDEMNIFICATION THEREAFTER, (B) ACCEPTS THE TENDER OF DEFENSE BUT WITH A "RESERVATION OF RIGHTS" IN WHOLE OR IN PART OR (C) REJECTS THE TENDER OF DEFENSE BASED ON A DETERMINATION THAT IT IS NOT REQUIRED TO INDEMNIFY AGAINST THE CLAIM UNDER THE TERMS OF THIS AGREEMENT.

26.6.4 IF DEVELOPER ACCEPTS THE TENDER OF DEFENSE UNDER SECTION 26.6.3(A), DEVELOPER SHALL HAVE THE RIGHT TO SELECT LEGAL COUNSEL FOR THE INDEMNIFIED PARTY, SUBJECT TO REASONABLE APPROVAL BY THE INDEMNIFIED PARTY, AND DEVELOPER SHALL OTHERWISE CONTROL THE DEFENSE OF SUCH CLAIM, INCLUDING SETTLEMENT, AND BEAR THE FEES AND COSTS OF DEFENDING AND SETTLING SUCH CLAIM. DURING SUCH DEFENSE, (A) DEVELOPER SHALL FULLY AND REGULARLY INFORM THE INDEMNIFIED PARTY OF THE PROGRESS OF THE DEFENSE AND OF ANY SETTLEMENT DISCUSSIONS AND (B) THE INDEMNIFIED PARTY SHALL FULLY COOPERATE IN SAID DEFENSE, PROVIDE TO DEVELOPER ALL MATERIALS AND ACCESS TO PERSONNEL IT REQUESTS AS NECESSARY FOR DEFENSE, PREPARATION AND TRIAL AND WHICH OR WHO ARE UNDER THE CONTROL OF OR REASONABLY AVAILABLE TO THE INDEMNIFIED PARTY, AND MAINTAIN THE CONFIDENTIALITY OF ALL COMMUNICATIONS BETWEEN IT AND DEVELOPER CONCERNING SUCH DEFENSE.

26.6.5 IF DEVELOPER RESPONDS TO THE TENDER OF DEFENSE AS SPECIFIED IN SECTION 26.6.3(B) OR (C), THE INDEMNIFIED PARTY SHALL BE ENTITLED TO SELECT ITS OWN LEGAL COUNSEL AND OTHERWISE CONTROL THE DEFENSE OF SUCH CLAIM, INCLUDING SETTLEMENT.

26.6.6 THE INDEMNIFIED PARTY MAY ASSUME ITS OWN DEFENSE BY DELIVERING TO DEVELOPER NOTICE OF SUCH ELECTION AND THE REASONS THEREFOR, IF THE INDEMNIFIED PARTY, AT THE TIME IT GIVES NOTICE OF THE CLAIM OR AT ANY TIME THEREAFTER, REASONABLY DETERMINES THAT (A) CONFLICT EXISTS BETWEEN IT AND DEVELOPER WHICH PREVENTS OR

POTENTIALLY PREVENTS DEVELOPER FROM PRESENTING A FULL AND EFFECTIVE DEFENSE, (B) DEVELOPER IS OTHERWISE NOT PROVIDING AN EFFECTIVE DEFENSE IN CONNECTION WITH THE CLAIM OR (C) DEVELOPER LACKS THE FINANCIAL CAPACITY TO SATISFY POTENTIAL LIABILITY OR TO PROVIDE AN EFFECTIVE DEFENSE.

26.6.7 IF THE INDEMNIFIED PARTY IS ENTITLED AND ELECTS TO CONDUCT ITS OWN DEFENSE PURSUANT HERETO OF A CLAIM FOR WHICH IT IS ENTITLED TO INDEMNIFICATION, DEVELOPER SHALL REIMBURSE ON A CURRENT BASIS ALL REASONABLE COSTS AND EXPENSES THE INDEMNIFIED PARTY INCURS IN INVESTIGATING AND DEFENDING. IN THE EVENT THE INDEMNIFIED PARTY IS ENTITLED TO AND ELECTS TO CONDUCT ITS OWN DEFENSE, THEN (A) IN THE CASE OF A DEFENSE CONDUCTED UNDER SECTION 26.6.3(A), IT SHALL HAVE THE RIGHT TO SETTLE OR COMPROMISE THE CLAIM WITH DEVELOPER'S PRIOR CONSENT, WHICH SHALL NOT BE UNREASONABLY WITHHELD OR DELAYED; (B) IN THE CASE OF A DEFENSE CONDUCTED UNDER SECTION 26.6.3(B), IT SHALL HAVE THE RIGHT TO SETTLE OR COMPROMISE THE CLAIM WITH DEVELOPER'S PRIOR CONSENT, WHICH SHALL NOT BE UNREASONABLY WITHHELD OR DELAYED, OR WITH APPROVAL OF THE COURT OR ARBITRATOR FOLLOWING REASONABLE NOTICE TO DEVELOPER AND OPPORTUNITY TO BE HEARD AND WITHOUT PREJUDICE TO THE INDEMNIFIED PARTY'S RIGHTS TO BE INDEMNIFIED BY DEVELOPER; AND (C) IN THE CASE OF A DEFENSE CONDUCTED UNDER SECTION 26.6.3(C), IT SHALL HAVE THE RIGHT TO SETTLE OR COMPROMISE THE CLAIM WITHOUT DEVELOPER'S PRIOR CONSENT AND WITHOUT PREJUDICE TO ITS RIGHTS TO BE INDEMNIFIED BY DEVELOPER.

26.6.8 A REFUSAL OF, OR FAILURE TO ACCEPT, A TENDER OF DEFENSE, AS WELL AS ANY DISPUTE OVER WHETHER AN INDEMNIFIED PARTY WHICH HAS ASSUMED CONTROL OF DEFENSE IS ENTITLED TO DO SO UNDER SECTION 26.6.6, SHALL BE RESOLVED ACCORDING TO THE DISPUTE RESOLUTION PROCEDURES. DEVELOPER SHALL BE ENTITLED TO CONTEST AN INDEMNIFICATION CLAIM AND PURSUE, THROUGH THE DISPUTE RESOLUTION PROCEDURES, RECOVERY OF DEFENSE AND INDEMNITY PAYMENTS IT HAS MADE TO OR ON BEHALF OF THE INDEMNIFIED PARTY.

26.6.9 THE PARTIES ACKNOWLEDGE THAT WHILE SECTION 26.5 CONTEMPLATES THAT DEVELOPER WILL HAVE RESPONSIBILITY FOR CERTAIN CLAIMS AND LIABILITIES ARISING OUT OF ITS OBLIGATIONS TO INDEMNIFY, CIRCUMSTANCES MAY ARISE IN WHICH THERE MAY BE SHARED LIABILITY OF THE PARTIES WITH RESPECT TO SUCH CLAIMS AND LIABILITIES. IN SUCH CASE, WHERE EITHER PARTY BELIEVES A CLAIM OR LIABILITY MAY ENTAIL SHARED RESPONSIBILITY AND THAT PRINCIPLES OF COMPARATIVE NEGLIGENCE AND INDEMNITY ARE APPLICABLE, IT SHALL CONFER WITH THE OTHER PARTY ON MANAGEMENT OF THE CLAIM OR LIABILITY IN QUESTION. IF THE PARTIES CANNOT AGREE ON AN APPROACH TO REPRESENTATION IN THE MATTER IN QUESTION, EACH SHALL ARRANGE TO REPRESENT ITSELF AND TO BEAR ITS OWN COSTS IN CONNECTION THEREWITH PENDING THE OUTCOME OF SUCH MATTER. WITHIN 30 DAYS SUBSEQUENT TO THE FINAL, NON-APPEALABLE RESOLUTION OF THE MATTER IN QUESTION, WHETHER BY ARBITRATION OR BY JUDICIAL PROCEEDINGS, THE PARTIES SHALL ADJUST THE COSTS OF DEFENSE, INCLUDING REIMBURSEMENT OF REASONABLE ATTORNEYS' FEES AND OTHER LITIGATION AND DEFENSE COSTS, IN ACCORDANCE WITH THE INDEMNIFICATION ARRANGEMENTS OF SECTION 26.5, AND CONSISTENT WITH THE OUTCOME OF SUCH PROCEEDINGS CONCERNING THE RESPECTIVE LIABILITIES OF THE PARTIES ON THE THIRD-PARTY CLAIM.

26.6.10 IN DETERMINING RESPONSIBILITIES AND OBLIGATIONS FOR DEFENDING SUITS PURSUANT TO THIS SECTION 26.6, SPECIFIC CONSIDERATION SHALL BE GIVEN TO THE FOLLOWING FACTORS: (A) THE PARTY PERFORMING THE ACTIVITY IN QUESTION; (B) THE LOCATION OF THE ACTIVITY AND INCIDENT; (C) CONTRACTUAL ARRANGEMENTS THEN GOVERNING THE PERFORMANCE OF THE ACTIVITY; AND (D) ALLEGATIONS OF RESPECTIVE FAULT CONTAINED IN THE CLAIM.

PART E
RELIEF AND COMPENSATION EVENTS; DEFAULTS AND TERMINATION; LENDERS' RIGHTS

ARTICLE 27
RELIEF EVENTS; COMPENSATION EVENTS

27.1 Relief Events

27.1.1 Relief Event Notice. Developer shall provide prompt notice to TxDOT whenever Developer has determined that a Relief Event has occurred or is imminent. Such notice (the "**Relief Event Notice**") shall include a reasonably detailed description of the circumstances and an estimate of the delay in performance of any obligations hereunder attributable to the Relief Event. If a single Relief Event is a continuing cause of delay, only one Relief Event Notice is necessary. If Developer fails to deliver such Relief Event Notice within 30 days after the date on which Developer first became aware (or should have been aware, using all reasonable diligence) of the Relief Event, Developer shall be deemed to have irrevocably and forever waived and released the portion of any Claim or right to relief for adverse effect attributable to the Relief Event accruing after such 30-day deadline and until the date Developer submits such notice. If Developer fails to deliver such Relief Event Notice within 180 days after the date on which Developer first became aware (or should have been aware, using all reasonable diligence) of the Relief Event, Developer shall be deemed to have irrevocably and forever waived and released any and all Claim or right to relief for adverse effect attributable to the Relief Event.

27.1.2 Relief Request. Within 30 days after submitting the Relief Event Notice, Developer shall submit to TxDOT a request (the "**Relief Request**") with the following: (a) full details of the Relief Event, including its nature, the date of its occurrence and its duration; (b) the effect of the Relief Event on Developer's ability to perform any of its obligations under this Agreement, including details of the relevant obligations, the precise effect on each such obligation, a time impact analysis under Section 2.1.1.7 of the Technical Provisions indicating all affected activities on any Critical Path (with activity durations, predecessor and successor activities and resources, including Float available pursuant to Section 9.1.3), and the likely duration of that effect; and (c) an explanation of the measures that Developer proposes to undertake to mitigate the delay and other consequences of the Relief Event. After submitting the Relief Request, Developer shall also provide promptly to TxDOT any new information concerning the Relief Event of which Developer becomes aware and any additional information concerning the Relief Event as reasonably requested by TxDOT. In particular, if Developer believes it is entitled to a Lease extension, Developer shall provide to TxDOT information and a financial analysis with respect to such extension within 30 days after the date on which the threshold delay periods under Section 27.1.3(c)(iii) have been met; such information and analysis shall be updated monthly thereafter until the Relief Event ceases. If Developer fails to deliver such Relief Request within 30 days after submitting the Relief Event Notice, Developer shall be deemed to have irrevocably and forever waived and released any and all Claim or right to relief for any adverse effect attributable to the Relief Event.

27.1.3 Relief Event Determination. Within 30 days after receiving a Relief Request (or the most recent update thereto), TxDOT, considering recommendations made by the Independent Engineer, shall issue a determination (the "**Relief Event Determination**") of the following:

(a) Developer shall be relieved from the performance of obligations, and Noncompliance Points shall not be assessed against Developer, as a result of Developer's inability to

perform its obligations due solely and directly to, and during the duration of, the Relief Event. The Relief Event Determination shall specify the obligations from which Developer is relieved. Developer shall not be excused from timely payment of monetary obligations under this Agreement due to the occurrence of a Relief Event. Developer shall not be excused from compliance with Laws or Technical Provisions due to the occurrence of a Relief Event, except temporary inability to comply as a direct result of a Relief Event.

(b) If applicable, the Project Schedule or Milestone Deadlines will be extended by the number of days of delay affecting a Critical Path, after consumption of available Float, that is directly attributable to the Relief Event and that cannot be avoided through reasonable mitigation measures, as set forth in the Relief Event Determination.

(c) If applicable, the Term will be extended by the number of days reasonably required to recover from the impact of the loss of Toll Revenues (of the type described in clauses (a) through (d) of the definition of Toll Revenues) and the impact of the increase in uninsurable and non-reimbursable costs attributable to such Relief Event, net of any cost-savings realized by Developer due to such Relief Event. For the purpose of determining impacts and the length of the term of the Lease extension, the Parties shall use the same present value methodology for calculating the weighted average cost of capital and the value of future Toll Revenues as incorporated into the Base Case Financial Model Update (or, if there has been no Base Case Financial Model Update, into the Base Case Financial Model). An extension of term due to a Relief Event is available only if (i) such Relief Event is not also a Compensation Event (or such Relief Event is also a Compensation Event, but compensation for loss of Toll Revenues has been wholly excluded from the Compensation Amount available for such Compensation Event), (ii) the delay caused by such Relief Event continues for at least 180 consecutive days or for at least 180 non-consecutive days in a 36-month period (for these purposes, excluding the period of delay commencing 30 days after the date on which Developer first became aware (or should have been aware, using all reasonable diligence) of such Relief Event and ending on the date Developer submits the Relief Event Notice), and (iii) the Relief Event adversely affects the collection of Toll Revenues (of the type described in clauses (a) through (d) of the definition of Toll Revenues) or increases Developer's costs that are not insured and not required to be insured under this Agreement.

Any Dispute regarding the occurrence of a Relief Event, the terms of the Relief Event Determination or waiver of Developer's Claim or right to relief shall be resolved according to the Dispute Resolution Procedures.

27.1.4 Limit on Extension of Lease Term. Notwithstanding anything in Section 27.1.3(c) to the contrary, under no circumstances shall the cumulative extensions of the term of the Lease under Section 27.1.3(c) exceed 10 years or the maximum extension then possible under applicable Laws, whichever is less. To the extent that an extension of the Lease term is limited by applicable Law, then the adverse cost and revenue impacts of the Relief Event that would otherwise be made up through extension of the Lease term (from and beyond the limit then possible under applicable Laws up to but not exceeding a cumulative extension of the Lease term of 10 years) shall be treated as a Compensation Event; *provided* that this provision shall not apply to any Relief Event under clauses (a) and (c) of the definition of Relief Event.

27.2 Compensation Events

27.2.1 Compensation Event Notice. Developer shall provide prompt notice to TxDOT whenever Developer has determined that a Compensation Event has occurred or is imminent. Such notice (the "**Compensation Event Notice**") shall include a reasonably detailed description of the circumstances, the date of occurrence, Developer's estimate of the anticipated adverse and beneficial effects, and an analysis and calculation of Developer's estimate of the effect on costs and Toll Revenues. If Developer

fails to deliver such Compensation Event Notice within 60 days after the date on which Developer first became aware (or should have been aware, using all reasonable diligence) of the Compensation Event, Developer shall be deemed to have irrevocably and forever waived and released the portion of any Claim or right to compensation for adverse effect attributable to the Compensation Event accruing after such 60-day deadline and until the date Developer submits such notice. After submitting the Compensation Event Notice, Developer shall also provide promptly to TxDOT and the Independent Engineer any new information concerning the Compensation Event of which Developer becomes aware and any additional information concerning the Compensation Event as reasonably requested by TxDOT. If Developer fails to deliver such Compensation Event Notice within 180 days after the date on which Developer first became aware (or should have been aware, using all reasonable diligence) of such Compensation Event, Developer shall be deemed to have irrevocably and forever waived and released any and all Claim or right to compensation for any adverse effect attributable to the Compensation Event.

27.2.2 Independent Analyses. Within 90 days after receiving the Compensation Event Notice, TxDOT may, but is not obligated to, obtain, and if obtained must provide a copy to Developer of, (a) an analysis of Developer's estimated cost impacts attributable to the Compensation Event from the Independent Engineer and (b) an analysis of traffic and revenue impacts attributable to the Compensation Event from a traffic and revenue consultant retained by Developer and approved by TxDOT. If such analyses are obtained, TxDOT and Developer shall commence good faith negotiations within 30 days after receipt thereof to determine the Compensation Amount, if any, to which Developer is entitled on the basis of such analyses.

27.2.3 Compensation Amount. The Compensation Amount shall equal the amount necessary to restore Developer to the same economic position in which it would have been had the Compensation Event not occurred, regardless of the method or timing for payment thereof chosen by TxDOT under Section 27.2.5, but subject to the following:

(a) Cost impacts shall (i) exclude third-party entertainment costs, lobbying and political activity costs, costs of alcoholic beverages, costs for first class travel in excess of prevailing economy travel costs, and costs of club memberships, in each case to the extent that such costs would not be reimbursed to an employee of TxDOT in the regular course of business; (ii) exclude unallowable costs under the following provisions of the federal Contract Cost Principles, 48 CFR 31.205: 31.205-8 (contributions or donations), 31.205-13 (employee morale, health, welfare, food service, and dormitory costs and credits), 31.205-14 (entertainment costs), 31.205-15 (fines, penalties, and mischarging costs), 31.205-27 (organization costs), 31.205-34 (recruitment costs), 31.205-35 (relocation costs), 31.205-43 (trade, business, technical and professional activity costs), 31.205-44 (training and education costs), and 31.205-47 (costs related to legal and other proceedings); (iii) exclude amounts paid or to be paid to Affiliates in excess of the pricing Developer could reasonably obtain in an arms' length, competitive transaction with an unaffiliated Contractor; (iv) exclude those costs incurred in asserting, pursuing or enforcing any Claim or Dispute; (v) take into account any savings in costs resulting from the Compensation Event; and (vi) be subject to Developer's obligation under Section 27.3. To the extent that the payment method selected pursuant to Section 27.2.5 defers compensation beyond when Developer incurs costs in respect of the Compensation Event, cost impacts shall include reasonable costs incurred by Developer in connection with financing on arm's-length terms to fund such costs.

(b) Toll Revenue impacts shall (i) take into account any increase in Toll Revenue attributable to the Compensation Event; (ii) for the period attributable to the Compensation Event, (1) be based on the daily average net Toll Revenues received during the comparable days and times over the shorter of the six months immediately preceding the Compensation Event or the period commencing on the applicable Service Commencement Date and (2) be reduced by all avoided processing and collection

fees, charges and costs, including Transaction fees and charges; and (iii) be subject to Developer's obligation to mitigate loss of Toll Revenues in accordance with Section 27.3.

(c) For the purpose of any discounting, the Parties shall use the same present value methodology for calculating the weighted average cost of capital as incorporated into the Base Case Financial Model Update (or, if there has been no Base Case Financial Model Update, into the Base Case Financial Model).

(d) In all cases the Compensation Amount shall be net of all insurance available to Developer, or deemed to be self-insured by Developer under Section 26.1.4(c), with respect to cost or revenue impacts of the Compensation Event. For this purpose, all insurance required to be maintained by Developer under the CDA Documents shall be considered to be available to Developer.

(e) If the Compensation Amount includes amounts subject to federal income tax or State margin tax and TxDOT chooses under Section 27.2.5 to pay any portion of such taxable amounts in a lump sum, then the Compensation Amount shall also include, and TxDOT shall pay, the amount necessary to cover the incremental increase, if any, in the federal income tax liability of Developer (or, if it is a pass-through entity for income tax purposes, its members or partners) or State margin tax liability of Developer due to such lump sum payment over the Base Tax Liability. TxDOT shall pay such amount within 30 days after Developer delivers to TxDOT proof of the actual tax liability incurred and the amount by which it exceeds the Base Tax Liability. The Compensation Amount shall not include, and TxDOT shall have no liability for, any incremental increase in federal income tax or State margin tax liability where the Compensation Amount is paid in quarterly or other periodic payments.

(f) For a Compensation Event described in clause (f) of the definition thereof (Business Opportunity in the Airspace), the Compensation Amount shall be limited to (i) the loss of Toll Revenues due to traffic disruption during, and directly caused by, construction activities and (ii) the increase in Developer's costs directly caused by construction or operating activities, and shall not include loss of Toll Revenues (if any) caused by the operation of the transportation facility.

(g) For a Compensation Event described in clause (i) of the definition thereof (suspension of tolling), the Compensation Amount shall be limited to the impact on Toll Revenues for the period that such order is in effect based on the daily average net Toll Revenues (net of Transaction Fees and other costs avoided) received during the comparable days and times over the six months immediately preceding the suspension (or over the period since the first Service Commencement Date, if shorter).

(h) For a Compensation Event described in clause (k) of the definition thereof (Unplanned Revenue Impacting Facility), the Compensation Amount shall be determined under Section 24.3.2.

(i) For a Compensation Event described in clause (l) of the definition thereof (court order), the Compensation Amount shall be limited to the incremental increase in costs of initial design and construction due to delay and disruption directly attributable to the court order, plus interest on Project Debt other than Subordinate Debt for the period of delay in initial design and construction directly attributable to the court order, plus loss of Toll Revenues directly attributable to a court order prohibiting imposition of tolls during a time period when Developer otherwise would be charging tolls under this Agreement, and shall not include any compensation for other impacts on return on equity.

(j) For a Compensation Event described in clause (r) of the definition thereof (certain termination of the TxDOT Tolling Services Agreement), the Compensation Amount shall be limited to the incremental increase in costs incurred by Developer to procure, hire, transition to and

compensate a replacement service provider for comparable services after termination of the TxDOT Tolling Services Agreement (to the extent the compensation exceeds that which would be owing to TxDOT under the TxDOT Tolling Services Agreement for the remainder of the term of this Agreement); *provided* that any such damages related to any difference in level of compensation of the replacement service provider shall not exceed the amount by which the compensation payable to a replacement service provider (utilizing regular rates of compensation of such replacement service provider) exceeds the compensation that would have been payable to TxDOT under the TxDOT Tolling Services Agreement during the shorter of (i) five years or (ii) the balance of the unexpired term of the TxDOT Tolling Services Agreement as of the date of termination of thereof.

(k) For a Compensation Event described in clause (s) of the definition thereof (certain Relief Events), the Compensation Amount shall be limited as set forth in Section 27.1.4.

(l) For a Compensation Event described in clause (t) of the definition thereof (IH 610 Interchange), the Compensation Amount shall be limited to (i) any damage to the Toll Lanes directly caused by such re-construction activities and (ii) any loss of Toll Revenues due to traffic disruption during, and directly caused by, such re-construction activities, based on the daily average net Toll Revenues (net of Transaction Fees and other costs avoided) received during the comparable days and times over the six months immediately preceding the traffic disruption caused by the re-construction activities (or over the period since the first Service Commencement Date, if shorter). Developer shall not be compensated for the loss of Toll Revenues following the conclusion of such construction activities.

(m) For a Compensation Event described in clause (u) of the definition thereof (lighting agreements), the Compensation Amount shall be equal to Developer's increased costs for maintaining and operating the lights formerly maintained and operated by the City of Houston or the City of Pearland.

27.2.4 Determination of Compensation Amount. Developer shall conduct all negotiations to determine any Compensation Amount on an Open Book Basis, including by sharing with TxDOT all data, documents and information pertaining thereto. Any Dispute regarding occurrence of a Compensation Event, determination of the Compensation Amount or waiver of Developer's Claim or right to compensation shall be resolved according to the Dispute Resolution Procedures. TxDOT shall pay any undisputed portion of a Compensation Amount pursuant to Section 27.2.5 pending final resolution of the Dispute.

27.2.5 Payment of Compensation Amount. Subject to Section 27.2.3, TxDOT shall pay the Compensation Amount (as finally determined by mutual agreement of the Parties or pursuant to the Dispute Resolution Procedures) (w) through quarterly or other periodic payments in accordance with a payment schedule determined by mutual agreement or through the Dispute Resolution Procedures corresponding to when the cost and Toll Revenue impacts are anticipated to occur, (x) in a lump sum, payable as determined by mutual agreement or through the Dispute Resolution Procedures, (y) by adjustment to the revenue payment formula set forth in Exhibit 6 so as to make up all or any portion of such Compensation Amount or (z) in such other manner as agreed upon by the Parties. TxDOT shall select any one or combination of the foregoing compensation methods in its discretion, subject to the following:

(a) If a portion of the Compensation Amount is attributable to prior capital expenditures, other than capital expenditures funded by Developer with non-callable Project Debt, TxDOT shall pay such portion in a lump sum unless otherwise approved by Developer.

(b) If a portion of the Compensation Amount is attributable to costs of design or construction to be performed or other future capital expenditures, TxDOT may pay such portion in quarterly (or more frequently) progress payments in arrears and otherwise according to TxDOT's standard practices and procedures for paying its contractors and applicable Laws.

(c) If a portion of the Compensation Amount is attributable to future non-capital costs or future Toll Revenue impacts, any periodic payments TxDOT chooses shall be made quarterly (or more frequently).

(d) If TxDOT elects to make quarterly or other periodic payments, at any later time TxDOT may choose to complete compensation through a lump sum payment of the present value of the remaining Compensation Amount (plus any incremental federal income tax and State margin tax liability as provided in Section 27.2.3(e)).

(e) Any election by TxDOT to pay all or a portion of such Compensation Amount pursuant to Section 27.2.5(y) shall be subject to (i) determination that Developer will have the continuing ability to satisfy debt coverage ratios then binding on Developer under its Funding Agreements and Security Documents and (ii) the ability of Developer, using diligent efforts, to raise additional Project Debt or equity to the extent necessary to currently fund the cost impacts of the Compensation Event.

(f) If TxDOT does not make any lump sum or periodic payment of the Compensation Amount when due, the unpaid portion shall thereafter bear interest, at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, until the date the amount due is paid; *provided*, *however*, that if any portion of the Compensation Amount is to pay for costs of design or construction to be performed or for other future capital expenditures, such portion shall bear interest in accordance with the Texas Prompt Payment Act, Chapter 2251 of the Texas Government Code.

(g) No method may be chosen if it will not yield the amount necessary to restore Developer to the same economic position it would have been in if the Compensation Event had not occurred, except as specifically provided otherwise in this Agreement.

27.2.6 Release. Without limiting Developer's rights with respect to non-monetary relief for Relief Events, the Compensation Amount shall represent the sole right to compensation and damages for the adverse financial effects of a Compensation Event. As a condition precedent to TxDOT's obligation to pay any portion of the Compensation Amount, Developer shall execute a full, unconditional, irrevocable release, in form reasonably acceptable to TxDOT, of any Claims, Losses or other rights to compensation or other monetary relief associated with such Compensation Event, except for the Claim and right to the subject Compensation Amount, Developer's right to non-monetary relief for a Relief Event, and the right to terminate this Agreement in accordance with Section 31.4 and to receive any applicable Termination Compensation.

27.2.7 Base Case Financial Model Update. Developer shall run new projections and calculations under the Financial Model Formulas to establish a Base Case Financial Model Update whenever there occurs a Compensation Event. TxDOT shall have the right to Dispute the validity, accuracy or reasonableness of any Base Case Financial Model Update or the related updated and revised assumptions and data within 60 days after receiving notice of such update. In no event shall the Financial Model Formulas be changed except with the prior approval of both Parties, each in its discretion.

27.3 Mitigation. Developer shall take all steps reasonably necessary to mitigate the consequences of any Relief Event or Compensation Event, including all steps that would generally be taken in accordance with Good Industry Practice.

ARTICLE 28
NONCOMPLIANCE POINTS

28.1 Noncompliance Events. The Noncompliance Events are identified on Table 2 of Exhibit 18. Developer shall promptly notify TxDOT and the Independent Engineer of the occurrence of any breach or failure that is or might become a Noncompliance Event. If TxDOT becomes aware of a breach or failure that is or might become a Noncompliance Event for which Developer has not yet provided such notice, TxDOT shall notify Developer and the Independent Engineer thereof.

28.2 Cure Period. A Noncompliance Event shall not have occurred until expiration of any cure period applicable thereto, as identified on such attachment. For events identified as category "A" in Table 2 of Exhibit 18, Developer's cure period (if any) with respect to such event starts upon the date Developer first obtained knowledge or reason to know of the breach or failure. For events identified as category "B" in Table 2 of Exhibit 18, Developer's cure period (if any) with respect to such event starts upon the date the event occurred. Developer shall notify TxDOT and the Independent Engineer of any efforts to cure a potential Noncompliance Event, which cure is subject to verification by the Independent Engineer and TxDOT.

28.3 Noncompliance Points. Without prejudice to any other rights and remedies available to TxDOT, TxDOT may assess Noncompliance Points in respect of a Noncompliance Event, not to exceed the maximum number of points specified for that event on Table 2 of Exhibit 18. TxDOT shall give due consideration to the recommendation of the Independent Engineer as to whether to assess Noncompliance Points and the number of points to be assessed. Noncompliance Points shall be considered to have been assessed on the date notice of such breach or failure was first given under Section 28.1. Any Dispute concerning the assessment of Noncompliance Points must be initiated within five days after TxDOT notifies Developer of the assessment or is otherwise forever barred. TxDOT shall not be entitled to assess Noncompliance Points under more than one category for any particular event or circumstance that is a breach or failure. Except where a single act or omission gives rise to more than one breach or failure, it shall be treated as a single breach or failure for the purpose of assessing Noncompliance Points, and the highest amount of Noncompliance Points under the relevant breaches or failures shall apply. A failure by Developer to report to TxDOT and the Independent Engineer a breach or failure to perform as required under Section 28.1, on the one hand, and the subject breach or failure to perform, on the other hand, constitute separate and distinct breaches and failures to perform for the purpose of assessing Noncompliance Points.

28.4 Persistent Developer Default. A "**Persistent Developer Default**" occurs whenever (a) 210 Noncompliance Points have been assessed in a 365-day period prior to the Last Service Commencement Date for the Initial Configuration; (b) 300 Noncompliance Points have been assessed in a 730-day period prior to the Last Service Commencement Date for the Initial Configuration; or (c) 110 Noncompliance Points have been assessed in a 365-day period after the Last Service Commencement Date for the Initial Configuration; or (d) 220 Noncompliance Points have been assessed in a 1,095-day period after the Last Service Commencement Date for the Initial Configuration.

28.5 Increased Oversight, Testing and Inspection. If at any time there exists a Persistent Developer Default or Developer receives a Warning Notice, then (in addition to other remedies available under this Agreement, the Lease and the Principal Project Documents) TxDOT, by notice to Developer, may increase the level of its and the Independent Engineer's monitoring, inspection, sampling, measuring, testing, auditing and oversight of the Project and Developer's compliance with its obligations under the CDA Documents, to such level as TxDOT sees fit, until such time as Developer has demonstrated to the reasonable satisfaction of TxDOT that Developer has (a) reduced by 50% the number of Uncured

Noncompliance Points outstanding as of the date such notice was given to Developer (if there existed a Persistent Developer Default as of such notice date), (b) fully and completely cured the breaches and failures that are the basis for such Warning Notice (if applicable) and (c) completed delivery and performance of an approved remedial plan, if at any time during which TxDOT is so entitled to increase the level of oversight TxDOT also requires Developer to prepare and implement a remedial plan pursuant to Section 29.4.8. If TxDOT increases the level of monitoring, inspection, sampling, measuring, testing, auditing and oversight by TxDOT and the Independent Engineer under this Section 28.4 and liquidated damages are not provided for under this Agreement in connection with such action, then Developer shall pay and reimburse TxDOT within 30 days after receipt of demand and reasonable supporting documentation for all increased costs and fees TxDOT incurs in connection with such action, including TxDOT's Recoverable Costs and TxDOT's share of the increased costs and fees of the Independent Engineer. The foregoing does not preclude TxDOT, at its discretion and expense, from increasing its level of monitoring, inspection, sampling, measuring, testing, auditing and oversight at other times.

ARTICLE 29
DEFAULT AND REMEDIES

29.1 Developer Defaults. Developer shall be in breach of this Agreement upon the occurrence of any one or more of the following events or conditions (each a "**Developer Default**"):

29.1.1 Developer (a) fails to begin the applicable Work within 30 days following the later of issuance of NTP2 or achievement of Financial Close, (b) fails to satisfy all conditions to issuance of NTP2 required to be satisfied by Developer under Section 9.2.2 by the NTP2 Conditions Deadline, (c) fails to satisfy all conditions to commencement of the Construction Work, and to commence such Construction Work with diligence and continuity, by the deadline therefor set forth in Table 1 of Exhibit 8 (as the same may be extended pursuant to this Agreement), (d) fails to begin O&M Work with diligence and continuity by the Operating Commencement Date or (e) fails to achieve Final Acceptance for all Project Segments by the Final Acceptance Deadline for the last Project Segment; and, in any instance, such failure is not cured within 15 days (or in the case of a failure described in clause (b) only, 30 days) after TxDOT gives notice of such failure to Developer;

29.1.2 Developer abandons all or a material part of the Project, which abandonment shall have occurred if (a) Developer clearly demonstrates through statements or acts an intent not to continue to construct or operate all or a material part of the Project and (b) no significant Work (taking into account the Project Schedule, if applicable, and any Relief Event) on the Project or a material part thereof is performed for a continuous period of more than 45 days (other than because of a Relief Event that materially interferes with ability to continue); and, in either instance, such abandonment is not cured within 30 days after TxDOT gives notice of such abandonment to Developer;

29.1.3 Developer fails to achieve Service Commencement for a Project Segment by the applicable Service Commencement Deadline, and such failure is not cured by the by the applicable Long Stop Date;

29.1.4 Any failure comparable to a failure described in Section 29.1.1, 29.1.2, 29.1.3 or 29.1.11 occurs with respect to any Upgrade that Developer is obligated to perform under this Agreement, and such failure is not cured within the time period provided under Section 29.1.1, 29.1.2, 29.1.3 or 29.1.11, as applicable;

29.1.5 Developer (a) fails to make any payment owing to TxDOT under the CDA Documents or Independent Engineer Agreement when due or (b) fails to deposit funds to any reserve or account, or to post or deliver a letter of credit, bond or other form of security, in the amount and within the time period required by this Agreement; and, in either instance, such failure is not cured within 30 days after TxDOT gives notice of such failure to Developer;

29.1.6 There occurs any use of the Project or Airspace or any portion thereof by any Developer-Related Entity in violation of this Agreement, the Technical Provisions, Governmental Approvals or Laws; and, in either instance, such violation is not cured within 30 days after TxDOT gives notice of such violation to Developer;

29.1.7 There occurs any closure of the Project or any portion thereof, or any lane closure, except as expressly permitted otherwise in this Agreement, the Technical Provisions and the TxDOT-approved Traffic Management Plan, and such failure is not cured within 15 days after TxDOT gives notice of such failure to Developer (it being understood that such cure period shall not preclude or delay TxDOT's immediate exercise, without notice or demand, of its remedy set forth in Section 29.4.2);

29.1.8 Any representation or warranty in the CDA Documents made by Developer, or any certificate, schedule, report, instrument or other document delivered by or on behalf of Developer to TxDOT pursuant to the CDA Documents is false or materially misleading or materially inaccurate when made or omits material information when made; and such breach is not cured within 30 days after TxDOT gives notice of such breach to Developer (*provided* that, if such breach is of a nature that the cure cannot with diligence be completed within such 30-day period, such period shall be extended by such additional time, not to exceed an additional 90 days, as is reasonably necessary to diligently effect cure; and *provided* that cure will be regarded as complete when the adverse effects of the breach are cured);

29.1.9 Developer (a) fails to obtain, provide and maintain any insurance, bonds, guarantees, letters of credit or other performance security as and when required under this Agreement or the Lease for the benefit of relevant parties or (b) fails to comply with any requirement of this Agreement pertaining to the amount, terms or coverage of the same; and, in either instance, such default is not cured within 15 days after TxDOT gives notice of such default to Developer (*provided* that if such default is not cured within five days after TxDOT gives notice of such default to Developer, TxDOT may, but is not obligated to, effect cure at Developer's expense);

29.1.10 In violation of Article 33, (a) Developer makes or attempts to make or suffers a voluntary or involuntary assignment or transfer of all or any portion of this Agreement, the Lease, the Project or Developer's Interest, or (b) there occurs a Restricted Change in Ownership; and, in either instance, such violation is not cured within 15 days after TxDOT gives notice of such violation to Developer;

29.1.11 Developer materially fails to timely observe or perform or cause to be observed or performed any material covenant, agreement, obligation, term or condition required to be observed or performed by Developer under the CDA Documents and not otherwise expressly covered by this Section 29.1, including material failure to perform the Design Work, Construction Work, O&M Work or any material portion thereof in accordance with the CDA Documents; and such failure is not cured within 30 days after TxDOT gives notice of such failure to Developer (*provided* that, if such failure is of a nature that the cure cannot with diligence be completed within such 30-day period, such period shall be extended by such additional time, not to exceed an additional 90 days, as is reasonably necessary to diligently effect cure; *provided, further* that the Developer's failure to meet the deadlines set forth in Project Schedule, in and of itself, shall not be considered a Developer Default);

29.1.12 After exhaustion of all rights of appeal, (a) there occurs any suspension or debarment (distinguished from ineligibility due to lack of financial qualifications) or (b) there goes into effect an agreement for voluntary exclusion, of Developer, any affiliate of Developer (as "affiliate" is defined in 29 CFR 98.905 or successor regulation of similar import), or any Key Contractor whose work is not completed, from bidding, proposing or contracting with any federal or State department or agency; and, in either case, such breach is not cured within 30 days after TxDOT gives notice of such failure to Developer (*provided* that, if such breach is of a nature that the cure cannot with diligence be completed within such 30-day period, such period shall be extended by such additional time, not to exceed an additional 90 days, as is reasonably necessary to diligently effect cure; and *provided* if the debarred or suspended Person is a managing member, general partner or controlling investor of Developer, cure will be regarded as complete when Developer proves it has removed such Person from any position or ability to manage, direct or control the decisions of Developer or to perform Work; and *provided* that if the debarred or suspended Person is a Key Contractor, cure will be regarded as complete when Developer replaces the Key Contractor with TxDOT's prior approval in its discretion as provided in Section 23.3.1);

29.1.13 There occurs any Persistent Developer Default, of which TxDOT has given notice to Developer, and either (a) Developer fails to deliver to TxDOT a remedial plan meeting the requirements for approval set forth in Section 29.4.8 within 45 days after receiving such notice, and such failure is not cured within five days after TxDOT gives notice of such failure to Developer, or (b) Developer fails to fully comply with the schedule or specific elements of, or actions required under, the approved remedial plan, and such failure is not cured within 30 days after TxDOT gives notice of such failure to Developer;

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

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

29.1.16 In any voluntary or involuntary case seeking liquidation, reorganization or other relief with respect to Developer or its debts under any U.S. or foreign bankruptcy, insolvency or other similar Law now or hereafter in effect, this Agreement or any of the other CDA Documents is rejected, including a rejection pursuant to 11 USC § 365 or any successor statute;

29.1.17 Any voluntary or involuntary case or other act or event described in Section 29.1.14 or 29.1.15 above shall occur with respect to (a) any member of Developer with a material financial obligation owing to Developer for equity or shareholder loan contributions, (b) any member of Developer for whom transfer of ownership would constitute a Restricted Change in Ownership, or (c) any Guarantor of material Developer obligations to TxDOT under the CDA Documents, unless another Guarantor of the same material Developer obligations then exists, is solvent, is not and has not been the debtor in any such voluntary or involuntary case, has not repudiated its guaranty and is not in breach of its guaranty; and, in any instance, (i) diligent efforts to cure such breach are not commenced within 10 days or (ii) a letter of

credit or payment is not provided to TxDOT or the Collateral Agent for the benefit of the Project in the amount of (as applicable) (1) the member's financial obligation for equity or shareholder loan contributions to or for the benefit of Developer or (2) the Guarantor's specified sum or specified maximum liability under its guaranty, or if none is specified, the reasonably estimated maximum liability of the Guarantor; or

29.1.18 Developer fails to timely satisfy its financing obligation under Section 3.4.1, and such failure is not cured within five Business Days after TxDOT gives notice of such failure to Developer.

29.2 Certain Developer Cures

29.2.1 Breach for Imposing Excess Tolls. If the Developer Default consists of imposing tolls in excess of that permitted under this Agreement, such Developer Default shall be curable only by (a) adjusting the tolls to a rate permitted by this Agreement, unless waived by TxDOT, and (b) disgorging to TxDOT any and all increases in Toll Revenues that would not have been realized in the absence of such Developer Default, together with interest thereon, at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, from the date of collection until the date disgorged.

29.2.2 Breach for Unapproved Actions. If the Developer Default consists of failure to give TxDOT a required prior notice and opportunity to complete an applicable review and comment or approval procedure under Section 8.1 before action is taken by Developer, or to obtain TxDOT approval before undertaking other action for which such approval is required, such Developer Default shall be curable only by (a) reversing or suspending the action until the notice and review and comment or approval procedures are followed and completed, unless Developer finished the action before receiving the notice of Developer Default or unless waived by TxDOT, and (b) disgorging to TxDOT any and all increases in Toll Revenues that would not have been realized in the absence of such Developer Default.

29.2.3 Breach for Developer Actions. If the Developer Default consists of any Developer activity or failure to act which constitutes a change from Developer's activities immediately prior to the Developer Default, such Developer Default shall be curable only by (a) reinstating the activity as it was being performed immediately prior to the Developer Default and (b) disgorging to TxDOT any and all increases in Toll Revenues that would not have been realized in the absence of such Developer Default.

29.2.4 Status Report on Cure Progress. For any Developer Default for which a Warning Notice has been delivered by TxDOT to Developer, TxDOT shall provide a status report as to Developer's progress in curing the Developer Default within 10 Business Days after receiving a request for such status report from Developer. The status report shall be provided solely for purposes of informing Developer as to TxDOT's view of the progress in effecting a cure for the Developer Default, shall not constitute an admission of any fact, shall not be admissible in evidence for any purpose, shall not form the basis for any Dispute or Claim, and shall not limit in any way TxDOT's right to terminate this Agreement should cure not be effected within the relevant period.

29.3 Warning Notices. Without prejudice to any other right or remedy available to TxDOT, TxDOT may deliver notice (a "**Warning Notice**") to Developer, with a copy to the Collateral Agent for the senior and first tier subordinate Security Documents, stating explicitly that it is a "Warning Notice" and stating in reasonable detail the matter or matters giving rise to the notice and, if applicable, amounts due from Developer, and reminding Developer of the implications of such notice, whenever there occurs (a) any Developer Default under Section 29.1.1, Section 29.1.2, Section 29.1.4 (but only if it concerns a mandatory Capacity Improvement and is of the same type and nature as a Developer Default under Section 29.1.1 or Section 29.1.2), Section 29.1.5 (but only for a material failure to pay or deposit), Section 29.1.6 (but only if material), Section 29.1.7 (but only if it affects a material portion of the

Project), Section 29.1.10, Section 29.1.11, Section 29.1.13 or Section 29.1.17, (b) delay in achieving Service Commencement for any Project Segment that extends beyond the applicable Service Commencement Deadline, as the same may be extended pursuant to this Agreement, by more than 90 days or (c) any other material Developer Default. The issuance of a Warning Notice shall entitle TxDOT and the Independent Engineer to increase the level of oversight as provided in Section 28.5. The issuance of a Warning Notice may trigger a Default Termination Event as provided in Section 31.3. A Warning Notice may be issued prior to, concurrent with or after a notice of a Developer Default under Section 29.1 with respect to the same matter (it being understood, however, that the notice of a Developer Default under Section 29.1, and not the Warning Notice, shall control with respect to any cure periods available under Section 29.1).

29.4 TxDOT Remedies

29.4.1 Termination. Subject to the Collateral Agent's cure rights under the Lenders' Direct Agreement, in the event of any Developer Default that is or becomes a Default Termination Event, TxDOT may terminate this Agreement and the Lease and thereupon enter and take possession and control of the Project by summary proceeding available to landlords under applicable Law, which termination shall, among other things, automatically terminate all of Developer's rights under Articles 2 and 14, whereupon Developer shall take all action required to be taken by Developer under Section 31.9.

29.4.2 Immediate TxDOT Entry and Cure of Wrongful Closure. Without notice and without awaiting lapse of the period to cure, in the event of any Developer Default under Section 29.1.7 (closure of the Project or lane closure in violation of the CDA Documents), TxDOT may enter and take control of the Project to the extent TxDOT finds it necessary to reopen and continue operations for the benefit of Developer and the public, until such time as such breach is cured, or TxDOT terminates this Agreement and the Lease. Developer shall pay to TxDOT on demand TxDOT's Recoverable Costs in connection with such action. So long as TxDOT undertakes such action in good faith, even if under a mistaken belief in the occurrence of such a Developer Default, such action shall not be deemed unlawful or a breach of this Agreement, shall not expose TxDOT to any liability to Developer and shall not entitle Developer to any other remedy, it being acknowledged that TxDOT has a high priority, paramount public interest in providing and maintaining continuous public access to the Project. The foregoing shall not, however, protect TxDOT from Developer's lawful claims to indemnity or contribution for third-party bodily injury or property damage arising out of any such TxDOT action, if and to the extent (a) TxDOT was mistaken in believing such a Developer Default occurred, (b) the third-party liability is not insured and not required to be insured under this Agreement and (c) such injury or property damage was caused by TxDOT's negligence, recklessness or intentional misconduct. Immediately following rectification of such Developer Default, as determined by TxDOT, TxDOT shall relinquish control and possession of the Project back to Developer.

29.4.3 Safety-Related Action. TxDOT has the absolute right to undertake, or to direct Developer to undertake, any work required to implement or comply with Safety Standards (as interpreted by TxDOT) or a Safety Compliance Order whenever (a) Developer fails to meet any Safety Standard or timely perform Safety Compliance or (b) TxDOT and Developer cannot agree on the interpretation or application of a Safety Standard or the valid issuance of a Safety Compliance Order within a period of time reasonably acceptable to TxDOT. To the extent such work undertaken by TxDOT is reasonably necessary to comply with Safety Standards or to perform validly issued Safety Compliance Orders, Developer shall reimburse TxDOT on demand for TxDOT's Recoverable Costs in connection with such work and TxDOT shall have no liability or obligation to compensate Developer for any Losses suffered or incurred as a result of such work. If Developer, by notice to TxDOT, protests TxDOT's intended work and it is finally determined that such work was not necessary, the unnecessary work under the Safety Compliance Order shall be treated as a TxDOT Change; *provided* that any compensation owing to

Developer as a result thereof shall be limited to Losses actually suffered and incurred by Developer as a direct result of such unnecessary work.

29.4.4 Emergency Action. It is acknowledged that TxDOT has a paramount public interest in protecting public and worker safety at the Project and adjacent and connecting areas. Therefore, notwithstanding anything in this Agreement to the contrary, if TxDOT, in its good faith judgment, determines that Developer has failed to meet any Safety Standards or perform Safety Compliance and such failure results in an Emergency or danger to persons or property, and if Developer is not then diligently taking all necessary steps to rectify or deal with such Emergency or danger, TxDOT, without notice and without awaiting lapse of the period to cure any breach, and in addition and without prejudice to its other remedies, may (but is not obligated to) immediately take such action as may be reasonably necessary to rectify the Emergency or danger, including by suspending Construction Work and closing (or causing to be closed) any and all portions of the Project affected by the Emergency or danger. Developer shall reimburse TxDOT on demand for TxDOT's Recoverable Costs in connection with such work. So long as TxDOT undertakes such action in good faith, even if under a mistaken belief in the occurrence of such failure or existence of an Emergency or danger as a result thereof, such action shall not be deemed unlawful or a breach of this Agreement, shall not expose TxDOT to any liability to Developer and shall not entitle Developer to any other remedy. TxDOT's good faith determination of the existence of such a failure, Emergency or danger shall be deemed conclusive in the absence of clear and convincing evidence to the contrary. Immediately following rectification of such Emergency or danger, as determined by TxDOT, TxDOT shall allow the Construction Work to continue or such portions of the Project to reopen, as the case may be. The foregoing shall not, however, protect TxDOT from Developer's lawful claims to indemnity or contribution for third-party bodily injury or property damage arising out of any such TxDOT action, if and to the extent (i) TxDOT was mistaken in believing such a Developer Default occurred, (ii) the third-party liability is not insured and not required to be insured under this Agreement and (iii) such injury or property damage was caused by TxDOT's negligence, recklessness or intentional misconduct.

29.4.5 TxDOT Step-in Rights

(a) Upon the occurrence of a Developer Default, and for so long as such Developer Default remains uncured, TxDOT may (but is not obligated to), without waiving or releasing Developer from any obligations, pay and perform all or any portion of Developer's obligations and the Work that are the subject of such Developer Default and of any other then-existing breaches or failures to perform which Developer has failed to cure despite having received prior notice. In connection with such action, to the extent reasonably required for or incident to curing such Developer Default, TxDOT may (i) employ security guards and other safeguards to protect the Project; (ii) spend such sums as are reasonably necessary to employ and pay such architects, engineers, consultants and contractors and obtain materials and equipment as may be required, without obligation or liability to Developer or any Contractors for loss of opportunity to perform the same Work or supply the same materials and equipment; (iii) draw on and use proceeds from Payment and Performance Bonds, letters of credit and other performance security to the extent available under the terms thereof to pay such sums; (iv) execute all applications, certificates and other documents as may be required; (v) make decisions respecting, assume control over and continue Work as may be reasonably required; (vi) meet with, coordinate with, direct and instruct contractors and suppliers, process invoices and applications for payment from contractors and suppliers, pay contractors and suppliers, and resolve claims of contractors, subcontractors and suppliers, and for this purpose Developer irrevocably appoints TxDOT as its attorney-in-fact with full power and authority to act for and bind Developer in its place and stead; (vii) take any and all other actions as may be reasonably required or incident to curing; and (viii) prosecute and defend any action or proceeding incident to the Work undertaken. Developer shall reimburse TxDOT on demand for TxDOT's Recoverable Costs in connection with work under this Section 29.4.5. If TxDOT takes action under this Section 29.4.5 and it is later finally

determined that TxDOT lacked the right to do so because a Developer Default had not occurred, TxDOT's action shall be treated as a Directive Letter for a TxDOT Change.

(b) Developer hereby grants to TxDOT and its Authorized Representatives, contractors, subcontractors, vendors and employees a perpetual, non-rescindable right of entry onto the Project, the Project Right of Way and any construction, lay down, staging, borrow and similar areas, exercisable at any time or times without notice, for the purpose of carrying out TxDOT's step-in rights under this Section 29.4.5. Neither TxDOT nor any of its Authorized Representatives, contractors, subcontractors, vendor and employees shall be liable to Developer in any manner for any inconvenience or disturbance arising out of its entry onto the Project, the Project Right of Way or Project Specific Locations in order to perform under this Section 29.4.5, unless caused by the gross negligence, recklessness, willful misconduct or bad faith of such Person and except as provided in the final sentence of Section 29.4.5(a). If any Person exercises any right to pay or perform under this Section 29.4.5, it nevertheless shall have no liability to Developer for the sufficiency or adequacy of any such payment or performance, or for the manner or quality of design, construction, operation or maintenance, unless caused by the gross negligence, recklessness, willful misconduct or bad faith of such Person and except as provided in the final sentence of Section 29.4.5(a).

(c) TxDOT's rights under this Section 29.4.5 are subject to the right of any Surety under Payment and Performance Bonds to assume performance and completion of all bonded work.

(d) In the case of a Developer Default that would, either immediately or following the giving of notice, constitute a Default Termination Event enabling TxDOT to terminate or suspend its obligations under this Agreement, TxDOT's rights under this Section 29.4.5 are subject to Lender rights to cure under the Lenders' Direct Agreement; *provided* that TxDOT may continue exercise of its step-in rights until the Lender obtains possession and notifies TxDOT that it stands ready to commence good faith, diligent curative action. In the case of any other Developer Default, TxDOT's rights under this Section 29.4.5 are subject to the exercise of step-in rights by the Collateral Agent under the senior Security Documents; *provided* that the Collateral Agent (i) delivers to TxDOT notice of the Collateral Agent's decision to exercise step-in rights, and commences the good faith, diligent exercise of such step-in rights, within the cure period available to the Collateral Agent under the Lenders' Direct Agreement, and (ii) thereafter continues such good faith, diligent exercise of remedies until the Developer Default is fully and completely cured.

29.4.6 Damages. Subject to Sections 29.4.12 and 29.4.13 and the provisions on liquidated damages set forth in Section 29.5, TxDOT shall be entitled to recover any and all damages available at Law (subject to the duty at Law to mitigate damages and without duplicate recovery) on account of the occurrence of a Developer Default, including, to the extent available at Law, (i) loss of any compensation owing to TxDOT under this Agreement proximately caused by the Developer Default, (ii) actual and projected costs to remedy any defective part of the Work, (iii) actual and projected costs to rectify any breach or failure to perform by Developer and/or to bring the condition of the Project to the standard it would have been in if Developer had complied with its obligations to carry out and complete the Work in accordance with the CDA Documents, (iv) actual and projected costs to TxDOT to terminate, take over the Project, re-procure and replace Developer, (v) actual and projected delay costs and (vi) actual and projected increases in costs to TxDOT to complete the Project if not completed, together with interest thereon from and after the date any amount becomes due to TxDOT until paid at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points or other rate specified therefor in this Agreement. Developer shall owe any such damages that accrue after the occurrence of the Developer Default and the delivery of notice thereof, if any, required by this Agreement regardless of whether the Developer Default is subsequently cured.

29.4.7 Offset Rights

(a) TxDOT may deduct and offset the amount of any Claim finally determined to be owing to TxDOT from and against any amounts TxDOT may owe to Developer or any Affiliate.

(b) With respect to any Claim for amounts owing to TxDOT that has not been finally determined, TxDOT may elect by notice to Developer to require Developer to post a letter of credit in an amount equal to the disputed portion of the Claim. TxDOT shall have the right to draw on such letter of credit as provided in Section 26.3.1(b), except that draw under Section 26.3.1(b)(i) shall be conditioned upon final determination of the disputed Claim through Dispute Resolution Procedures or otherwise and failure of Developer to pay the Claim, together with interest thereon, within 30 days after final determination of the Claim. In the event the amount of the disputed Claim as finally determined, through Dispute Resolution Procedures or otherwise, is less than the amount of the letter of credit, TxDOT shall reimburse Developer for a portion of the fees charged for the letter of credit in the same ratio that the face amount of the letter of credit in excess of the finally determined amount of the Claim bears to the full face amount of the letter of credit. Reimbursement shall be due 30 days after TxDOT receives from Developer documentation of the letter of credit fees Developer has paid. If TxDOT receives such documentation by not later than 14 days before it draws on the letter of credit, TxDOT shall reduce its draw on the letter of credit by the portion of the fees to be reimbursed, in satisfaction of its obligation to reimburse.

29.4.8 Remedial Plan Delivery and Implementation. Within 45 days after receiving notice of the occurrence of a Persistent Developer Default, Developer shall prepare, and submit to TxDOT for approval, a remedial plan setting forth a schedule and specific actions to be taken by Developer to improve its performance and to reduce the cumulative number of outstanding Uncured Noncompliance Points by at least 50%. Such actions may include improvements to Developer's quality management practices, plans and procedures, revising and restating components of the Project Management Plan, changes in organizational and management structure, increased monitoring and inspections, changes in Key Personnel and other important personnel, replacement of Contractors, and delivery of security to TxDOT. Developer's failure to deliver or comply in any material respect with the remedial plan shall constitute a material Developer Default, for which TxDOT may (among other remedies) issue a Warning Notice.

29.4.9 Performance Security. Upon the occurrence of a Developer Default, without waiving or releasing Developer from any obligations, TxDOT shall be entitled to make demand upon and enforce any bond, and make demand upon, draw on and enforce and collect any letter of credit, guaranty or other payment or performance security available to TxDOT under this Agreement with respect to the Developer Default in question in any order in TxDOT's discretion. Where access to a bond, letter of credit or other payment or performance security is to satisfy damages owing, TxDOT shall be entitled to make demand, draw, enforce and collect regardless of whether the Developer Default is subsequently cured. TxDOT will apply the proceeds of any such action to the satisfaction of Developer's obligations under this Agreement, including payment of amounts owing to TxDOT. The foregoing does not limit or affect any other right of TxDOT to make demand upon and enforce any bond, and make demand upon, draw on and enforce and collect any letter of credit, guaranty or other payment or performance security, immediately after TxDOT is entitled to do so under the bond, letter of credit, guaranty or other payment or performance security.

29.4.10 Suspension of Work

(a) TxDOT shall have the right and authority to suspend any affected portion of the Work by order to Developer upon the occurrence of a Developer Default for any of the following breaches or failures: (i) performance of Nonconforming Work; (ii) failure to comply with any Law or Governmental Approval (including failure to handle, preserve and protect archeological, paleontological or historic resources, or failure to handle Hazardous Materials, in accordance with applicable Laws and Governmental Approvals); (iii) failure to remove and replace personnel as set forth in Section 23.6.3; (iv) failure to provide proof of required insurance coverage as set forth in Section 26.1.2(d)(iii); (v) failure to carry out and comply with Directive Letters; (vi) failure to satisfy any condition to commencement of construction set forth in Section 9.2.4; and (vii) failure to maintain, extend or replace any Payment and Performance Bond unless a drawing has been made thereunder in the amount of the required coverage provided for in Section 26.2 and the proceeds of such drawing are held by TxDOT. TxDOT will lift the suspension order promptly after Developer fully cures and corrects the applicable breach or failure to perform.

(b) In addition, TxDOT shall have the right and authority to suspend any affected portion of the Work by order to Developer for the following reasons: (i) to comply with any court order or judgment; (ii) TxDOT's performance of data recovery respecting archeological, paleontological or cultural resources; (iii) the existence of conditions unsafe for workers, other Project personnel or the general public, including certain failures to comply with Safety Standards or perform Safety Compliance as set forth in Section 29.4.4 or (iv) Developer's failure to pay in full when due sums owing any Contractor for services, materials or equipment (except only for retainage provided in the relevant Contract and amounts in dispute or otherwise in accordance with the terms of such Contract).

(c) Developer shall promptly comply with any suspension order under this Section 29.4.10, even if Developer disputes the grounds for suspension. Developer shall promptly recommence the Work upon receipt of notice from TxDOT directing Developer to resume work.

(d) In addition to the protections from liability under Section 29.4.4, TxDOT shall have no liability to Developer, and Developer shall have no right to a Relief Event or Compensation Event, in connection with any suspension properly founded on any of the other grounds set forth in Section 29.4.10(a) or (b) (except to the extent the circumstances described under Section 29.4.10(b)(i) and (ii) may qualify as a Relief Event or Compensation Event). If TxDOT orders suspension of Work on one of the foregoing grounds but it is finally determined that such grounds did not exist, or if TxDOT orders suspension of Work for any other reason, it shall be treated as a Directive Letter for a TxDOT Change, except as provided in Section 29.4.4.

29.4.11 Other Rights and Remedies. Subject to Sections 29.4.13 and 31.13, TxDOT shall also be entitled to exercise any other rights and remedies available under this Agreement or the Lease, or available at law or in equity.

29.4.12 Cumulative, Non-Exclusive Remedies. Subject to Sections 29.4.13 and 31.13, and subject to the stipulated remedial measures for the breaches and failures to perform for which Noncompliance Points may be assessed, each right and remedy of TxDOT hereunder shall be cumulative and shall be in addition to every other right or remedy provided herein or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by TxDOT of any one or more of any of such rights or remedies shall not preclude the simultaneous or later exercise by TxDOT of any or all other such rights or remedies.

29.4.13 Limitation on Consequential Damages. Notwithstanding any other provision of the CDA Documents and except as set forth in this Section 29.4.13, to the extent permitted by applicable Law, Developer shall not be liable for punitive damages or special, indirect, incidental or consequential damages, whether arising out of breach of this Agreement or the Lease, tort (including negligence) or any other theory of liability, and TxDOT releases Developer from any such liability. The foregoing limitation on Developer's liability for consequential damages shall not apply to or limit any right of recovery TxDOT may have respecting the following: (a) Losses (including defense costs) to the extent (i) covered by the proceeds of insurance required to be carried pursuant to Section 26.1, (ii) covered by the proceeds of insurance actually carried by or insuring Developer under policies solely with respect to the Project and the Work, regardless of whether required to be carried pursuant to Section 26.1, or (iii) Developer is deemed to have self-insured the Loss pursuant to Section 26.1.4(c); (b) Losses arising out of fraud, criminal conduct, intentional misconduct (which does not include any intentional Developer Default), recklessness, bad faith or gross negligence on the part of any Developer-Related Entity; (c) Developer's indemnities set forth in Article 12 and Section 26.5 or elsewhere in the CDA Documents; (d) Developer's obligation to pay liquidated damages in accordance with Section 29.5 or any other provision of the CDA Documents; (e) Losses arising out of Developer Releases of Hazardous Materials; (f) Developer's obligation to pay compensation to TxDOT as provided in Article 4 (but excluding any payment on account of future Revenue Payment Amounts); (g) amounts Developer may owe or be obligated to reimburse to TxDOT under the express provisions of the CDA Documents, including TxDOT's Recoverable Costs; (h) interest, late charges, fees, transaction fees and charges, penalties and similar charges that the CDA Documents expressly state are due from Developer to TxDOT; and (i) any credits, deductions or offsets that the CDA Documents expressly provide to TxDOT against amounts owing Developer.

29.5 Liquidated Damages

29.5.1 General

(a) The Parties acknowledge and agree that breaches or failures by Developer of the kind identified in this Section 29.5 would cause significant harm to TxDOT, Users and the people of the State, including loss of use, enjoyment and benefit of the Project and connecting TxDOT transportation facilities by the general public, injury to the credibility and reputation of TxDOT's transportation improvement program with policy makers and with the general public who depend on and expect availability of service, loss of ridership on the Project and connecting TxDOT transportation facilities and further loss of TxDOT's revenue payment under this Agreement and/or toll revenues on such connecting facilities, and additional costs of administering this Agreement (including engineering, legal, accounting, overhead and other administrative costs); and that such harm is incapable of being accurately determined. The Parties further acknowledge and agree that the liquidated damages stipulated in this Section 29.5 as remedies for such breaches or failures reasonably approximate the appropriate compensation for the anticipated harm.

(b) TxDOT's right to, and imposition of, liquidated damages are in addition, and without prejudice, to any other rights and remedies available to TxDOT under this Agreement, at law or in equity respecting the breach, failure to perform or Developer Default that is the basis for the liquidated damages or any other breach, failure to perform or Developer Default, except for recovery of the monetary damage that the liquidated damages are intended to compensate. Liquidated damages are not intended to, and do not, liquidate Developer's liability under the indemnification provisions of Section 26.5, even though third-party claims against Indemnified Parties may arise out of the same event, breach or failure that gives rise to such liquidated damages. Permitting or requiring Developer to continue and finish the Work or any part thereof after the Service Commencement Deadline or Final Acceptance

Deadline shall not act as a waiver of TxDOT's right to receive liquidated damages hereunder or any rights or remedies otherwise available to TxDOT.

(c) Developer shall pay any liquidated damages owing under this Section 29.5 within 30 days after TxDOT delivers invoice or demand therefor to Developer. Liquidated damages shall be due and payable to TxDOT without right of offset, deduction, reduction or other charge, except as provided in Section 29.7.3.

(d) The amounts set forth in this Section 29.5 and in Table 1 of Exhibit 18 shall be increased annually on January 1 of each year after the Effective Date by a percentage equal to the percentage increase in CPI between the CPI for October of the second immediately preceding year and the CPI for October of the immediately preceding year (in no event shall the amount be less than the amount in effect during the immediately preceding year).

29.5.2 Service Commencement. TxDOT shall be entitled to immediate and automatic liquidated damages from Developer equal to $93,300 per day for each day that the Last Service Commencement Date for the Initial Configuration is later than the Service Commencement Deadline. Such liquidated damages shall constitute TxDOT's sole right to damages for such delay.

29.5.3 Final Acceptance. TxDOT shall be entitled to immediate and automatic liquidated damages from Developer equal to $5,200 per day for each day that the date of Final Acceptance for a Project Segment is later than the Final Acceptance Deadline applicable to that Project Segment. Such liquidated damages shall apply separately to each Project Segment; *provided* that in no event shall the cumulative amount of liquidated damages on any given day under this Section 29.5.3 exceed $10,400. No liquidated damages shall be owing under this Section 29.5.3 for any day for which liquidated damages are owing under for any day for which liquidated damages are owing under Section 29.5.2. Such liquidated damages shall constitute TxDOT's sole right to damages for such delay.

29.5.4 Lane Rental Charges

(a) Subject to clauses (b) and (c) below, TxDOT shall be entitled to immediate and automatic liquidated damages ("**Lane Rental Charges**") from Developer for any period between the Operating Commencement Date and the applicable Service Commencement Date during which one or more General Purpose Lanes are closed beyond the requirements, or have a width that is less than the minimum requirements, set forth in Section 18.3.1 of the Technical Provisions. Lane Rental Charges shall apply to both scheduled and unscheduled occurrences. Lane Rental Charges shall be assessed for every quarter-hour or part thereof. The amount of Lane Rental Charges assessed shall be determined based on the number of lanes closed or reduced and the time period of the closure or reduction, as set forth on Table 1 of Exhibit 18. Developer shall report to the Independent Engineer on a daily basis any General Purpose Lane closures or reduced widths that give rise to Lane Rental Charges.

(b) Developer shall not be assessed Lane Rental Charges for rolling lane closures for the purpose of construction activities above operational General Purpose Lanes. For this purpose, a "rolling lane closure" means a lane closure that occurs in "Period E" (as defined in Table 1 of Exhibit 18), having a duration of less than 15 minutes, and only so long as the lanes are re-opened such that queued traffic is dispersed.

(c) Developer shall not be obligated to pay the first $2,500,000 of Lane Rental Charges assessed pursuant to this Section 29.5.4.

29.5.5 Noncompliance Points

(a) TxDOT shall be entitled to immediate and automatic liquidated damages from Developer equal to $8,000 per Noncompliance Point assessed pursuant to Section 28.3.

(b) TxDOT shall be entitled to immediate and automatic liquidated damages from Developer equal to $13,000 per day for each day that the number of assessed Uncured Noncompliance Points equals or exceeds (i) 80 points prior to the Last Service Commencement Date for the Initial Configuration or (ii) 50 points on or after the Last Service Commencement Date for the Initial Configuration.

29.5.6 Financial Close. As required by Section 3.3 of Exhibit B to the ITP, Developer shall have delivered to TxDOT upon conditional award the Financial Close Security. If TxDOT terminates this Agreement and the Lease pursuant to Section 31.3.1, TxDOT shall be entitled to draw on the Financial Close Security as liquidated damages for such Developer Default without prior notice to or demand upon Developer for such liquidated damages. Such liquidated damages shall constitute TxDOT's sole right to damages on account of such failure. Developer acknowledges that the time period TxDOT has provided to Developer to close the Initial Project Debt is ample and reasonable, and both Developer and TxDOT acknowledge that such liquidated damages are reasonable in order to compensate TxDOT for damages it will incur as a result of the lost opportunity to TxDOT represented by the CDA Documents. Such damages include the harm from the difficulty, and substantial additional expense, to TxDOT, to procure and deliver, operate and maintain the Project through other means, potential loss of a portion of the Concession Payment, loss of or substantial delay in use, enjoyment and benefit of the Project by the general public, and injury to the credibility and reputation of TxDOT's transportation improvement program, with policy makers and with the general public who depend on and expect availability of service. Developer further acknowledges that these damages are incapable of accurate measurement because of, among other things, the unique nature of the Project and the unavailability of a substitute for it.

29.6 TxDOT Defaults. TxDOT shall be in breach of this Agreement upon the occurrence of any one or more of the following events or conditions (each a "**TxDOT Default**"):

29.6.1 TxDOT fails to make any payment owing to Developer under this Agreement when due or TxDOT fails to make any payment owing to Developer under the TxDOT Tolling Services Agreement (if the TxDOT Tolling Services Agreement is in effect) when due, and such failure is not cured within 30 days after Developer gives notice of such failure to TxDOT;

29.6.2 Any representation or warranty made by TxDOT in this Agreement is false or materially misleading or inaccurate when made or omits material information when made, and such breach is not cured within 60 days after Developer gives notice of such breach to TxDOT (*provided* that, if such breach is of a nature that the cure cannot with diligence be completed within such 60-day period, such period shall be extended by such additional time, not to exceed an additional 120 days, as is reasonably necessary to diligently effect cure; and *provided* that cure will be regarded as complete when the adverse effects of the breach are cured);

29.6.3 TxDOT fails to be ready and able to commence provision of customer service and other toll collection and enforcement services for Developer under Section 14.5.3 or 14.5.4;

29.6.4 TxDOT fails to observe or perform any other covenant, agreement, term or condition required to be observed or performed by TxDOT under this Agreement, and such failure is not cured within 60 days after Developer gives notice of such failure to TxDOT (*provided* that, if such failure is of a

nature that the cure cannot with diligence be completed within such 60-day period, such period shall be extended by such additional time, not to exceed an additional 120 days, as is reasonably necessary to diligently effect cure);

29.6.5 An event of default by TxDOT occurs under the Lease; and such default is not cured within 60 days after Developer gives notice of such default to TxDOT (*provided* that, if such default is of a nature that the cure cannot with diligence be completed within such 60-day period, such period shall be extended by such additional time, not to exceed an additional 120 days, as is reasonably necessary to diligently effect cure); or

29.6.6 TxDOT confiscates or appropriates all or any material part of the Developer's Interest or of the beneficial interests in Developer, other than a Termination for Convenience or any other exercise of a right of termination set forth in this Agreement, and such event is not cured within 30 days after Developer gives notice of such event to TxDOT.

29.7 Developer Remedies

29.7.1 Termination. Subject to Section 31.13, Developer will have the right to terminate this Agreement and the Lease and recover termination damages as more particularly set forth in, and subject to the terms and conditions of, Section 31.4.

29.7.2 Damages and Other Remedies. Developer shall have and may exercise the following remedies upon the occurrence of a TxDOT Default:

(a) If Developer does not terminate this Agreement, then, subject to Section 29.7.4, Developer may treat the TxDOT Default as a Compensation Event on the terms and conditions set forth in Section 27.2;

(b) If the TxDOT Default is a failure to pay when due any undisputed portion of a progress payment owing under a Change Order and TxDOT fails to cure such TxDOT Default within 30 days after receiving from Developer notice thereof, Developer shall be entitled to suspend the Work under the Change Order until the default is cured; and

(c) Subject to Sections 29.7.4 and 31.13, Developer also shall be entitled to exercise any other remedies available under this Agreement or the Lease or at Law or in equity, including offset rights to the extent and only to the extent available under Section 29.7.3. Subject to Sections 29.7.4 and 31.13, each right and remedy of Developer hereunder shall be cumulative and shall be in addition to every other right or remedy provided herein or now or hereafter existing at Law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Developer of any one or more of any of such rights or remedies shall not preclude the simultaneous or later exercise by Developer of any or all other such rights or remedies.

29.7.3 Offset Rights. Developer may deduct and offset the amount of any Claim finally determined to be owing to Developer from and against any amounts Developer may owe to TxDOT.

29.7.4 Limitations on Remedies

(a) Notwithstanding any other provision of the CDA Documents and except as forth in this Section 29.7.4, to the extent permitted by applicable Law, TxDOT shall not be liable for punitive damages or special, indirect, incidental or consequential damages, whether arising out of breach of this Agreement or the Lease, tort (including negligence) or any other theory of liability, and Developer

releases TxDOT from any such liability. The foregoing limitation on TxDOT's liability for consequential damages shall not apply to or limit any right of recovery Developer may have respecting the following: (i) Losses arising out of fraud, criminal conduct, intentional misconduct (which does not include any intentional TxDOT Default), recklessness, bad faith or gross negligence on the part of TxDOT; (ii) TxDOT's indemnities set forth in Article 12; (iii) Losses arising out of releases of Hazardous Materials caused by TxDOT; (iv) any amounts TxDOT may owe or be obligated to reimburse under the express provisions of this Agreement for Compensation Events or events of termination; (v) any other specified amounts TxDOT may owe or be obligated to reimburse to Developer under the express provisions of the CDA Documents; (vi) interest and charges that the CDA Documents expressly state are due from TxDOT to Developer; and (vii) any credits, deductions or offsets that the CDA Documents expressly provide to Developer against amounts owing TxDOT.

(b) The measure of compensation available to Developer as set forth in this Agreement for a Compensation Event or an event of termination shall constitute the sole and exclusive monetary relief and damages available to Developer from the State or TxDOT arising out of or relating to such event; and Developer irrevocably waives and releases any right to any other or additional damages or compensation from the State or TxDOT. No award of compensation or damages shall be duplicative.

(c) Developer shall have no right to seek, and irrevocably waives and relinquishes any right to, non-monetary relief against TxDOT, except (i) for any sustainable action in mandamus, (ii) for any sustainable action to stop, restrain or enjoin use, reproduction, duplication, modification, adaptation or disclosure of Proprietary Intellectual Property in violation of the licenses granted under Section 34.6, or to specifically enforce TxDOT's duty of confidentiality under Section 34.6.6, (iii) for declaratory relief pursuant to the Dispute Resolution Procedures declaring the rights and obligations of the Parties under the CDA Documents, or (iv) declaratory relief pursuant to the Dispute Resolution Procedures declaring specific terms and conditions that shall bind the Parties, but only where this Agreement expressly calls for such a method of resolving a Dispute.

(d) Without limiting the effect of Section 29.7.4(b), in the event TxDOT wrongfully withholds an approval or consent required under this Agreement, or wrongfully issues an objection to or disapproval of a Submittal or other matter under this Agreement, Developer's sole remedies against TxDOT shall be extensions of time to the extent provided in Section 27.1 for a Relief Event and damages to the extent provided in Section 27.2 for a Compensation Event.

29.8 Partnering

29.8.1 Effect on Dispute Resolution. The provisions of this Section 29.8 are not part of the Informal Resolution Procedures or the Dispute Resolution Procedures contemplated under this Agreement, Section 201.112 or 223.208 of the Texas Transportation Code or the Commercial Rules established thereunder. Compliance with the provisions of this Section 29.8 or the terms of any partnering charter is not required as a condition precedent to any Party's right to initiate a claim or seek resolution of any Issue under the relevant procedures specified in Article 30.

29.8.2 Purpose. TxDOT and Developer have developed and intend to continue fostering a cohesive relationship to carry out their respective responsibilities under this Agreement through a voluntary, non-binding "partnering" process drawing upon the strengths of each organization to identify and achieve reciprocal goals. The objectives of the partnering process are (a) to identify potential problem areas, issues and differences of opinion early, (b) to develop and implement procedures for resolving them in order to prevent them from becoming Claims and Disputes, (c) to achieve effective and efficient performance and completion of the Work in accordance with the CDA Documents, and (d) to create

mutual trust and respect for each Party's respective roles and interests in the Project while recognizing the respective risks inherent in those roles.

29.8.3 Charter. In continuance of their existing partnering process, within 90 days after the Effective Date TxDOT and Developer shall attend a team building workshop and through such workshop negotiate and sign a mutually acceptable non-binding partnering charter to govern the process of partnering for the Project. The charter shall include non-binding rules and guidelines for engaging in free and open communications, discussions and partnering meetings between them, in order to further the goals of the partnering process. The charter shall call for the formation and meetings of a partnering panel, identify the Key Personnel of Developer and key representatives of TxDOT who shall serve on the partnering panel, and set the location for meetings. The charter also shall include non-binding rules and guidelines on whether and under what circumstances to select and use the services of a facilitator, where and when to conduct partnering panel meetings, who should attend such meetings, and, subject to Section 30.8, exchange of statements, materials and communications during partnering panel meetings. In any event, the partnering charter shall recognize and be consistent with the obligations of TxDOT and Developer contained in this Agreement with respect to communications, cooperation, coordination and procedures for resolving Claims and Disputes.

29.8.4 Meetings. Under the non-binding procedures, rules and guidelines of the partnering charter, the Parties will address at partnering meetings specific interface issues, oversight interface issues, division of responsibilities, communication channels, application of alternative resolution principles and other matters. If Developer and TxDOT succeed in resolving a Claim or Dispute through the partnering procedures, they shall memorialize the resolution in writing, including execution of Change Orders as appropriate, and promptly perform their respective obligations in accordance therewith.

29.9 Waiver of Consumer Rights. TXDOT AND DEVELOPER HAVE ASSESSED THEIR RESPECTIVE RIGHTS, LIABILITIES AND OBLIGATIONS UNDER THE TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT, BUSINESS & COMMERCE CODE, SECTION 17.41 ET SEQ. (THE "**DTPA**"). TXDOT AND DEVELOPER AGREE THAT THE DTPA DOES NOT APPLY TO ANY CLAIM OR DISPUTE UNDER ANY CDA DOCUMENT SINCE THE TRANSACTIONS EVIDENCED BY THE CDA DOCUMENTS INVOLVE A TOTAL CONSIDERATION BY EACH OF TXDOT AND DEVELOPER IN EXCESS OF $500,000. HOWEVER, IN THE EVENT THE DTPA IS DEEMED TO BE APPLICABLE BY A COURT OF COMPETENT JURISDICTION, TXDOT AND DEVELOPER HEREBY WAIVE THEIR RIGHTS AGAINST ONE ANOTHER AND AGAINST THEIR RESPECTIVE DEVELOPER-RELATED ENTITIES AND INDEMNIFIED PARTIES UNDER THE DTPA, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. AFTER CONSULTATION WITH ATTORNEYS OF THEIR OWN SELECTION, TXDOT AND DEVELOPER VOLUNTARILY CONSENT TO THIS WAIVER. THE PARTIES AGREE THAT THIS SECTION 29.9 CONSTITUTES A CONSPICUOUS LEGEND.

ARTICLE 30
DISPUTE RESOLUTION PROCEDURES

30.1 General Provisions

30.1.1 Scope. Any Claim or Dispute shall be resolved in accordance with the terms and procedures set forth in this Article 30 (the "**Dispute Resolution Procedures**"). The Parties agree that the Dispute Resolution Procedures constitute contract claim procedures authorized and governed by Title 43, Texas Administrative Code, Section 9.6, and that the CDA Documents shall not be subject to the contract claim procedures set forth in Title 43, Texas Administrative Code, Section 9.2. Any disagreement between the Parties as to whether the Dispute Resolution Procedures apply to a particular Dispute under the CDA Documents, and any disagreement as to whether there has been an adverse Change in Law as described in Section 30.1.3 or whether particular procedures apply to a Dispute, shall be treated as a Dispute for resolution in accordance with this Article 30. Resolutions of Claims and Disputes pursuant to this Article 30 shall be final, binding, conclusive and enforceable.

30.1.2 Jurisdiction of Travis County, Texas District Courts. None of the Dispute Resolution Procedures shall be enforced or interpreted in a way that curtails Developer's right to mandamus relief in Travis County, Texas district court pursuant to Section 223.208(e) of the Code or that curtails Developer's right to mandamus relief from the Supreme Court of Texas pursuant to Section 22.002 of the Texas Government Code. TxDOT may invoke the jurisdiction of the district courts of Travis County, Texas to petition for equitable relief against Developer, including temporary restraining orders, injunctions, other interim or final declaratory relief or the appointment of a receiver, to the extent allowed by Law.

30.1.3 Adverse Change in Law Governing Dispute Resolution Procedures. TxDOT and Developer agree that (a) their procedural rights and remedies under this Article 30 are material, substantive, vested contract rights and (b) any change in the Code or the Texas Administrative Code, or the enactment or amendment of any other Law, after the Financial Proposal Due Date that would have a material adverse effect on TxDOT's or Developer's procedural rights or remedies under this Article 30 shall constitute a retroactive application of Law impairing vested contract rights and would be unconstitutional under Article I, Section 16, of the Texas Constitution. Therefore, such change shall not be given effect or be applicable to the CDA Documents. If, however, such a Change in Law renders it impossible to effectuate the Dispute Resolution Procedures, then the provisions of Section 35.14 will apply; *provided* that for the purpose of seeking an interpretation or reformation under Section 35.14.3, either Party can refer such question to the Disputes Board or the appropriate court, if any, that declared any portion of the CDA Documents invalid. This provision shall prevail over any contrary provision of the CDA Documents.

30.1.4 Matters Ineligible for Dispute Resolution Procedures. The Dispute Resolution Procedures and the authority of the Disputes Board shall not apply to the following (except that with respect to clauses (c), (d), (i) and (j) below, the Party asserting the Claim or Dispute may elect, at its option, to invoke the Informal Resolution Procedures prior to taking other action): (a) any matters that the CDA Documents expressly state are final, binding or not subject to dispute resolution; (b) any claim or dispute that does not arise under the CDA Documents; (c) any equitable relief sought in Travis County, Texas district court that TxDOT is permitted to bring against Developer under Section 30.1.2; (d) any Claim or Dispute arising solely in tort; (e) any claim to interplead a Party into an action brought by a third Person against the other Party or by the other Party against a third Person; (f) Claims and Disputes that are not actionable against TxDOT by Developer on its own behalf; (g) any claim by a Contractor, including any such claim against Developer that gives rise to an independent but related claim by

Developer against TxDOT (but the Dispute Resolution Procedures will apply to any such independent related claim by Developer against TxDOT); (h) any claims or disputes against insurance companies; (i) any Claims and Disputes based on remedies expressly created by statute; and (j) any mandamus action that Developer is permitted to bring against TxDOT under Section 30.1.2.

30.1.5 Burden of Proof. The Party bringing a Claim or Dispute shall bear the burden of proving the same.

30.2 Informal Resolution Procedures

30.2.1 Informal Resolution as Condition Precedent. As a condition precedent to the right to have any Dispute (other than those disputes set forth in Sections 30.1.4) further adjudicated or resolved, the Party seeking to pursue the Dispute (the "claiming Party") must first attempt to resolve the Dispute directly with the other Party (the "responding Party") through the Informal Resolution Procedures described in this Section 30.2. The time limitations applicable to the Informal Resolution Procedures may be changed (as to a particular Dispute only) by agreement of the Parties.

30.2.2 Notice of Dispute to Designated Agent. The claiming Party shall first give notice of the Dispute to the responding Party's designated agent (which shall be its Authorized Representative unless otherwise designated by notice to the claiming party) as follows:

(a) The notice shall include a concise statement describing (i) if the Parties have mutually agreed that the Dispute is a Fast-Track Dispute; (ii) the date of the act, inaction or omission giving rise to the Dispute; (iii) a description of the nature, circumstances and cause of the Dispute; (iv) reference to any pertinent provisions of the CDA Documents; (v) if applicable, the estimated dollar amount of the Dispute, and how that estimate was determined (including any cost and revenue element that has been or may be affected); (vi) if applicable, an analysis of the Project Schedule and Milestone Deadlines showing any changes or disruptions (including an impacted delay analysis reflecting the disruption in the manner and sequence of performance that has been or will be caused, delivery schedules, staging, and adjusted Milestone Deadlines); (vii) if applicable, the claiming Party's plan for mitigating the amount claimed and the delay claimed; (viii) the claiming Party's desired resolution of the Dispute; and (ix) any other information the claiming Party considers relevant.

(b) The notice shall be signed by the Authorized Representative of the claiming Party, and shall contain a certification by the claiming Party that (i) the notice of Dispute is served in good faith; (ii) except as to specific matters stated in the notice as being unknown or subject to discovery, all supporting information is reasonably believed by the claiming Party to be accurate and complete; (iii) the Dispute accurately reflects the amount of money or other right, remedy or relief to which the claiming Party reasonably believes it is entitled; and (iv) the Authorized Representative is duly authorized to execute and deliver the notice and such certification on behalf of the claiming Party.

30.2.3 CEO / Executive Director Meetings. Unless the responding Party agrees with the claiming Party's position and desired resolution of the Dispute, then commencing within 10 Business Days (five Business Days for Fast-Track Disputes) after the notice of Dispute is served and concluding 10 Business Days thereafter, the Chief Executive Officer (or equivalent) of Developer and the Executive Director or the Executive Director's designate whose rank is not lower than Assistant Executive Director, shall meet and confer, in good faith, to seek to resolve the Dispute raised in the claiming Party's notice of Dispute. If they succeed in resolving the Dispute, Developer and TxDOT shall memorialize the resolution.

30.2.4 Failure to Resolve Dispute with Informal Resolution Procedures. If a Dispute is submitted to but not timely resolved under the Informal Resolution Procedures, then the Parties may mutually agree to initiate mediation in accordance with Section 30.6. If a Dispute is submitted to but not timely resolved under the Informal Resolution Procedures or by mediation, or the Parties do not mutually agree to initiate mediation, either Party may (a) refer the Dispute to the Disputes Board for resolution pursuant to Section 30.3.2 or (b) pursue any other relief that may be available in a Travis County, Texas district court in accordance with Section 30.1.2.

30.3 Disputes Board

30.3.1 Disputes Board Agreement. The Disputes Board Agreement, attached as Exhibit 19, governs the establishment and membership of the Disputes Board and matters of evidence and procedure that are not otherwise addressed in this Article 30. If the composition of either Party's qualified candidate list for the Disputes Board has not been finalized prior to the Effective Date, that Party shall promptly appoint the members in accordance with the requirements and procedures of the Disputes Board Agreement. The Disputes Board shall conduct proceedings and, upon completion of its proceedings, issue findings of fact, conclusions of law, and a decision to TxDOT and Developer. The Disputes Board shall have the authority to resolve any Dispute other than those Disputes identified in Section 30.1.4. The Disputes Board shall have no authority to order that one Party compensate the other Party for attorneys' fees and expenses, except for attorneys' fees and expenses payable to TxDOT under Sections 10.2, 26.5.1(f) and 34.5.3 and except for defense costs payable pursuant to an indemnity obligation under this Agreement. If a Disputes Board Decision awards an amount payable by one Party to the other, it is due and payable on the date required for payment in accordance with the CDA Documents; if the date of payment is not specified in the CDA Documents, the payment shall be due 10 Business Days after the date the Disputes Board Decision becomes final and binding.

30.3.2 Submission of Dispute to Disputes Board. Within 15 days after the end of the CEO / Executive Director meetings described in Section 30.2.3 or the end of any mediation conducted pursuant to Section 30.2.4 or 30.6, whichever is later, either Party may refer a Dispute to the Disputes Board for resolution by serving notice on the other Party. The notice shall include the same information as a notice of Dispute issued under Section 30.2.2. Within 15 days (seven days for Fast-Track Disputes) after a Party refers a Dispute to the Disputes Board, the responding Party shall serve a response upon the claiming Party's designated agent. The response shall be signed by the Authorized Representative of the responding Party and shall include certifications that (a) the response is served in good faith, (b) if any supporting information is included in the response, it is reasonably believed by the responding Party to be accurate and complete, except as to specific matters unknown or subject to discovery, and (c) the Authorized Representative is duly authorized to execute and deliver the response and such certification on behalf of the responding Party. Thereafter, the Parties shall proceed under the Disputes Board Agreement to obtain a Disputes Board Decision pursuant to Section 5.5 of the Disputes Board Agreement.

30.3.3 Failure of Notice to Meet Certification Requirements. If the notice of Dispute fails to meet the certification requirements under Section 30.2.1, on motion of the responding Party the Disputes Board shall suspend proceedings on the Dispute until a correct and complete certification is delivered, and shall have the discretionary authority to dismiss the Dispute for lack of a correct certification if it is not delivered within a reasonable time as set by the Disputes Board. Prior to the entry by the Disputes Board of a final decision on a Dispute, the Disputes Board shall require a defective certification to be corrected.

30.4 SOAH Administrative Hearings and Final Orders

30.4.1 Appeal of Disputes Board Decision

(a) If either Party believes that Grounds for Appeal affected a Disputes Board Decision, then within 20 days after the Disputes Board's issuance to TxDOT and Developer of the subject Disputes Board Decision that Party may request the Executive Director to seek a formal administrative hearing before the State Office of Administrative Hearings ("**SOAH**") pursuant to Texas Government Code, Chapter 2001, and Section 201.112 of the Texas Transportation Code. Grounds for Appeal shall be the sole basis for appeal of a Disputes Board Decision. Within 10 Business Days of a request for a formal administrative hearing before SOAH, the Executive Director shall refer the matter to SOAH.

(b) If there is not a timely request for a formal administrative hearing before SOAH based on Ground for Appeal, then within 10 Business Days after the expiration of the deadline for such a request, the Executive Director shall issue a final order that implements the Disputes Board Decision. If the Executive Director does not issue the final order implementing the Disputes Board Decision within such 10 Business Days, the Disputes Board Decision shall become effective as the final order of the Executive Director effective on the next Business Day.

30.4.2 SOAH Proceeding and AU Proposal for Decision. Upon referral to SOAH of the question of whether Grounds for Appeal affected the Disputes Board Decision, the Administrative Law Judge ("**ALJ**") shall conduct a hearing in accordance with the SOAH regulations solely on the question of whether Grounds for Appeal affected the subject Disputes Board Decision. The Disputes Board's findings of fact, conclusions of law and Disputes Board decision; any dissenting findings, recommendations or opinions of a minority Disputes Board member; and all submissions to the Disputes Board by the Parties shall be admissible in the SOAH proceeding, along with all other evidence the ALJ determines to be relevant. After timely closing of the record of the SOAH proceeding, the ALJ shall timely issue its proposal for decision in accordance with SOAH Regulations to the Executive Director and Developer. A Party may file exceptions to the proposal for decision no later than seven days after issuance of the proposal for decision. A Party may file a reply to exceptions no later than 14 days after issuance of the proposal for decision. The ALJ may comment on the exceptions and replies no later than 21 days after issuance of the proposal for decision.

30.4.3 Final Orders of Executive Director

(a) Within 28 days after receipt of the ALJ's proposal for decision the Executive Director shall issue a final order.

(b) If the Executive Director concludes that Grounds for Appeal prejudiced the rights of a party or affected the Disputes Board Decision, the Executive Director shall rule that the Disputes Board Decision is invalid and shall remand the Dispute to the Disputes Board for reconsideration; *provided* that if the Grounds for Appeal is that the claim, demand, dispute, disagreement or controversy is a matter identified in Section 30.1.4 as beyond the Disputes Board's authority, then the Executive Director shall vacate the Disputes Board Decision and dismiss the matter, without remand and without prejudice to the claiming Party's right to pursue the claim, demand, dispute, disagreement or controversy in the proper jurisdiction. If the nature of the Grounds for Appeal was a Disputes Board Member Conflict of Interest or Disputes Board Member Misconduct, then a reconstituted Disputes Board that does not include that Disputes Board member must reconsider the remanded Dispute.

(c) If the Executive Director concludes that Grounds for Appeal did not affect the Disputes Board Decision, the Executive Director shall affirm the Disputes Board Decision and order its implementation.

(d) If the Executive Director fails to issue a final order within the 28-day time period, then on the next Business Day, the proposal for decision is deemed accepted by the Executive Director as the correct decision and becomes the final order in the Dispute. In such event:

(i) If the ALJ determined that Grounds for Appeal prejudiced the rights of a party or affected the Disputes Board Decision, the Disputes Board Decision shall be deemed invalid, and the Dispute shall be remanded to the Disputes Board for reconsideration; *provided* that if the Grounds for Appeal is that the claim, demand, dispute, disagreement or controversy is a matter identified in Section 30.1.4 as beyond the Disputes Board's authority, then the Disputes Board Decision shall be deemed vacated and the matter shall be deemed dismissed, without remand and without prejudice to the claiming Party's right to pursue the claim, demand, dispute, disagreement or controversy in the proper jurisdiction. If the nature of the Grounds for Appeal was a Disputes Board Member Conflict of Interest or Disputes Board Member Misconduct, then a reconstituted Disputes Board that does not include that Disputes Board member must reconsider the remanded Dispute.

(ii) If the ALJ determined that the decision of the Disputes Board was not affected by Grounds for Appeal, the ALJ's proposal for decision shall be deemed adopted and the Disputes Board Decision shall be deemed affirmed by the Executive Director and the Parties shall implement the decision of the Disputes Board.

(e) The Parties agree and acknowledge that the Executive Director's issuance of a final order under this Section 30.4.3 is a purely ministerial act. Accordingly, notwithstanding any other provision in this Agreement, Developer shall be entitled to mandamus relief pursuant to Section 22.002(c), Texas Government Code, if the Executive Director fails to timely seek an administrative hearing before SOAH under Section 30.4.1(a), issue a final order under Section 30.4.1(b), or issue a final order under this Section 30.4.3.

30.5 Judicial Appeal of Final Orders Under Substantial Evidence Rule. A final order under Section 30.4.3 shall be a final order subject to judicial appeal under Section 201.112(d) of the Texas Transportation Code. Pursuant to Texas Government Code, Section 2001.144(a)(4), TxDOT and Developer hereby agree that the date of issuance for any final order under Section 30.4.3 shall be the actual date of issuance by the Executive Director or the date the ALJ's proposal for decision becomes the final order in the Dispute, so that the filing of a motion for rehearing shall not be a prerequisite for appeal, as provided in Texas Government Code, Section 2001.145(a).

30.6 Mediation. Developer and TxDOT, by mutual agreement, may refer a Dispute (as well as any dispute with a Utility Owner relating to any Utility Adjustment) to mediation for resolution. The Parties shall use diligent efforts to convene and conclude mediation proceedings within 30 days after they agree to refer the Dispute to mediation. Developer and TxDOT shall share equally the expenses of the mediation. If any Dispute has been referred to mediation for resolution by mutual agreement of the Parties, but the Dispute is not resolved within the foregoing 30-day period, then either Party shall have the right, on or after the 31st day, to cease participating in such mediation. A Party shall give notice to the other Party that it will no longer participate. The deadlines in this Article 30 for processing a Dispute are tolled, day for day, during mediation.

30.7 Independent Engineer Evidence

30.7.1 The Independent Engineer's evaluations, opinions, findings, reports, recommendations, objections, decisions, certifications or other determinations shall be treated as part of the record under review, shall be admissible in any proceeding before the Disputes Board or any court and shall be accorded substantial weight by the Disputes Board. No Party shall have any right to unilaterally seek, order or obtain from the Independent Engineer and introduce into evidence any further evaluations, opinions, reports, recommendations, objections, decisions, certifications or other determinations respecting a Dispute after it is first asserted, whether in support or defense of the Party's position on such Dispute. However, either Party and/or the Disputes Board shall have the right to call the Independent Engineer to give oral or written testimony to explain or clarify the Independent Engineer's evaluations, opinions, findings, reports, recommendations, objections, decisions, certifications or other determinations.

30.7.2 Wherever in this Agreement or the Technical Provisions it is stated that the Independent Engineer's evaluations, opinions, findings, reports, recommendations, objections, decisions, certifications or other determinations are to be given substantial weight in resolving Disputes, such provision does not preempt or substitute for the exercise of independent judgment by the Disputes Board or court and does not affect each Party's right to discovery and presentation of other or contradictory evidence, including evidence relevant to the credibility of the Independent Engineer or error, omission, inconsistency, inaccuracy or deficiency by the Independent Engineer in applying the relevant requirements and provisions of the CDA Documents to the matter that is the subject of the Dispute.

30.8 Settlement Negotiations Confidential. All discussions, negotiations and Informal Resolution Procedures described in Section 30.2 between the Parties to resolve a Dispute, and all documents and other materials furnished to a Party or exchanged between the Parties during any such discussions, negotiations, or Informal Resolution Procedures, shall be considered confidential and not subject to disclosure by either Party. The Parties may also request a protective order in any Disputes Board, SOAH or judicial proceeding to prohibit the public disclosure of any other information they believe is confidential. Determinations of such requests by the Disputes Board, ALJ or court shall be governed by the standards in the Texas Rules of Evidence and Texas Rules of Civil Procedure.

30.9 Venue and Jurisdiction. The Parties agree that the exclusive original jurisdiction and venue for any legal action or proceeding, at law or in equity, that is permitted to be brought by a Party in court arising out of the CDA Documents shall be the district courts of Travis County, Texas.

30.10 Continuation of Disputed Work. At all times during Dispute Resolution Procedures (including Informal Resolution Procedures), Developer and all Contractors shall continue with the performance of the Work and their obligations, including any disputed Work or obligations, diligently and without delay, in accordance with this Agreement, except to the extent enjoined by order of a court or otherwise approved by TxDOT in its discretion. Developer acknowledges that it shall be solely responsible for the results of any delaying actions or inactions taken during the pendency of resolution of a Dispute relating to the Work under the Dispute Resolution Procedures even if Developer's position in connection with the Dispute ultimately prevails. In addition, during the pendency of resolution of a Dispute relating to the Work under the Dispute Resolution Procedures, the Parties shall continue to comply with all provisions of the CDA Documents, the Project Management Plan, the Governmental Approvals and applicable Law. Throughout the course of any Work that is the subject of any Dispute that is the subject of Dispute Resolution Procedures, Developer shall keep separate and complete records of any extra costs, expenses, loss of Toll Revenues and/or other monetary effects relating to the disputed Work and/or its resolution under the Dispute Resolution Procedures, and shall permit TxDOT access to these and any other records needed for evaluating the Dispute. The Disputes Board shall have similar access to all such records. These records shall be retained for a period of not less than one year after the date of resolution of the Dispute

pertaining to such disputed Work (or for any longer period required under any other applicable provision of the CDA Documents).

30.11 Procedure for Payment of Judgments. Promptly after any final, non-appealable order or judgment awarding compensation or damages to Developer, TxDOT shall institute payment procedures as set forth in applicable Law and use best efforts to obtain from the Legislature an appropriation for the full amount due. TxDOT shall not hinder or oppose Developer's own efforts to obtain an appropriation for the full amount due.

ARTICLE 31
TERMINATION

31.1 Termination for Convenience

31.1.1 Right to Terminate for Convenience. TxDOT may terminate this Agreement and the Lease in whole, but not in part, by notice to Developer (within this Section 31.1, "notice of termination") if TxDOT determines, in its discretion, that a termination is in TxDOT's best interest (a "**Termination for Convenience**"). The notice of termination shall specify a date upon which the Termination for Convenience shall take effect. Termination for Convenience shall take effect immediately upon the date specified in the notice of termination so long as TxDOT makes payment to Developer of the full amount of Termination Compensation in immediately available funds in the applicable amount as determined in Section 31.1.3; *provided* that TxDOT may withhold an amount equal to TxDOT's reasonable estimate of the costs Developer will thereafter incur to perform and complete its post-termination obligations under Section 31.9. Any amount withheld in accordance with foregoing proviso shall be disbursed to Developer within 10 days after Developer completes all its post-termination obligations under Section 31.9, as first verified by TxDOT. Termination of this Agreement and the Lease shall not relieve Developer or any Guarantor or Surety of its obligation for any claims arising prior to termination.

31.1.2 Notice of Change in Price Interval. As required by Section 371.101(e) of the Texas Transportation Code and Section 27.10(e) of the Rules, not later than 12 months before the start of a new price interval, Developer shall notify TxDOT of the applicable Termination Compensation amount set forth in Exhibit 20 for that price interval. For this purpose, "price interval" means each time interval set forth in Exhibit 20 for which a Termination Compensation amount is provided. TxDOT shall notify Developer if it will exercise the option to terminate this Agreement and the Lease pursuant to Section 31.1.1 during the price interval not later than six months after receiving Developer's notice. TxDOT may rescind a notice of the exercise of an option to terminate without liability. For the avoidance of doubt, notice by TxDOT that it will exercise such option to terminate does not constitute notice of termination under Section 31.1.1, and notice by TxDOT that it will not exercise such option does not preclude TxDOT from later terminating this Agreement and the Lease pursuant to Section 31.1.1 so long as TxDOT provides the required notice of termination and otherwise satisfies the requirements of Section 31.1.1.

31.1.3 Termination Compensation. If TxDOT terminates this Agreement and the Lease pursuant to Section 31.1.1, the amount of Termination Compensation to which Developer is entitled (to the extent provided in Section 31.1.1) shall be equal to the Termination Compensation amount determined pursuant to Section 31.4.4 (as if this Agreement and the Lease were terminated pursuant to Section 31.4.1).

31.2 Termination for Force Majeure Event

31.2.1 Notice of Conditional Election to Terminate. Either Party may give notice to the other Party of its conditional election to terminate this Agreement and the Lease (a) before the Last Service Commencement Date for the Initial Configuration if the Critical Path for completion of Construction Work (after consumption of Float available pursuant to Section 9.1.3) has been delayed, and is continuing to be delayed at the time of such notice, by at least 180 consecutive days due to reasons directly attributable to a Force Majeure Event or (b) on or after the Last Service Commencement Date for the Initial Configuration if all or any material portion of the Project becomes and remains inoperable for a period of at least 180 consecutive days, and continues to be inoperable as of the time of such notice, and such inoperability has a substantial impact on the economic viability of the Project and is due to reasons directly attributable to a Force Majeure Event and not to another other concurrent delay; *provided* that a Party may not give such notice if Developer could have mitigated or cured such delay or inoperability through the exercise of reasonably diligent efforts or if the Term could be extended pursuant to Section 27.1 as a remedy for such delay or inoperability. Such notice shall clearly indicate the intent to terminate this Agreement and the Lease and shall describe in reasonable detail the Force Majeure Event, the delay or inoperability caused and its duration. If TxDOT and Developer deliver concurrent notices of conditional election to terminate (for which purposes notices are concurrent if each Party sends its notice before actually receiving the notice from the other Party, regardless of actual knowledge of the Parties), Developer's notice shall prevail.

31.2.2 Developer Options Upon TxDOT Notice. If TxDOT gives notice of its conditional election to terminate under Section 31.2.1, such notice shall be considered accepted unless Developer gives notice within 30 days after receiving such notice from TxDOT that Developer elects to keep this Agreement and the Lease in effect. If Developer timely gives such notice to keep the agreements in effect, then (a) TxDOT's notice of conditional election to terminate shall be disregarded, and this Agreement and the Lease shall continue in full force and effect, (b) TxDOT shall not have any obligation to compensate Developer for any costs of restoration and repair, for any loss of Toll Revenues or for any other Losses arising out of the Force Majeure Event, and (c) if the Force Majeure Event occurred prior to any Service Commencement Date, there shall be no further extension of the Service Commencement Deadline, the Long Stop Date or any other schedule milestone on account of the Force Majeure Event, notwithstanding any contrary provision of Article 27, and TxDOT may require delivery and implementation of a logic-based critical path recovery schedule for avoiding further delay in the Design Work and Construction Work.

31.2.3 TxDOT Options Upon Developer Notice. If Developer gives notice of its conditional election to terminate under Section 31.2.1, such notice shall be considered accepted unless TxDOT gives notice within 30 days after receiving such notice from Developer that TxDOT elects to keep this Agreement and the Lease in effect. If TxDOT timely gives such notice to keep the agreements in effect, then (a) Developer's notice of conditional election to terminate shall be disregarded, and this Agreement and the Lease shall continue in full force and effect, (b) Developer shall retain rights to relief from performance obligations under Section 27.1 with respect to the Force Majeure Event, and (c) TxDOT shall be obligated to pay or reimburse Developer an amount equal to:

(i) The incremental increase in Developer's reasonable out-of-pocket costs and expenses needed to repair and restore any physical damage or destruction to the Project directly caused by the Force Majeure Event, which shall include, if applicable, any reasonable financing costs incurred on arm's-length terms, and any incremental increase in amounts Developer may owe to the Design-Build Contractor under the terms of the Design-Build Contract for (1) costs of repair and restoration and (2) delay and disruption damages for the period of delay directly caused by the Force Majeure Event after the date Developer delivers its notice of conditional election to terminate; plus

(ii) Developer's reasonable extended overhead and administrative expenses for the period of any delay in achieving the Last Service Commencement Date for the Initial Configuration from and after the date Developer delivers its notice of conditional election to terminate; plus

(iii) The lesser of (1) the loss of Toll Revenues from and after the date Developer delivers its notice of conditional election to terminate directly resulting from the Force Majeure Event, determined in the same manner, and subject to the same conditions and limitations, as for a Compensation Event under Section 27.2, and (2) an amount equal to (A) regularly scheduled debt service on Project Debt, other than Subordinate Debt, accrued during the period of delay due to the Force Majeure Event after the date Developer delivers its notice of conditional election to terminate, plus (B) Developer's unavoidable, reasonable operating and maintenance costs during such period, minus (C) Toll Revenues during such period; minus

(iv) The sum of (1) the greater of (A) the proceeds of insurance (including casualty insurance and business interruption insurance) that is required to be carried pursuant to Section 26.1 and provides coverage to pay, reimburse or provide for any of the foregoing costs and losses, and (B) the proceeds of insurance (including casualty insurance and business interruption insurance) that is actually carried by or insuring Developer under policies solely with respect to the Project and the Work, regardless of whether required to be carried pursuant to Section 26.1, and that provides coverage to pay, reimburse or provide for any of the foregoing costs and losses, plus (2) the foregoing costs and losses that Developer is deemed to have self-insured pursuant to Section 26.1.4(c).

If Developer gives notice of its conditional election to terminate under Section 31.2.1, and TxDOT elects to keep this Agreement and the Lease in effect, and the negative effects of the same Force Majeure Event (for which Developer previously gave notice of conditional election to terminate) continue for 24 consecutive months (total since inception of such event), Developer may unconditionally terminate this Agreement and the Lease by notice to TxDOT. No election by TxDOT to keep this Agreement and the Lease in effect under this Section 31.2.3 shall prejudice or waive TxDOT's right to give notice of conditional election to terminate under Section 31.2.1 with respect to the same or any other Force Majeure Event.

31.2.4 Early Termination Date; Termination Compensation. If a Party's notice of conditional election to terminate this Agreement and the Lease pursuant to this Section 31.2 is accepted, or if Developer delivers notice to unconditionally terminate this Agreement and the Lease pursuant to the penultimate sentence of Section 31.2.3, then TxDOT shall be obligated to pay, within 60 days after the notice of conditional election to terminate is accepted, Termination Compensation equal to:

(a) the Senior Debt Termination Amount; plus

(b) the amount necessary to reimburse reasonable and documented out-of-pocket costs of third party and Affiliate Contractors to demobilize and terminate under Contracts between Developer and third parties or Affiliates for performance of Work, excluding Developer's non-contractual liabilities and indemnity liabilities (contractual or non-contractual) to third parties or Affiliates; plus

(c) the incremental increase, if any, in the costs Developer incurs under Section 31.9.10 over the present value of such costs under the Base Case Financial Model, but without double counting of the amounts under clauses (a) and (b) above; minus

(d) all Borrowed Cash and Credit Balances (if any); minus

(e) the amount of all Distributions, and all payments to Affiliates in excess of reasonable compensation for necessary services or that are advance payments in violation of Section 23.5.3, between the date notice of conditional election to terminate is delivered and the Early Termination Date, but without double-counting of the amounts under clause (d) above; minus

(f) the portion of any Compensation Amounts previously paid to Developer that (i) compensated Developer for cost and revenue impacts attributable to the period after the Early Termination Date and (ii) were not previously used to reduce Project Debt within the definition of Senior Debt Termination Amount; plus

(g) if and only if the notice of conditional election to terminate was given by TxDOT (as opposed to Developer), the Contributed Unreturned Equity.

Developer shall provide, or cause to be provided, to TxDOT a statement from the Collateral Agent of the Senior Debt Termination Amount and evidence of all Borrowed Cash and Credit Balances, together with Developer's certification that the amounts shown are true, correct and complete; if TxDOT does not receive such information within 30 days after the notice of conditional election to terminate is accepted, TxDOT may pay Termination Compensation based on its own good faith calculation. Termination shall be effective upon payment of Termination Compensation; *provided, however*, that TxDOT may withhold an amount equal to TxDOT's reasonable estimate of the costs Developer will thereafter incur to perform and complete its post-termination obligations under Section 31.9. Any amount withheld in accordance with foregoing proviso shall be disbursed to Developer within 10 days after Developer completes all of its post-termination obligations under Section 31.9, as first verified by TxDOT.

31.2.5 Finality of Termination. Termination under this Section 31.2 shall be final, regardless of whether the Party electing to terminate this Agreement is correct in determining that it has the right to terminate hereunder. If either Party elects to terminate this Agreement pursuant to Section 31.2, and it is later determined that such Party lacked the right to so terminate, then: (a) if TxDOT issued the conditional election to terminate, the termination shall be treated as a Termination for Convenience as provided in Section 31.1 for the purpose of determining the Termination Compensation due and (b) if Developer issued the conditional election to terminate, the termination shall be treated as a termination for Developer Default as provided in Section 31.3 for the purpose of determining the Termination Compensation Due.

31.3 Termination for Developer Default

31.3.1 Default Termination Events. TxDOT may terminate this Agreement and the Lease immediately upon notice to Developer and the Collateral Agent under the Security Documents (other than the Subordinated Security Documents) upon the occurrence of any of the following events (each a "**Default Termination Event**"), which Developer agrees, acknowledges and stipulates would result in material and substantial harm to TxDOT's rights and interests under this Agreement and therefore justify termination: (a) Developer fails to achieve Service Commencement for any Project Segment by the applicable Long Stop Date; (b) there occurs any other Developer Default for which TxDOT issues a Warning Notice, and such Developer Default is not fully and completely cured within the applicable cure period, if any, available to Lenders; (c) there occurs any Developer Default under Section 29.1.5; (d) there occurs any Developer Default under Section 29.1.14, 29.1.15 or 29.1.16; (e) there occurs a Developer Default under Section 29.1.17; or (f) Developer fails to achieve Financial Close by the Financial Close Deadline and such failure is not directly attributable to an Excuse from Closing. Termination under this Section 31.3.1 shall be final and effective immediately upon delivery of such notice, regardless of whether TxDOT is correct in determining that it has the right to terminate hereunder; if it is later determined that TxDOT lacked such right, then the termination shall be treated as a Termination for

Convenience as provided in Section 31.1 for the purpose of determining the Termination Compensation due.

31.3.2 Termination Compensation. If TxDOT terminates this Agreement and the Lease pursuant to Section 31.3.1:

(a) Developer shall not be entitled to receive any compensation if (i) the basis for such termination is a Developer Default under Section 29.1.14, 29.1.15 or 29.1.16 or Developer's failure to achieve Financial Close by the Financial Close Deadline, except as contemplated in Section 31.6, or (ii) the Collateral Agent has requested and entered into New Agreements pursuant to Section 2.4.8 of the Lenders' Direct Agreement, or (iii) Developer terminates this Agreement and the Lease on grounds or circumstances beyond Developer's termination rights specifically set forth in this Agreement.

(b) Subject to clause (a) above and clause (c) below, Developer shall be entitled to Termination Compensation equal only to the lesser of:

(i) (1) 80% of the Senior Debt Termination Amount, minus (2) 80% of all Borrowed Cash and Credit Balances (if any), minus (3) 80% of the portion of any Compensation Amounts previously paid to Developer that (A) compensated Developer for cost and revenue impacts attributable to the period after the Early Termination Date and (B) were not previously used to reduce Project Debt within the definition of Senior Debt Termination Amount;

(ii) (1) 80% of the Initial Senior Debt Termination Amount, plus (2) 80% of any increase in the Initial Senior Debt Termination Amount directly attributable to a Refinancing of the Initial Base Case Senior Project Debt that (A) was fully and specifically identified and taken into account in the Base Case Financial Model and calculation of the Concession Payment and (B) occurs prior to the date notice of termination is delivered, minus (3) 80% of all Borrowed Cash and Credit Balances (if any), minus (4) 80% of the portion of any Compensation Amounts previously paid to Developer that (A) compensated Developer for cost and revenue impacts attributable to the period after the Early Termination Date and (B) were not previously used to reduce Project Debt within the definition of Senior Debt Termination Amount;

(iii) if and only if the Default Termination Event occurred prior to the Last Service Commencement Date for the Initial Configuration, (1) $815,511,339, minus (2) TxDOT's estimated cost to complete the Project, minus (3) the amount of the TMC Public Funds Payment paid, minus (4) (if applicable) the amount of the Public Funds Payments paid; or

(iv) if and only if the Default Termination Event occurred on or after the Last Service Commencement Date for the Initial Configuration, (1) the Fair Market Value, if any, of the Developer's Interest as of the Valuation Date, minus (2) the amount of any damages due to TxDOT resulting from the Developer Default, including TxDOT's reasonable costs to terminate and take over the Project, but without double counting where such costs are part of the determination of Fair Market Value (if applicable), minus (3) the amount of all Distributions, and all payments to Affiliates in excess of reasonable compensation for necessary services or that are advance payments in violation of Section 23.5.3, between the Valuation Date and the Early Termination Date, minus (4) all amounts received by the Lenders in relation to the Project Debt (including all interest, capital and Breakage Costs) between the Valuation Date and the Early Termination Date, plus (5) a return on the outstanding balance of the Fair Market Value amount between the Valuation Date and the Early Termination Date equal to Developer's weighted average cost of capital as of the Valuation Date.

(c) If the Default Termination Event occurred on or after the Last Service Commencement Date for the Initial Configuration, the amounts set forth in clauses (b)(i) and (b)(ii) above are subject to the condition that each Funding Agreement for senior Project Debt, and any intercreditor agreement between the Lenders of senior Project Debt and the Lenders of any first tier subordinate Project Debt within the definition of Senior Debt Termination Amount, shall expressly provide that upon termination of this Agreement for Developer Default the senior Lenders shall have no right to claim, receive or retain from the Termination Compensation (whether determined based on Fair Market Value, the Initial Senior Debt Termination Amount or the Senior Debt Termination Amount) an amount in excess of 80% of the Senior Debt Termination Amount minus 80% of all Borrowed Cash and Credit Balances (if any), such result multiplied by a fraction the numerator of which is the then outstanding principal balance of the senior Project Debt (including Breakage Costs) and the denominator of which is the then outstanding principal balance of the senior Project Debt (including Breakage Costs) plus first tier subordinate Project Debt (including Breakage Costs). If the foregoing condition is not satisfied, then the amounts under clauses (b)(i) and (b)(ii) above shall not include any amounts for first tier subordinate Project Debt described in clause (a)(iii)(B) of the definition of Senior Debt Termination Amount or any Breakage Costs related to such first tier subordinate Project Debt, and shall not be reduced by amounts described in clause (c) of such definitions related to such first tier subordinate Project Debt.

(d) TxDOT shall deliver to Developer any Termination Compensation owing hereunder, as determined by TxDOT in good faith, in immediately available funds, within the later of (i) 30 days after Developer completes its post-termination obligations under Section 31.9 or (ii) 60 days after the Early Termination Date, subject to damages and offset in accordance with Sections 29.4.6 and 29.4.7 (without duplication of any amounts owing to TxDOT accounted for in the calculation of Termination Compensation in clause (b) above). If TxDOT does not pay such amount when due, the unpaid amount shall bear interest from the due date until paid at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points.

(e) If the basis for termination is Developer's failure to achieve Financial Close by the Financial Close Deadline, TxDOT shall be entitled to draw on the Financial Close Security as liquidated damages for such Developer Default without prior notice to or demand upon Developer for such liquidated damages, as provided in Section 29.5.6.

31.4 Termination for TxDOT Default, Suspension of Work or Delayed Notice to Proceed

31.4.1 TxDOT Default. Developer may give notice of its intent to terminate this Agreement and the Lease following a material TxDOT Default under Section 29.6.1. If TxDOT does not cure such default within 60 days after receiving such notice, Developer may terminate this Agreement and the Lease immediately upon further notice to TxDOT. Termination under this Section 31.4.1 shall be final and effective immediately upon delivery of such notice, regardless of whether Developer is correct in determining that it has the right to terminate hereunder; if it is later determined that Developer lacked such right, then the termination shall be treated as a termination for a material Developer Default under Section 31.3.1(b) for the purpose of determining the Termination Compensation due.

31.4.2 Suspension of Work. Developer may terminate this Agreement and the Lease immediately upon notice to TxDOT if TxDOT has suspended Work for a period of at least 365 consecutive days, other than as permitted by Section 29.4.10.

31.4.3 Delayed Notice to Proceed. Developer may terminate this Agreement and the Lease immediately upon notice to TxDOT if TxDOT has not issued NTP1 or NTP2 within 365 days of the applicable anticipated issuance date set forth in Section 9.2, other than because the NEPA Finality Date has not occurred.

31.4.4 Termination Compensation. If Developer terminates this Agreement and the Lease pursuant to Section 31.4.1, 31.4.2 or 31.4.3, Developer shall be entitled to Termination Compensation equal to the least of:

(a) The applicable Termination Compensation amount set forth in Exhibit 20 as determined by the date the termination takes effect;

(b) (i) The greater of (1) the Fair Market Value, if any, of the Developer's Interest as of the Valuation Date, or (2) the Senior Debt Termination Amount; plus (ii) the amount necessary to reimburse reasonable and documented out-of-pocket costs of third-party and Affiliate Contractors to demobilize and terminate under Contracts between Developer and third parties or Affiliates for performance of Work, excluding Developer's non-contractual liabilities and indemnity liabilities (contractual or non-contractual) to third parties or Affiliates; plus (iii) if termination occurs prior to Substantial Completion of all Project Segments, Developer's own reasonable and documented out-of-pocket costs to demobilize; plus (iv) the incremental increase, if any, in the costs Developer incurs under Section 31.9.10 over the present value of such costs under the Base Case Financial Model, but without double counting of the amounts under clauses (i), (ii) and (iii) above; minus (v) only where the Senior Debt Termination Amount is applicable, all Borrowed Cash and Credit Balances, except to the extent such balances are already deducted in determining the Senior Debt Termination Amount; minus (vi) only where the Senior Debt Termination Amount is applicable, the cost of Renewal Work that Developer was required to but did not perform prior to the Early Termination Date, as well as the amount of funds that would have been required to be funded into the Handback Requirements Reserve and delivered to TxDOT at the end of the Term as if the Handback Requirements and Handback Requirements Reserve provisions had been in effect prior to the Early Termination Date, as contemplated by Section 20.1.3 and without duplication; minus (vii) only where the Senior Debt Termination Amount is applicable, the portion of any Compensation Amounts previously paid to Developer that (1) compensated Developer for cost and revenue impacts attributable to the period after the Early Termination Date and (2) were not previously used to reduce Project Debt within the definition of Senior Debt Termination Amount; minus (viii) only where Fair Market Value is applicable, the amount of all Distributions, and all payments to Affiliates in excess of reasonable compensation for necessary services or that are advance payments in violation of Section 23.5.3, between the Valuation Date and the Early Termination Date; minus (ix) only where Fair Market Value is applicable, all amounts received by the Lenders in relation to the Project Debt (including all interest, capital and Breakage Costs) between the Valuation Date and the Early Termination Date; plus (x) only where Fair Market Value is applicable, (1) in the case of Termination for Convenience, a return on the outstanding balance of the Fair Market Value amount between the Valuation Date and the Early Termination Date equal to Developer's weighted average cost of capital as of the Valuation Date or (2) in the case of termination for TxDOT Default or TxDOT suspension of Work, a return on the outstanding balance of the Fair Market Value amount between the Valuation Date and the date the Fair Market Value is paid in full equal to Developer's weighted average cost of capital as of the Valuation Date; plus (xi) only where Fair Market Value is applicable, the incremental tax liability, if any, described in Section 31.8.4; and

(c) (i) (1) If any Refinancing fully and specifically identified and taken into account in the Base Case Financial Model was scheduled therein to occur prior to the Valuation Date, then the Senior Debt Termination Amount determined as if such Refinancing occurred in the amount and on the terms assumed in the Base Case Financial Model, or (2) if otherwise, then the Initial Senior Debt Termination Amount; plus (ii) the greater of zero or the amount computed using the formula "A+B", where (A) "A" is the Net present value of the Distributions to be made between the Valuation Date and the date the original Term expires (but without taking into account the effect of the termination) as projected under the Base Case Financial Model and (B) "B" is an incremental adjustment in the form of one or more special Distributions that, when added to "A", would be required to increase the Equity IRR

to a blended, nominal Post-Tax rate of return on equity equal to the Adjusted Equity IRR (for these purposes, "B" is capped at a maximum equal to the present value of three times the Toll Revenues between the Valuation Date and the date the original Term expires (but without taking into account the effect of the termination) as projected under the Base Case Financial Model, and the present value of future Toll Revenues shall be determined using the Equity IRR as the discount factor); plus (iii) the amount that will put Developer in the same Post-Tax position as it would have been had the payment under clause (ii) above not been subject to federal income tax liability of Developer (or, if it is a pass-through entity for federal income tax purposes, its members or partners) and State margin tax liability of Developer as a lump sum payment; plus (iv) the amount necessary to reimburse reasonable and documented out-of-pocket costs of third-party and Affiliate Contractors to demobilize and terminate under Contracts between Developer and third parties or Affiliates for performance of Work, excluding Developer's non-contractual liabilities and indemnity liabilities (contractual or non-contractual) to third parties or Affiliates; plus (v) if termination occurs prior to Substantial Completion of all Project Segments, Developer's own reasonable and documented out-of-pocket costs to demobilize; plus (vi) the incremental increase, if any, in the costs Developer incurs under Section 31.9.10 over the present value of such costs under the Base Case Financial Model, but without double counting of the amounts under clauses (i), (ii) and (iii) above; minus (vii) all Cash and Credit Balances, except to the extent such balances are already deducted in determining amounts under clauses (i), (ii) and (iii) above; minus (viii) the portion of any Compensation Amounts previously paid to Developer that (1) compensated Developer for cost and revenue impacts attributable to the period after the Early Termination Date and (2) were not previously used to reduce Project Debt within the definition of Senior Debt Termination Amount; minus (ix) to the extent Equity IRR is determined under clause (b) of the definition of Equity IRR, an amount equal to the earnings on the committed funds set aside in the separate account specifically identified for the Project, or, if a letter of credit, parent guaranty or other security is provided instead of funding of such separate account, an amount equal to the imputed earnings on the committed funds determined by applying to the committed funds from and including the Effective Date to each date of actual funding (or termination, if sooner) a variable rate equal to LIBOR in effect from time to time;

provided that if this Agreement is terminated pursuant to Section 31.4.3 (delayed notice to proceed) and at such time there exists any event or circumstance that entitles either Party terminate, or with the giving of notice or passage of time, or both, would entitle either Party to terminate, this Agreement pursuant to Section 31.2 (Force Majeure) or Section 31.5 (court ruling or lack of NEPA finality), then the Termination Compensation shall be determined under Section 31.5.3, and not under this Section 31.4.4, but excluding any increase in the Senior Debt Termination Amount, Subordinate Debt or Contributed Unreturned Equity as a consequence of any Refinancing; *provided, further*, that if this Agreement is terminated prior to Service Commencement, Termination Compensation will be determined without regard to subsection (a) above.

31.4.5 Payment of Termination Compensation. TxDOT shall deliver to Developer any Termination Compensation owing hereunder, as determined by TxDOT in good faith, in immediately available funds, within 60 Days after the Early Termination Date; *provided, however*, that TxDOT may withhold an amount equal to TxDOT's reasonable estimate of the costs Developer will thereafter incur to perform and complete its post-termination obligations under Section 31.9. Any amount withheld in accordance with foregoing proviso shall be disbursed to Developer within 10 days after Developer completes all its post-termination obligations under Section 31.9, as first verified by TxDOT. If TxDOT does not pay such amount when due, the unpaid amount shall bear interest from the due date until paid at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points.

31.5 Termination by Court Ruling; Lack of NEPA Finality

31.5.1 Court Ruling. This Agreement and the Lease shall terminate (a "**Termination by Court Ruling**") immediately and automatically upon the issuance of a final court order by a court of competent jurisdiction (a) to the effect that this Agreement or the Lease, or both, are void or unenforceable or impossible to perform in their entirety, (b) upholding the binding effect on Developer or TxDOT of a Change in Law that causes impossibility of performance of a fundamental obligation by Developer or TxDOT under the CDA Documents or impossibility of exercising a fundamental right of Developer or TxDOT under the CDA Documents, or (c) causing the circumstances described in Section 35.14.2 or 35.14.4. Upon the effectiveness of a Termination by Court Ruling, TxDOT and Developer shall cooperate to implement Sections 31.9 through 31.14. This Section 31.5.1 does not apply to termination prior to, or for failure to achieve, Financial Close; refer instead to Section 31.6.

31.5.2 Lack of NEPA Finality. If the NEPA Finality Date has not occurred by fifth anniversary of the Effective Date (as such deadline may be extended by mutual agreement of the Parties), each Party, in its discretion, may thereafter terminate this Agreement and the Lease, effective immediately upon delivery of notice of termination to the other Party and the Collateral Agent under the Security Documents (other than the Subordinated Security Documents). However, if the NEPA Finality Date occurs before notice of termination is delivered, then no such notice shall be effective and neither Party shall have a right to terminate under this Section 19.13. Upon the effectiveness of a termination under this Section 19.13, TxDOT and Developer shall cooperate to implement Sections 31.9 through 31.14. This Section 31.5.2 does not apply to termination prior to, or for failure to achieve, Financial Close; refer instead to Section 31.6.

31.5.3 Termination Compensation. If this Agreement and the Lease are terminated pursuant to Section 31.5.1 or Section 31.5.2:

(a) Developer shall be entitled to Termination Compensation equal to: (i) the lesser of (1) the sum of (A) Initial Senior Debt Termination Amount, plus (B) any increase in the Initial Senior Debt Termination Amount directly attributable to a Refinancing of the Initial Base Case Senior Project Debt that (I) was fully and specifically identified and taken into account in the Base Case Financial Model and calculation of the Concession Payment and (II) occurs prior to the date notice of termination is delivered, plus (C) the portion of all Refinancing Gain previously paid to TxDOT, if any, or (2) the Senior Debt Termination Amount; plus (ii) an amount which, when taken together with interest payments on Subordinate Debt, Distributions made prior to the Early Termination Date, and the cash and credit balances derived from Toll Revenues or interest earnings in accounts held by or on behalf of Developer on the Early Termination Date, including in Lender accounts and reserve accounts, will yield a nominal Post-Tax blended internal rate of return, on Subordinate Debt and Contributed Unreturned Equity equal to that projected in the Base Case Financial Model, which rate of return is 15.82%, between the date of funding of such Subordinate Debt and Contributed Unreturned Equity and the Early Termination Date; plus (iii) the incremental increase, if any, in the costs Developer incurs under Section 31.9.11 over the present value of such costs under the Base Case Financial Model, but without double counting of the foregoing debt and equity amounts; minus (iv) all payments to Affiliates in excess of reasonable compensation for necessary services prior to the Early Termination Date or that are advance payments in violation of Section 23.5.3; minus (v) all Cash and Credit Balances, except to the extent such balances are already deducted in determining amounts under clauses (i) and (ii) above; minus (vi) the portion of any Compensation Amounts previously paid to Developer that (1) compensated Developer for cost and revenue impacts attributable to the period after the Early Termination Date and (2) were not previously used to reduce Project Debt within the definition of Senior Debt Termination Amount.

(b) The amount of any Termination Compensation under clause (a) above shall exclude, however, any increase in the Senior Debt Termination Amount, Subordinate Debt or Contributed Unreturned Equity as a consequence of any Refinancing (i) (in the case of a termination under Section 31.13.1) that occurs on or after the date Developer knows, or reasonably should know, about the filing of any legal action seeking a remedy that would be a Termination by Court Ruling or challenging a NEPA Approval within the definition of NEPA Finality Date or (ii) (in the case of a termination under Section 31.13.2) that occurs at any time after the court in any litigation challenging a NEPA Approval within the definition of NEPA Finality Date issues any temporary injunction prohibiting or restricting performance of any material portion of the Work.

(c) TxDOT shall pay such Termination Compensation within 60 days after the later of the Early Termination Date or the date on which TxDOT receives (i) a statement from the Collateral Agent of the Initial Senior Debt Termination Amount, increases in the Initial Senior Debt Termination Amount due to each Refinancing described in clause (a)(i) above, and the Senior Debt Termination Amount and (ii) evidence from Developer of the amounts of the Subordinate Debt, Contributed Unreturned Equity, and all Borrowed Cash and Credit Balances; *provided*, *however*, that TxDOT may withhold an amount equal to TxDOT's reasonable estimate of the costs Developer will thereafter incur to perform and complete its post-termination obligations under Section 31.9. Any amount withheld in accordance with foregoing proviso shall be disbursed to Developer within 10 days after Developer completes all its post-termination obligations under Section 31.9, as first verified by TxDOT. If TxDOT does not pay such amount when due, the unpaid amount shall bear interest from the due date until paid at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points.

(d) If (i) it is established pursuant to the Dispute Resolution Procedures that TxDOT requested or caused the filing, or by collusion with any other Person caused or abetted the filing, of the action that resulted in the issuance of the final court order that led to Termination by Court Ruling, or of an action challenging a NEPA Approval within the definition of NEPA Finality Date or (ii) a Termination by Court Ruling results from or entails a breach by TxDOT of its warranties under Section 5.2 but not a corresponding breach by Developer of its warranties under Section 5.1, then Termination Compensation shall be determined under Section 31.1 (rather than under this Section 31.5.3); *provided*, *however*, that this clause (d) shall not apply to legal proceedings initiated by TxDOT challenging applicability of a Change in Law where the final outcome applies the Change in Law to TxDOT or Developer and leads to Termination by Court Ruling.

(e) If (i) it is established pursuant to the Dispute Resolution Procedures that Developer requested or caused the filing, or by collusion with any other Person, caused or abetted the filing of the action that resulted in the issuance of the final court order that led to Termination by Court Ruling, or of an action challenging a NEPA Approval within the definition of NEPA Finality Date or (ii) a Termination by Court Ruling results from or entails a breach by Developer of its warranties under Section 5.1 but not a corresponding breach by TxDOT of its warranties under Section 5.2, then Termination Compensation shall be determined under Section 31.3.2 (rather than under this Section 31.5.3); *provided*, *however*, that this clause (e) shall not apply to legal proceedings initiated by Developer challenging applicability of a Change in Law where the final outcome applies the Change in Law to TxDOT or Developer and leads to Termination by Court Ruling.

31.6 Termination Prior to Financial Close (for Excused Reasons)

31.6.1 Termination Events. If Developer fails to achieve Financial Close by the Financial Close Deadline and such failure is directly attributable to an Excuse from Closing, or if TxDOT makes an Unaffordability Determination prior to Financial Close, then either TxDOT or Developer may give notice of its intent to terminate this Agreement.

31.6.2 Negotiations; Effectiveness of Termination. Following the delivery of any notice to terminate under this Section 31.6, TxDOT and Developer shall engage in good faith negotiations concerning terminating or continuing this Agreement as required by Section 3.4.4. This Agreement (and if applicable, the Lease) shall automatically terminate upon the 30th day after delivery of such notice unless the Parties otherwise agree. Upon the effectiveness of a termination under this Section 31.6.2, TxDOT and Developer shall cooperate to implement Sections 31.9 through 31.14 and TxDOT shall promptly return to Developer the original of the Financial Close Security.

31.6.3 Termination Compensation. If this Agreement and the Lease are terminated pursuant to this Section 31.6 and notice of termination is delivered prior to Financial Close, Developer shall be entitled to Termination Compensation equal to (a) $950,000 plus (b) the amount of nonrefundable Lender fees and premiums previously approved by TxDOT and paid by Developer to secure the loan commitment for Initial Project Debt described in Exhibit 4, but not to exceed $600,000. (Developer shall not be entitled to any other Termination Compensation for a termination under this Section 31.6.) TxDOT shall pay such Termination Compensation within 60 days after the later of the Early Termination Date or the date on which TxDOT receives documentation and other evidence of such fees and premiums, together with Developer's certification that the amounts shown are true, correct and complete; *provided, however*, that TxDOT may withhold an amount equal to TxDOT's reasonable estimate of the costs Developer will thereafter incur to perform and complete its post-termination obligations under Section 31.9. Any amount withheld in accordance with foregoing proviso shall be disbursed to Developer within 10 days after Developer completes all its post-termination obligations under Section 31.9, as first verified by TxDOT. If TxDOT does not pay such amount when due, the unpaid amount shall bear interest from the due date until paid at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points.

31.7 Determination of Fair Market Value. Whenever Fair Market Value of Developer's Interest is required to be determined, it shall be determined as of the Valuation Date as follows:

31.7.1 Appointment of the Appraiser. Within 30 days after a request by either Party, TxDOT and Developer shall jointly appoint an independent third-party appraiser (the "**Appraiser**") to determine Fair Market Value of Developer's Interest. The Appraiser must be nationally recognized and experienced in appraising similar assets. If the Parties fail to appoint an Appraiser by such deadline, each party shall appoint, within 10 days after such deadline, an independent third-party appraiser, and such appraisers shall jointly appoint, within 15 days after their appointments, the Appraiser. If such appraisers fail to appoint the Appraiser by such deadline, either Party may petition the Travis County District Court to appoint the Appraiser. TxDOT and Developer shall pay in equal shares the reasonable costs and expenses of the Appraiser; each Party shall pay the costs of its own appraiser (contemplated in the third sentence of this paragraph).

31.7.2 Appraisal. The Appraiser shall (a) appraise the Fair Market Value of the Developer's Interest as of the Valuation Date, (b) determine Developer's weighted average cost of capital as of the Valuation Date, and (c) determine (in accordance with the definition of Base Tax Liability) the Base Tax Liability that would be incurred over the remaining Term absent early termination. The Appraiser shall appraise Fair Market Value on the basis of the assumptions contained in the definition of Fair Market

Value and by taking into account (i) the terms of the CDA Documents, (ii) the condition of the Elements of the Project, (iii) prior financial performance of the Project, (iv) Developer's record regarding the Targets in the Performance and Measurement Table and of compliance with the CDA Documents, including record of compliance with Renewal Work requirements, but only for the purpose of evaluating and taking into account the effect of such record on the condition and viability of the Project, (v) projected revenues and costs of the Project (excluding costs that reduce the Fair Market Value pursuant to clause (c) of the definition of Fair Market Value, which shall be determined separately by the Appraiser) for the remainder of the Term had the Agreement not be terminated, as determined by the Appraiser, and (vi) such other factors as the Appraiser considers relevant. In determining Developer's weighted average cost of capital as of the Valuation Date, no consideration shall be given to any default rate of interest on Project Debt. For the purpose of the Appraiser's valuation using a projected net cash flow methodology, the Appraiser shall use the Financial Model Formulas most recently approved by TxDOT and Developer; *provided* that if there are known mathematical errors in the Financial Model Formulas the Parties shall provide corrected Financial Model Formulas to the Appraiser. The Appraiser will determine the data inputs and data values.

31.7.3 Developer Data; Draft and Final Reports. Developer shall promptly deliver to TxDOT and the Appraiser all information, documents and data that either may reasonably request relevant to the determination of Developer's weighted average cost of capital as of the Valuation Date and the Base Tax Liability. In conducting the appraisal, and before issuing a draft appraisal report, the Appraiser shall afford reasonable and comparable opportunity to each Party to provide the Appraiser with information, data, analysis and reasons supporting each Party's view on the Fair Market Value, Developer's weighted average cost of capital as of the Valuation Date, and the Base Tax Liability. The Appraiser shall then deliver to both Parties a draft appraisal report. The Parties shall have 15 days after receipt of the draft appraisal report to comment thereon. Not later than 15 days after the opportunity to comment has expired, the Appraiser shall consider and evaluate all comments, prepare a final appraisal report stating the Fair Market Value, Developer's weighted average cost of capital as of the Valuation Date, and the Base Tax Liability, and deliver the final appraisal report to both Parties.

31.7.4 Disputes. Either Party may Dispute the Appraiser's determination of Fair Market Value, Developer's weighted average cost of capital as of the Valuation Date or the Base Tax Liability within 30 days after receiving the final appraisal report, which Dispute shall be resolved according the Dispute Resolution procedures. Failure to timely Dispute the final appraisal report constitutes acceptance thereof. In resolution of any such Dispute, the Appraiser's determination shall be given substantial weight in evidence absent failure to properly apply the terms of the CDA Documents or applicable Laws.

31.8 Access to Information; Adjustments to Compensation Payments

31.8.1 Access to Information. Developer shall conduct all discussions and negotiations to determine any Termination Compensation, and shall share with TxDOT all data, documents and information pertaining thereto, on an Open Book Basis.

31.8.2 Resolved Claims. Subject to Section 31.12 and clause (e) of the definition of Fair Market Value, if any outstanding Claim that is independent of the event of termination and determination of Termination Compensation is resolved prior to payment of the Termination Compensation, the Parties shall adjust the Termination Compensation by the amount of the unpaid award, if any, on the Claim.

31.8.3 Pending Claims. At TxDOT's sole election, it may hold back from payment of the Termination Compensation the amount of any Claim of TxDOT against Developer not resolved prior to payment. TxDOT shall provide notice to Developer of any such election, the subject Claim and the

amount to be withheld, prior to or concurrently with tendering payment of the Termination Compensation.

31.8.4 Incremental Increase in Tax Liability. If the Termination Compensation is based on Fair Market Value, TxDOT also shall be liable for the amount necessary to cover the incremental increase, if any, in the federal income tax liability of Developer (or, if it is a pass-through entity for federal income tax purposes, its members or partners) and in the State margin tax liability of Developer due to payment of the Termination Compensation (other than this element of the Termination Compensation) over the Base Tax Liability. TxDOT shall pay such amount within 30 days after Developer delivers to TxDOT proof of the actual tax liability incurred and the amount by which it exceeds the Base Tax Liability.

31.9 Termination Procedures and Duties. In respect of any expiration or termination of this Agreement and the Lease for any reason, including TxDOT Default, the following provisions apply:

31.9.1 Prior to Early Termination Date. In any case where notice of termination precedes the effective Early Termination Date, Developer shall continue performing the Work in accordance with, and without excuse from, all the standards, requirements and provisions of the CDA Documents. In addition, not later than 30 days after notice of termination is delivered, and annually thereafter within 30 days after the beginning of each Fiscal Year until the effective Early Termination Date (or rescission or expiration of the notice of termination), Developer shall deliver to TxDOT an annual budget for the Project for the current Fiscal Year in at least as much detail as any budget required by Lenders and Good Industry Practice, together with its annual budgets for the immediately preceding three Fiscal Years and detailed itemization of all costs and expenses for the immediately preceding three Fiscal Years organized by the line items in the budgets. Each such budget shall provide for operating and maintenance expenditures at least sufficient to continue services and operations at the levels experienced in years prior to notice of termination, taking into account inflationary effects, and in any case consistent with continuing performance to the requirements of the CDA Documents. TxDOT may increase and direct the Independent Engineer to increase the level of its and the Independent Engineer's monitoring, inspection, sampling, measuring, testing, auditing and oversight of the Project and Developer's compliance with the obligations under this Agreement, to such level as TxDOT reasonably sees fit to protect against curtailment of services, quality and performance; in such case, Developer and TxDOT shall share equally the extra costs of the Independent Engineer.

31.9.2 Transition Plan. Within three days after receipt of a notice of termination, Developer shall meet and confer with TxDOT for the purpose of developing an interim transition plan for the orderly transition of Work, demobilization and transfer of the Project and Project Right of Way control to TxDOT. The Parties shall use diligent efforts to complete preparation of the transition plan within 15 days after the date Developer receives the notice of termination. The transition plan shall be in form and substance acceptable to TxDOT in its discretion and shall include and be consistent with the other provisions and procedures set forth in this Section 31.9, all of which procedures Developer shall immediately follow, regardless of any delay in preparation or acceptance of the transition plan.

31.9.3 Reversion; Toll Revenues; Project ROW. From and after the Termination Date, even though Developer may be continuing services temporarily pursuant to a transition plan, Developer shall cease to own or have rights to Toll Revenues, except to the extent of any continuing pledge and security interest pursuant to Section 31.14. On the Termination Date, or as soon thereafter as is possible, Developer shall relinquish and surrender full control and possession of the Project and Project Right of Way to TxDOT or TxDOT's Authorized Representative, and shall cause all persons and entities claiming under or through Developer to do likewise, in at least the condition required by the Handback Requirements. On the later of the Termination Date or the date Developer relinquishes full control and

possession, TxDOT shall assume responsibility, at its expense, for the Project and the Project Right of Way, subject to any rights to damages against Developer where the termination is due to a Default Termination Event.

31.9.4 Design-Build Contract. If as of the Termination Date Developer has not completed construction of all or part of the Project and Utility Adjustments that are part of the Construction Work, TxDOT may elect, by notice to Developer and the Design-Build Contractor delivered within 90 days after the Termination Date, to continue in effect the Design-Build Contract or to require its termination. If TxDOT elects to continue the Design-Build Contract in effect, then Developer shall execute and deliver to TxDOT an assignment, in form and substance acceptable to TxDOT, of all Developer's right, title and interest in and to the Design-Build Contract, and TxDOT shall assume in writing Developer's obligations thereunder that arise from and after the Termination Date. If TxDOT does not timely elect to continue the Design-Build Contract in effect, then Developer shall:

(a) Unless TxDOT has granted New Agreements to a Lender or its Substituted Entity, take such steps as are necessary to terminate the Design-Build Contract, including notifying the Design-Build Contractor that the Design-Build Contract is being terminated and that the Design-Build Contractor is to immediately stop work and stop and cancel orders for materials, services or facilities unless otherwise authorized by TxDOT;

(b) Immediately safely demobilize and secure construction, staging, lay down and storage areas for the Project and Utility Adjustments included in the Construction Work in a manner satisfactory to TxDOT, and remove all debris and waste materials except as otherwise approved by TxDOT;

(c) Take such other actions as are necessary or appropriate to mitigate further cost;

(d) Subject to the prior approval of TxDOT, settle all outstanding liabilities and all claims arising out of the Design-Build Contract; *provided* that the satisfaction of liabilities and claims intended to be satisfied with the proceeds of Termination Compensation may be delayed until immediately after, but not later than, Developer receives payment of the Termination Compensation;

(e) Cause the Design-Build Contractor to execute and deliver to TxDOT an assignment, in form and substance acceptable to TxDOT, of all the Design-Build Contractor's right, title and interest in and to (i) all Utility Agreements, assignable agreements with railroads and other third-party agreements and permits, except subcontracts for performance of the Design and Construction Work, provided TxDOT assumes in writing all of the Design-Build Contractor's obligations thereunder that arise after the Termination Date, and (ii) all assignable warranties, claims and causes of action held by the Design-Build Contractor against subcontractors and other third parties in connection with the Project or the Work, to the extent the Project or the Work is adversely affected by any subcontractor or other third-party breach of warranty, contract or other legal obligation; and

(f) Carry out such other directions as TxDOT may reasonably give for termination of Design Work and Construction Work.

31.9.5 Other Development Contracts. If as of the Termination Date Developer has entered into any other contract for the design, construction, permitting, installation and equipping of the Project or for Utility Adjustments, excluding the Independent Engineer Agreement, TxDOT shall elect, by notice to Developer, to continue in effect such contract or to require its termination. If TxDOT elects to continue the contract in effect, then Developer shall execute and deliver to TxDOT an assignment, in form and substance acceptable to TxDOT, of all Developer's right, title and interest in and to the contract, and

TxDOT shall assume in writing Developer's obligations thereunder that arise from and after the Termination Date. If TxDOT elects to require termination of the contract, then Developer shall take actions comparable to those set forth in Section 31.9.4 with respect to the contract.

31.9.6 O&M Contracts. If as of the Termination Date Developer has entered into any O&M Contract, TxDOT shall elect, by notice to Developer, to continue it in effect or require its termination; *provided* that if a Lender is entitled to New Agreements following termination, TxDOT shall not elect to terminate any such Contract until the Lender's right to New Agreements expires without exercise. If TxDOT elects to continue any such Contract in effect, then on or about the Termination Date (or promptly after any later election to terminate) Developer shall execute and deliver to TxDOT an assignment, in form and substance acceptable to TxDOT of all Developer's right, title and interest in and to the Contract, and TxDOT shall assume in writing Developer's obligations thereunder that arise from and after the Termination Date.

31.9.7 Independent Engineer Agreement. On or about the Termination Date Developer shall execute and deliver to TxDOT an assignment, in form and substance acceptable to TxDOT, of all Developer's right, title and interest in and to the Independent Engineer Agreement, and TxDOT shall assume in writing Developer's obligations thereunder that arise from and after the date of assignment.

31.9.8 Materials, Goods, Equipment. Within 30 days after notice of termination is delivered, Developer shall provide TxDOT with true and complete list of all materials, goods, machinery, equipment, parts, supplies and other property in inventory or storage (whether held by Developer or any person or entity on behalf of or for the account of Developer) for use in or respecting the Work or the Project, or on order or previously completed but not yet delivered from Suppliers for use in or respecting the Work or the Project. In addition, on or about the Termination Date, Developer shall transfer title and deliver to TxDOT or TxDOT's Authorized Representative, through bills of sale or other documents of title, as directed by TxDOT, all such materials, goods, machinery, equipment, parts, supplies and other property, provided TxDOT assumes in writing all of Developer's obligations under any contracts relating to the foregoing that arise after the Termination Date.

31.9.9 Preservation. Developer shall take all action that may be necessary, or that TxDOT may direct, for the protection and preservation of the Project, the Work and such materials, goods, machinery, equipment, parts, supplies and other property.

31.9.10 Assistance with ETCS. At TxDOT's request, Developer shall assist TxDOT, for a reasonable period, with its hiring and training of personnel for operation of the Electronic Toll Collection System and with training of personnel in the use and operation of any other software or computer programs Developer uses in connection with the Project. Such assistance, if requested, shall include training and instruction on system features and operations, explanation and instruction regarding operating plans, rules, manuals and procedures, on-the-job training and other reasonable measures to enable the personnel being trained to properly and efficiently operate such system.

31.9.11 Quitclaim. On the Termination Date, Developer shall (a) execute, acknowledge and deliver to TxDOT a quitclaim deed, in form and substance acceptable to TxDOT, quitclaiming all of Developer's right, title, interest and estate in and to the Project and Project Right of Way, including that set forth in the recorded Memorandum of Lease, and (b) record a termination of the Memorandum of Lease.

31.9.12 Handback Requirements Reserve. If applicable, on the Termination Date, Developer shall assign, transfer and set over to TxDOT the Handback Requirements Reserve and funds therein in accordance with Section 20.2.5.

31.9.13 Bill of Sale. On or about the Termination Date, Developer shall execute and deliver to TxDOT the following, together with an executed bill of sale or other instrument, in form and substance acceptable to TxDOT, assigning and transferring to TxDOT all of Developer's right, title and interest in and to (a) all completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, designs, design documents, as-built and record plans, surveys, and other documents and information pertaining to the design or construction of the Project or the Utility Adjustments; (b) all samples, borings, boring logs, geotechnical data and similar data and information relating to the Project or Project Right of Way; (c) all books, records, reports, test reports, studies and other documents of a similar nature relating to the Work, the Project or the Project Right of Way; (d) all data and information relating to the use of the Project by the traveling public or Toll Revenues, including (i) all data compiled or maintained by the Electronic Toll Collection System, whether then maintained on the system or in archives or storage, (ii) all customer account information and (iii) all studies, reports, projections, estimates and other market research or analysis relating to use of the Project by the traveling public; *provided* that the transfer of any Intellectual Property shall be subject to Sections 34.6 and 34.7; and (e) all other work product and Intellectual Property used or owned by Developer or any Affiliate relating to the Work, the Project or the Project Right of Way; *provided* that the transfer of any Intellectual Property shall be subject to Sections 34.6 and 34.7.

31.9.14 Customer Accounts; Funds. Effective as of the Termination Date, Developer shall assign and transfer to TxDOT all of Developer's right, title and interest in and to customer accounts relating to the Project and funds credited thereto; *provided* that:

(a) As soon as reasonably practicable after the Termination Date, the Parties shall adjust and prorate the funds in such accounts, and any other funds collected from Project customers, as follows: (i) there shall be credited to Developer any debits to an account for customer use of the Project prior to the Termination Date, to the extent there were sufficient funds in the account as of the Termination Date to cover the debited amount; (ii) there shall be credited to Developer any sums collected by or on behalf of TxDOT after the Termination Date from a customer respecting a toll violation that occurred prior to the Termination Date, but only net of the application of any sums collected to tolls owing for use of the Project from and after the Termination Date; and (iii) any debits to an account for customer use of the Project from and after the Termination Date, if collected by Developer, shall be remitted to TxDOT; and

(b) TxDOT, by notice to Developer, may elect not to take over customer accounts of Developer (if any) if TxDOT intends to cease tolls on the Project following expiration or earlier termination of this Agreement. In such case, Developer shall promptly inform its account customers of the cessation of tolls and of the customer's choice either to cancel the account and receive refund of all unexpended funds or to transfer the account to the custody and control of another operator of any toll Project that has account interoperability with the Project. The notice shall identify each such other Project and provide contact information for the operators thereof. The notice shall give customers a reasonable period to respond, and shall state that the account will be closed and funds returned unless the customer timely responds with a request to transfer the account. Developer shall thereafter conclude disposition of accounts and account funds in accordance with customer directions.

31.9.15 O&M Costs. Within 90 days after the Termination Date, the Parties shall adjust and prorate costs of operation and maintenance of the Project, including utility costs and deposits, as of the Termination Date. If the Parties do not have complete or accurate information by such date, they shall make the adjustment and proration using a good faith estimate, and thereafter promptly readjust when the complete and accurate information is obtained. The Parties acknowledge that certain adjustments or readjustments may depend on receipt of bills, invoices or other information from a third party, and that the third party may delay in providing such information. Any readjustment necessary only because of

error in calculation and not due to lack of complete and accurate information shall be irrevocably waived unless the Party seeking readjustment delivers request therefor to the other Party not later than 180 days following the Termination Date.

31.9.16 Customer Service Center. If Developer holds any lease or rental agreement for any customer service center or customer service outlet serving customers of the Project, at TxDOT's request, Developer shall execute and deliver to TxDOT on or about the Termination Date an assignment, in form and substance acceptable to TxDOT, of such lease or rental agreement and Developer's right, title and interest thereunder, and TxDOT shall assume Developer's obligations thereunder arising from and after the date of assignment. Developer shall assist and cooperate with TxDOT in connection with its investigation and decision regarding any such lease or rental agreement, including providing TxDOT access to the premises for inspection and seeking any consent to assignment required by the landlord.

31.9.17 Warranties, Etc. On or about the Termination Date, Developer shall execute and deliver to TxDOT an assignment, in form and substance acceptable to TxDOT, of all Developer's right, title and interest in and to all warranties, claims and causes of action held by Developer against third parties in connection with the Project or the Work, including claims under casualty and business interruption insurance, but excluding any such Insurance Policy claims to the extent made prior to the Valuation Date and taken into account as a reduction in the appraisal and determination of Fair Market Value.

31.9.18 Other Assistance. Developer shall otherwise assist TxDOT in such manner as TxDOT may reasonably require prior to and for a reasonable period following the Termination Date to ensure the orderly transition of the Project and its management to TxDOT, and shall, if appropriate and if requested by TxDOT, take all steps as may be necessary to enforce the provisions of the Key Contracts pertaining to the surrender of the Project.

31.10 No Separate Terminations of Agreement and Lease. If for any reason this Agreement is terminated before the Lease is granted, then all right to obtain the Lease shall concurrently cease and terminate. TxDOT and Developer further agree and expressly intend that after the Lease is granted neither this Agreement nor the Lease shall continue in full force and effect without the other. Accordingly, (a) any termination of this Agreement according to its terms shall also automatically constitute a termination of the Lease, even if the notice of termination fails to declare a termination of the Lease, and (b) any termination of the Lease shall also automatically constitute a termination of this Agreement, even if the notice of termination fails to declare a termination of this Agreement.

31.11 Effect of Termination

31.11.1 Cessation of Developer's Interest and Liens and Encumbrances. Except as provided in Section 31.14, termination of this Agreement and the Lease under any provision of this Article 31 shall automatically cause, as of the Termination Date, the cessation of any and all property interest of Developer, real and personal, tangible and intangible, in or with respect to the Project, the Project Right of Way, the Toll Revenues and the Handback Requirements Reserve, which thereupon shall be and remain free and clear of any lien or encumbrance created, permitted or suffered by Developer or anyone claiming by, through or under Developer, including but not limited to the liens, pledges, assignments, collateral assignments, security interests and encumbrances of any and all Funding Agreements and Security Documents. In order to confirm the foregoing, at TxDOT's request, Developer shall promptly obtain and deliver to TxDOT recordable reconveyances, releases and discharges of all Security Documents, executed by the Lenders, but no such reconveyances, releases and discharges shall be necessary to the effectiveness of the foregoing.

31.11.2 Contracts and Agreements. Regardless of TxDOT's prior actual or constructive knowledge thereof, and except for any joinder agreement entered into pursuant to Section 31.14.4 should they survive the Termination Date, no contract or agreement to which Developer is a party (unless TxDOT is also a party thereto) as of the Termination Date shall bind TxDOT, unless TxDOT elects to assume such contract or agreement in writing. Except in the case of TxDOT's express written assumption, no such contract or agreement shall entitle the contracting party to continue performance of work or services respecting the Project following Developer's relinquishment to TxDOT of possession and control of the Project, or to any claim, legal or equitable, against TxDOT.

31.12 Liability After Termination; Final Release

31.12.1 No termination of this Agreement or the Lease shall excuse either Party from any liability arising out of any default as provided in this Agreement or the Lease that occurred prior to termination. Notwithstanding the foregoing, any termination of this Agreement shall automatically extinguish any Claim of Developer to payment of Compensation Amounts for adverse cost and revenue impacts accruing after the Early Termination Date from Compensation Events that occurred prior to termination.

31.12.2 Subject to Sections 31.1.15 and 31.9.16, TxDOT's payment to Developer of any Termination Compensation amounts required under the applicable provision of this Article 31 shall constitute full and final satisfaction of, and upon payment TxDOT shall be forever released and discharged from, any and all Claims, causes of action, suits, demands and Losses, known or unknown, suspected or unsuspected, that Developer may have against TxDOT arising out of or relating to this Agreement or the Lease or termination thereof, or the Project, except for specific Claims and Disputes that are asserted by Developer in accordance with Section 30.2.1 not later than 30 days after the effective date of termination, are unresolved at the time of such payment and are not related to termination or Termination Compensation. Upon such payment, Developer shall execute and deliver to TxDOT all such releases and discharges as TxDOT may reasonably require to confirm the foregoing, but no such release and discharge shall be necessary to give effect to the foregoing satisfaction and release.

31.13 Exclusive Termination Rights. This Article 31, together with the express provisions on termination set forth in Sections 29.4.1, 29.7.1 and 32.2 and in the Lease, contain the entire and exclusive provisions and rights of TxDOT and Developer regarding termination of this Agreement and the Lease, and any and all other rights to terminate at law or in equity are hereby waived to the maximum extent permitted by Law. TxDOT irrevocably waives and relinquishes any right it may have under applicable Law (including any Change in Law) to take or expropriate any shares, partnership interests, membership interests or other equity interests in Developer.

31.14 Covenant to Continue Tolling Project. In the event there exists as of the expiration of the Term or an Early Termination Date any outstanding unpaid amount owing from TxDOT to Developer, or any outstanding, unsatisfied Claim for sums owing from TxDOT to Developer, including any unpaid Termination Compensation, the terms and conditions of this Section 31.14 shall apply, and shall survive termination.

31.14.1 TxDOT shall continue to operate and maintain the Project, or cause it to be operated and maintained, as a tolled facility to the same or substantially equivalent standards as required of Developer under this Agreement.

31.14.2 TxDOT shall set, adjust, impose and collect tolls and charges according to Exhibit 10.

31.14.3 TxDOT shall cause all tolls and Image-Based Billing Toll Premiums (but not Administrative Fees) to be transferred to Developer until all amounts due are paid in full.

31.14.4 If the Master Lockbox and Custodial Account Agreement is in effect when TxDOT's obligation under this Section 31.14 arises, TxDOT, Developer and the custodian shall execute a joinder agreement substantially in the form of Exhibit 23. If the Master Lockbox and Custodial Account Agreement is not in effect when TxDOT's obligation under this Section 31.14 arises, TxDOT shall enter into an agreement with a custodian on substantially similar terms to the Master Lockbox and Custodial Account Agreement, and TxDOT, Developer and the custodian shall enter into a joinder agreement on substantially similar terms to Exhibit 23. When TxDOT's obligation under this Section 31.14 arises, TxDOT shall grant to Developer, in order to secure TxDOT's obligation to pay to Developer all amounts due, a security interest in any right, title, and interest of TxDOT in the SH 288 Secured Revenue Accounts (as defined below) and all funds deposited therein, together with any earnings thereon, excluding, however, the right, title, and interest of TxDOT in funds in the SH 288 Secured Revenue Accounts used or needed, or to be used or needed, for payment of reasonable and documented costs and expenses for operating and maintaining the Toll Lanes and for reasonable reserves for reconstruction, rehabilitation, renewal, and replacement of the Toll Lanes. For this purpose, "SH 288 Secured Revenue Account" means any revenue account established under the Master Lockbox and Custodial Account Agreement into which tolls and Image-Based Billing Toll Premiums from the Toll Lanes are deposited.

31.14.5 TxDOT shall maintain account holder funds separate and apart from State funds and shall cause all debits to the accounts of transponder holders for Transponder Transactions to be automatically transferred via the custodial accounts to Developer; *provided* that if TxDOT's customary non-Discriminatory rules and procedures for its toll processing or clearinghouse functions include deducting its transaction fee for such functions, then TxDOT may reduce the amount of each such transfer to Developer the transaction fee amount.

31.14.6 TxDOT's billing statements to Video Transaction Users shall instruct the User to make payments in the name of and to the address of the custodian under the custodial agreement described in Section 31.14.4.

31.14.7 If for any reason TxDOT receives any payment for a Transponder Transaction or Video Transaction, all Toll Revenues that are part of such payment shall be deemed received by TxDOT merely as a bailee or agent and shall not constitute funds of TxDOT or the State; and TxDOT shall forthwith remit such payments to the custodian under the Master Lockbox and Custodial Account Agreement.

31.14.8 TxDOT shall have the right to (a) withhold revenues to pay as and when incurred TxDOT's reasonable and documented operating and maintenance costs and expenses respecting the Project, (b) fund accounts for reasonable reserves for costs of reconstruction, rehabilitation, renewal and

replacement of the Project; and (c) draw from the revenues deposited into such subaccounts TxDOT's reasonable documented costs of reconstruction, rehabilitation, renewal and replacement of the Project.

31.14.9 For undisputed amounts owing to Developer, Developer shall be entitled to monthly distributions of all revenues net of TxDOT's permitted draws for such costs and expenses and net of such permitted reasonable reserves, until the undisputed amounts are paid in full.

31.14.10 For disputed amounts owing to Developer, such net revenues shall continue to be held in trust by the custodian under the Master Lockbox and Custodial Account Agreement until final, non-appealable decisions are rendered on all disputed amounts. TxDOT may apply, through the Dispute Resolution Procedures, for limitations on the amount so held in trust to the extent the Disputes Board or other applicable decision making body decides that any disputed portion of the Claim has no reasonable likelihood of award. The amounts of any final, non-appealable awards shall be funded in the same manner as undisputed amounts under Section 31.14.9 until paid in full.

31.14.11 At such time as all amounts owing to Developer are paid in full, or at any earlier date that the funds held in trust, net of such costs, expenses and reserves, are sufficient to pay disputed and undisputed amounts that are outstanding, (a) TxDOT's obligation to operate the Project as a tolled facility shall cease, (b) any amount held in trust by the Custodian pursuant to Section 31.14.10 shall be limited to the disputed that are outstanding, (c) tolls or additional charges to Users thereafter collected by TxDOT shall not be subject to the provisions of this Section 31.14 nor subject to any pledge, lien, security interest or encumbrance in favor of Developer or any Lender, and (d) TxDOT and Developer, promptly upon the other Party's request, shall execute such certificates, releases and other documents, including confirmation of termination of any joinder agreement entered into pursuant to Section 31.14.4, as the other Party reasonably requests to confirm the foregoing.

31.14.12 At such time as all amounts payable to Developer are paid in full to Developer, Developer's security interests in the any joinder agreement entered into pursuant to Section 31.14.4, shall cease and terminate.

ARTICLE 32
LENDERS' DIRECT AGREEMENT; TERMINATION UPON FAILURE TO CURE

32.1 Lenders' Direct Agreement. Upon receipt of written request from the Collateral Agent (or any other Lender of Project Debt that has no participating Lenders), and *provided* that the requesting Lender is then entitled to the protections of the Lenders' Direct Agreement, TxDOT shall enter into a Lenders' Direct Agreement in the form of Exhibit 21 with the Lender(s) (or with the Collateral Agent on the Lenders' behalf).

32.2 Failure to Cure; Right to Terminate. With respect to any Developer Default for which the Collateral Agent was provided an opportunity to cure under the Lenders' Direct Agreement, TxDOT may terminate this Agreement and the Lease upon expiration of the applicable cure period (as determined under Section 2.4 of the Lenders' Direct Agreement) if the default remains uncured by such expiration date.

PART F
MISCELLANEOUS

ARTICLE 33
ASSIGNMENT AND TRANSFER

33.1 Restrictions on Assignment, Subletting and Other Transfers

33.1.1 Restrictions Related to Developer. Developer shall not voluntarily or involuntarily sell, assign, convey, transfer, pledge, mortgage or otherwise encumber the Developer's Interest or any portion thereof without TxDOT's prior approval, except to (a) Lenders for security as permitted by this Agreement, so long as Developer retains responsibility for the performance of Developer's obligations under the CDA Documents; (b) any Lender affiliate that is a Substituted Entity or to any other Substituted Entity approved by TxDOT, so long as such Substituted Entity assumes in writing full responsibility for performance of the obligations of Developer under this Agreement, the Lease, the other CDA Documents, and the Principal Project Documents arising from and after the date of assignment; or (c) subject to the remainder of this Article 33, any entity that is under the same ultimate management control as Developer. Developer shall not sublease or grant any other special occupancy or use of the Project to any other Person that is not in the ordinary course of Developer performing the Work, without TxDOT's prior approval.

33.1.2 Restrictions Related to Qualified Investors and Related Entities. If:

(a) Prior to the fifth anniversary of the Last Service Commencement Date for the Initial Configuration, a Related Entity of a Class I Qualified Investor seeks to pledge, mortgage or otherwise encumber its membership interest in the Equity Member (or beneficial ownership interests therein) in order to incur secured debt held directly or indirectly by the Class I Qualified Investor; or

(b) Prior to the second anniversary of the Last Service Commencement Date for the Initial Configuration, a Related Entity of a Class II Qualified Investor seeks to pledge, mortgage or otherwise encumber its membership interest in the Equity Member (or beneficial ownership interests therein) in order to incur secured debt held directly or indirectly by the Class II Qualified Investor;

Then, at least 15 days prior to the anticipated effective date of such pledge, mortgage or encumbrance, the relevant Related Entity shall notify TxDOT of its intent to engage in such transaction, which notification may be delivered verbally, and obtain written certification from all lenders of such secured debt that such lender(s) agree to forebear from enforcing any foreclosure or similar rights in respect of the membership interest in the Equity Member (or beneficial ownership interests therein) for the applicable period in which an Equity Transfer by such Qualified Investor, without TxDOT prior approval, would be a Restricted Change in Ownership. Such foreclosure (or exercise of similar rights) may be considered a Restricted Change in Ownership pursuant to clause (a) or (b) of Section 33.2.1. The applicable Related Entity shall provide TxDOT physical access to and an opportunity to inspect such certifications at such time(s) and at a location in the State of Texas, in each case as may be mutually agreed by TxDOT and the Relevant Entity.

33.1.3 Violations. Any sale, assignment, conveyance, transfer, pledge, mortgage, encumbrance, sublease or grant of other special occupancy or use in violation of this Section 33.1 shall be null and void

ab initio and TxDOT, at its option, may, by Warning Notice, declare any such attempted action to be a material Developer Default.

33.2 Restrictions on Equity Transfers and Other Changes

33.2.1 Restricted Change in Ownership. A "**Restricted Change in Ownership**" shall mean any of the following:

(a) Prior to the fifth anniversary of the Last Service Commencement Date for the Initial Configuration, without the prior approval of TxDOT (which approval may be withheld, conditioned or delayed in TxDOT's discretion), any Class I Qualified Investor ceases to own (directly or indirectly) the same percentage of the issued share capital or membership interests in Developer that it owned (directly or indirectly) at the date of this Agreement, other than as a result of an Additional Equity Investment *provided* that such Additional Equity Investment does not reduce the actual amount of any Committed Investment of any Qualified Investor;

(b) Prior to the second anniversary of the Last Service Commencement Date for the Initial Configuration, without the prior approval of TxDOT (which approval may be withheld, conditioned or delayed in TxDOT's discretion), any Class II Qualified Investor ceases to own (directly or indirectly) the same percentage of the issued share capital or membership interests in Developer that it owned (directly or indirectly) at the date of this Agreement, other than as a result of an Additional Equity Investment *provided* that such Additional Equity Investment does not reduce the actual amount of any Committed Investment of any Qualified Investor;

(c) Any Equity Transfer during the Term in which any of the transferees or any of a transferee's affiliates is a Prohibited Person or which is otherwise prohibited by Law or would result in a violation of Law; or

(d) Any Equity Transfer not otherwise considered a Restricted Change in Ownership pursuant to clause (a) or (b) of this Section 33.2.1 that (in TxDOT's reasonable discretion) would be reasonably likely to have a material adverse effect on the Project or Developer's ability to timely perform its obligations under the CDA Documents and Principal Project Documents in respect of the Work, taking into account, among other reasonable factors and considerations, (i) the financial strength and integrity of the transferee, its direct or indirect beneficial owners, any proposed managers or operating partners and each of their respective affiliates (the "**Transferee Parties**"); (ii) the qualifications and experience of the Transferee Parties in operating toll roads or highways and performing other relevant work; (iii) the background and reputation of the Transferee Parties and each of their respective officers, directors, and employees, including the absence of criminal, civil or regulatory claims or actions against any such Person and the quality of any such Person's past or present performance on other projects; (iv) compliance with TxDOT's rules, regulations and adopted written policies regarding organizational conflicts of interests; (v) the relative portion of Developer's Interest subject to the proposed Equity Transfer; and (vi) the existence of any uncured Developer Default or any event or circumstance that, with the lapse of time, the giving of notice or both, would constitute a Developer Default, unless TxDOT receives from the proposed transferee assurances of cure and performance acceptable to TxDOT in its discretion.

33.2.2 Exceptions. A Restricted Change in Ownership shall not arise pursuant to Section 33.2.1 solely as a direct result of:

(a) the grant or enforcement of security in favor of the Lenders over or in relation to any Equity in Developer as permitted by this Agreement;

(b) a change in legal or beneficial ownership of any Equity that is listed on a recognized stock exchange, including such transactions involving any initial public offering; or

(c) a transfer of interests between or among managed funds that are under common ownership, management or control or that are managed by Persons under common ownership or control; *provided* that it can be demonstrated to TxDOT, for its prior approval (of only the following matters) that such transfer (i) does not affect direction or control of the management of Developer and (ii) continues to permit ongoing performance by Developer under the CDA Documents, and excluding a change in the management or control of a fund that manages or controls Developer.

33.2.3 Ownership. For the purposes of this Section 33.2, a Person will only be deemed to own Equity in another Person if such Person owns (directly or indirectly) the legal, beneficial and equitable interest in the relevant Equity of that other Person.

33.2.4 Violations. If there occurs any voluntary or involuntary Restricted Change in Ownership in violation of this Section 33.2, TxDOT, at its option, may, by Warning Notice, declare it to be a material Developer Default.

33.3 Standards and Procedures for TxDOT Approval

33.3.1 Discretionary Approval. Where TxDOT's approval is required for a proposed sale, assignment, conveyance, transfer, pledge, mortgage, encumbrance, sublease or grant of other special occupancy or use, or for any proposed Equity Transfer, and such approval may be withheld, conditioned or delayed in TxDOT's discretion, any decision by TxDOT to withhold, condition or delay its approval of, or failure to approve, the proposed transaction shall be final, binding and not subject to the Dispute Resolution Procedures.

33.3.2 Procedures. Developer shall provide TxDOT at least 30 days' prior notice of any Equity Transfer. TxDOT will approve or disapprove a request for approval of a proposed transaction subject to TxDOT's approval within 30 days after it receives from Developer a Submittal consisting such request together with (a) a reasonably detailed description of the proposed transaction, (b) such information, evidence and supporting documentation as TxDOT may request concerning the identity, financial resources, qualifications, experience and potential conflicts of interest of the proposed transferee and its proposed contractors and (c) such evidence of organization and authority, and such incumbency certificates, certificates regarding debarment or suspension, and other certificates, representations and warranties as TxDOT may reasonably request. TxDOT will evaluate the identity, financial resources, qualifications, experience and potential conflicts of interest using the same standards and criteria that it is then currently applying, or if there is no current application, then the same standards and criteria it most recently applied, to the evaluation of Persons responding to TxDOT requests for qualifications for concession or similar agreements for comparable projects and facilities. Developer shall reimburse TxDOT for all reasonable out-of-pocket expenses (including reasonable and proper fees of consultants and legal counsel) incurred by TxDOT in connection with its review of any Equity Transfer which requires TxDOT's consent under this Article 33 and of which TxDOT receives notice in accordance with this Section 33.3.2.

33.4 Assignment by TxDOT. TxDOT may assign all or any portion of its rights, title and interests in and to the CDA Documents, Payment and Performance Bonds, guarantees, letters of credit and other security for payment or performance, (a) without Developer's consent, to any other Person that succeeds to the governmental powers and authority of TxDOT, and (b) to others with the prior consent of Developer. TxDOT also may assign, without Developer's consent, all or any portion of its rights, title and interests in and to revenue streams from Developer under the CDA Documents, together with Payment

and Performance Bonds, guarantees, letters of credit and other security for payment of such revenue streams and TxDOT's rights to enforce payment of such revenue streams other than rights to terminate this Agreement and the Lease, to any trustee, credit enhancer or swap counterparty with respect to bonds or other indebtedness issued by TxDOT or a related entity or instrumentality as security for repayment of the bonds or other indebtedness.

33.5 Notice and Assumption. Assignments and transfers of the Developer's Interest permitted under this Article 33 or otherwise approved by TxDOT shall be effective only upon TxDOT's receipt of notice of the assignment or transfer and a written recordable instrument executed by the transferee, in form and substance acceptable to TxDOT, in which the transferee, without condition or reservation, assumes all of Developer's obligations, duties and liabilities under this Agreement, the Lease and the other CDA Documents then in effect and agrees to perform and observe all provisions thereof applicable to Developer. Each transferee, including any Person who acquires the Developer's Interest pursuant to foreclosure, transfer in lieu of foreclosure or similar proceeding, shall take the Developer's Interest subject to, and shall be bound by, the Project Management Plan, the Key Contracts, the Utility Agreements, all agreements between the transferor and railroads, the Governmental Approvals, and all agreements between the transferor and Governmental Entities with jurisdiction over the Project or the Work, except to the extent otherwise approved by TxDOT in its discretion. Except with respect to assignments and transfers pursuant to foreclosure, transfer in lieu of foreclosure or similar proceeding, the transferor and transferee shall give TxDOT notice of the assignment not less than 30 days prior to the effective date thereof.

33.6 Change of Organization or Name. Developer shall not change the legal form of its organization in a manner that adversely affects TxDOT's rights, protections and remedies under the CDA Documents without the prior approval of TxDOT, which consent may be granted or withheld in TxDOT's discretion. In the event either Party changes its name, such Party agrees to promptly furnish the other Party with notice of change of name and appropriate supporting documentation.

33.7 Changes in Organizational Documents

33.7.1 Restrictions on Changes to Organizational Documents. The organizational and governance documents of each of Developer, any Equity Member and any Related Entity and their permitted successors and assigns shall include the following provision:

Notwithstanding anything to the contrary in this agreement, this agreement may not be amended, modified or changed in any manner that (i) would have a material adverse effect on Developer's ability to perform its obligations under the Comprehensive Development Agreement, (ii) would have a material adverse effect on the Project, (iii) affects or relates to the prohibition herein on stopping, hindering or delaying work on the Project in the event of a dispute among the members or (iv) prior to the applicable anniversary of the Last Service Commencement Date for the Initial Configuration under the Comprehensive Development Agreement, would alter the voting or management rights or balance of control among the members or managers, other than as a result of an Additional Equity Investment (as defined in the Comprehensive Development Agreement); in each of (i), (ii), (iii) or (iv) without the written consent of TxDOT, which may be granted or withheld in TxDOT's sole discretion.

33.7.2 Evidence of Compliance. At TXDOT's request, Developer shall cause each Equity Member and Related Entity, and their permitted successors and assigns, to provide, and each such Person shall provide, copies of the relevant organizational and governance documents to TxDOT for the purpose of reviewing compliance with Section 33.7.1.

ARTICLE 34
RECORDS AND AUDITS; INTELLECTUAL PROPERTY

34.1 Maintenance of Records. Developer shall keep and maintain in Harris or Travis County, Texas, or in another location TxDOT approves in its discretion, all books, records and documents relating to the Project, Project Right of Way, Utility Adjustments or Work, including copies of all original documents delivered to TxDOT. Developer shall keep and maintain such books, records and documents in accordance with applicable provisions of the CDA Documents, including Attachment 1 to Exhibit 12 and the Texas State Records Retention Schedule, and of the Project Management Plan, and in accordance with Good Industry Practice. Developer shall notify TxDOT where such records and documents are kept.

34.2 Retention of Records. Developer shall retain records and documents for the respective time periods set forth in the Texas State Records Retention Schedule, or, if not addressed in the Texas State Records Retention Schedule, for a minimum of five years after the date the record or document is generated; *provided* that if the CDA Documents or applicable Law specify any longer time period for retention of particular records, such time period shall control. Notwithstanding the foregoing, all records which relate to Claims and Disputes being processed or actions brought under the Dispute Resolution Procedures shall be retained and made available until any later date that such Claims, Disputes and actions are finally resolved.

34.3 Inspection. Developer shall make all its books, records and documents available for inspection by TxDOT and the Independent Engineer and their Authorized Representatives and legal counsel at Developer's principal offices in Texas at all times during normal business hours, without charge. Developer shall provide to TxDOT and the Independent Engineer copies thereof (a) as and when expressly required by the CDA Documents or (b) for those not expressly required, upon request and at no expense to Developer. TxDOT may conduct any such inspection upon 48 hours' prior notice, or unannounced and without prior notice where there is good faith suspicion of fraud. The right of inspection includes the right to make extracts and take notes. The foregoing notwithstanding, Developer reserves the right to assert exemptions from disclosure for information that would be exempt under applicable State Law from discovery or introduction into evidence in legal actions; *provided* that in no event shall Developer be entitled to assert any such exemption to withhold traffic and revenue data.

34.4 Audits

34.4.1 For Compliance. TxDOT shall have such rights to review and audit Developer, its Contractors and their respective books and records as and when TxDOT deems necessary for purposes of verifying compliance with the CDA Documents and applicable Law. Without limiting the foregoing, TxDOT shall have the right to audit Developer's Project Management Plan and compliance therewith, including the right to inspect Work and/or activities and to verify the accuracy and adequacy of the Project Management Plan and its component parts, plans and other documentation. TxDOT may conduct any such audit of books and records upon 48 hours' prior notice, or unannounced and without prior notice where there is good faith suspicion of fraud.

34.4.2 For Claims. All Claims filed against TxDOT shall be subject to audit at any time following the filing of the Claim. The audit may be performed by employees of TxDOT or by an auditor under contract with TxDOT. No notice is required before commencing any audit before 60 days after the expiration of the term of this Agreement. Thereafter, TxDOT shall provide 20 days' notice to Developer, any Contractors or their respective agents before commencing an audit. Developer, Contractors or their agents shall provide adequate facilities, acceptable to TxDOT, for the audit during normal business hours. Developer, Contractors or their agents shall cooperate with the auditors. Failure of Developer, Contractors

or their agents to maintain and retain sufficient books and records to allow the auditors to verify all or a portion of the Claim or to permit the auditor access to such books and records shall constitute a waiver of the Claim and shall bar any recovery thereunder. At a minimum, the auditors shall have available to them the following documents relating to the Claim: (a) daily time sheets and supervisor's daily reports; (b) union agreements; (c) insurance, welfare, and benefits records; (d) payroll registers; (e) earnings records; (f) payroll tax forms; (g) material invoices and requisitions; (h) material cost distribution work sheet; (i) equipment records (list of company equipment, rates, etc.); (j) Contractors' (including Suppliers') invoices; (k) Contractors' and agents' payment certificates; (l) canceled checks (payroll and Suppliers); (m) job cost report; (n) job payroll ledger; (o) general ledger; (p) cash disbursements journal; (q) daily records of Toll Revenues; (r) all documents that relate to each and every Claim together with all documents that support the amount of damages as to each Claim; and (s) worksheets used to prepare the Claim establishing (i) the cost components of the Claim, including labor, benefits and insurance, materials, equipment, Contractors, all documents that establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals, and (ii) the lost revenue components of the Claim. Full compliance by Developer with the provisions of this Section 34.4.2 is a contractual condition precedent to Developer's right to seek relief on a Claim under Article 30.

34.4.3 By Independent Engineer; FHWA. Rights of the Independent Engineer to review and audit Developer, its Contractors and their respective books and records are set forth in Section 22.3, in the Technical Provisions and in the Independent Engineer Agreement. Any rights of the FHWA to review and audit Developer, its Contractors and their respective books and records are set forth in Exhibit 12.

34.4.4 Further Provisions

(a) TxDOT's and the Independent Engineer's rights of audit include the right to observe the business operations of Developer and its Contractors to confirm the accuracy of books and records.

(b) Developer shall include in the Project Management Plan internal procedures to facilitate review and audit by TxDOT, the Independent Engineer and, if applicable, FHWA.

(c) Developer represents and warrants the completeness and accuracy in all material respects of all information it or its agents provides in connection with TxDOT or Independent Engineer audits, and shall cause all Contractors other than TxDOT and Governmental Entities acting as Contractors to warrant the completeness and accuracy in all material respects of all information such Contractors provide in connection with TxDOT or Independent Engineer audits.

(d) Developer's internal and third-party quality and compliance auditing responsibilities shall be set forth in the Project Management Plan, consistent with the audit requirements referred to in Section 22.1.7 and described in Attachment 2-1 to the Technical Provisions. In addition, Developer shall perform Audit Inspections as set forth in Section 19.3.5 of the Technical Provisions.

(e) Nothing in the CDA Documents shall in any way limit the constitutional and statutory powers, duties and rights of elected State officials, including the independent rights of the State Auditor, in carrying out his or her legal authority. Developer understands and acknowledges that (i) the State Auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this Agreement or indirectly through a Contract, (ii) acceptance of funds directly under this Agreement or indirectly through a Contract acts as acceptance of the authority of the State Auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds, and (iii) an entity that is the subject of an audit or investigation must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit.

34.5 Public Information Act

34.5.1 Developer acknowledges and agrees that, except as provided by Section 223.204 of the Code, all Submittals, records, documents, drawings, plans, specifications and other materials in TxDOT's possession, including materials submitted by Developer to TxDOT, are subject to the provisions of the Public Information Act. If Developer believes information or materials submitted to TxDOT constitute trade secrets, proprietary information or other information that is not subject to the Public Information Act pursuant to Section 223.204 of the Code or is excepted from disclosure under the Public Information Act, Developer shall be solely responsible for specifically and conspicuously designating that information by placing "CONFIDENTIAL" in the center header of each such document or page affected, as it determines to be appropriate. Any specific proprietary information, trade secrets or confidential commercial and financial information shall be clearly identified as such, and shall be accompanied by a concise statement of reasons supporting the claim. Nothing contained in this Section 34.5 shall modify or amend requirements and obligations imposed on TxDOT by the Public Information Act or other applicable Law, and the provisions of the Public Information Act or other Laws shall control in the event of a conflict between the procedures described above and the applicable Law. Developer is advised to contact legal counsel concerning such Law and its application to Developer.

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

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

34.5.4 Notwithstanding the foregoing, Developer consents to disclosure of its Proposal in accordance with Section 2.6 of the ITP and all other disclosures required by Law. Developer further expressly waives any right to contest, impede, prevent or delay such disclosure, or to initiate any proceeding that may have the effect of impeding, preventing or delaying such disclosure, under Section 223.204 of the Code, the Rules, the Public Information Act or any other Law relating to the confidentiality or disclosure of information.

34.6 Intellectual Property

34.6.1 All Proprietary Intellectual Property, including with respect to Technology Enhancements, Source Code and Source Code Documentation, shall remain exclusively the property of Developer or its Affiliates or Contractors that supply the same, notwithstanding any delivery of copies thereof to TxDOT.

34.6.2 TxDOT shall have and is hereby granted a nonexclusive, transferable, irrevocable, fully paid up right and license to use, reproduce, modify, adapt and disclose, and sublicense others to use, reproduce, modify, adapt and disclose, the Proprietary. Intellectual Property of Developer, including with respect to Technology Enhancements, Source Code and Source Code Documentation, solely in connection with the Project and any Highway, tolled or not tolled, owned and operated by TxDOT or a State or regional Governmental Entity; *provided* that TxDOT shall have the right to exercise such license only at the following times: (a) from and after the expiration or earlier termination of the Term for any reason whatsoever; (b) during any time that TxDOT is exercising its step-in rights pursuant to Section 29.4, in which case TxDOT may exercise such license only in connection with the Project; and (c) during any time that a receiver is appointed for Developer, or during any time that there is pending a voluntarily or involuntary proceeding in bankruptcy in which Developer is the debtor, in which case TxDOT may exercise such license only in connection with the Project.

34.6.3 Subject to the license and rights granted to TxDOT pursuant to Section 34.6.2, TxDOT shall not at any time sell any Proprietary Intellectual Property of Developer or use, reproduce, modify, adapt and disclose, or allow any party to use, reproduce, modify, adapt and disclose, any such Proprietary Intellectual Property for any other purpose.

34.6.4 The right to transfer the license is limited to any Governmental Entity that succeeds to the power and authority of TxDOT generally or with respect to the Project.

34.6.5 The right to sublicense is limited to State or regional Governmental Entities that own or operate a Highway or other road, tolled or not tolled, and to the concessionaires, contractors, subcontractors, employees, attorneys, consultants and agents that are retained by or on behalf of TxDOT or any such State or regional Governmental Entity in connection with the Project or another Highway or other road, tolled or untolled. All such sublicenses shall be subject to Section 34.6.6.

34.6.6 Subject to Section 34.5, TxDOT (a) shall not disclose any Proprietary Intellectual Property of Developer to any Person other than authorized transferees and sublicensees who agree to be bound by any confidentiality obligations of TxDOT relating thereto; (b) shall enter into a commercially reasonable confidentiality agreement if requested by Developer with respect to the licensed Proprietary Intellectual Property; and (c) include, or where applicable require such State or regional Governmental Entity to include, in the contract with the sublicensee its covenant to employ sound business practices no less diligent than those used for its own confidential information, and no less diligent than required by commercially reasonable standards of confidentiality, to protect all Proprietary Intellectual Property of Developer and other materials provided under the sublicense against disclosure to third parties not in receipt of a sublicense, and to use the sublicense only for the permitted purposes.

34.6.7 Notwithstanding any contrary provision of this Agreement, in no event shall TxDOT or any of its directors, officers, employees, consultants or agents be liable to Developer, any Affiliate or any Contractor for any damages, including loss of profit, arising out of breach of the duty of confidentiality set forth in Section 34.6.6 if such breach is not the result of gross negligence or intentional misconduct. Developer hereby irrevocably waives all claims to any such damages. The foregoing provisions do not limit Developer's equitable remedies set forth in Section 29.7.

34.6.8 Developer shall continue to have a full and complete right to use any and all duplicates or other originals of its Proprietary Intellectual Property in any manner it chooses.

34.6.9 With respect to any Proprietary Intellectual Property, including with respect to Technology Enhancements, Source Code and Source Code Documentation, owned by a Person other than Developer, including any Affiliate, and other than TxDOT or a Governmental Entity acting as a

Contractor, Developer shall obtain from such owner, concurrently with execution of any contract, subcontract or purchase order with such owner or with the first use or adaptation of the Proprietary Intellectual Property in connection with the Project, both for Developer and TxDOT, nonexclusive, transferable, irrevocable, fully paid up licenses to use, reproduce, modify, adapt and disclose such Proprietary Intellectual Property solely in connection with the Project and any Highway, tolled or not tolled, owned and operated by TxDOT or a State or regional Governmental Entity, of at least identical scope, purpose, duration and applicability as the license granted under Section 34.6.2. The foregoing requirement shall not apply, however, to mass-marketed software products (sometimes referred to as "shrink wrap software") owned by such a Person where such a license cannot be extended to TxDOT using commercially reasonable efforts. The limitations on sale, transfer, sublicensing and disclosure by TxDOT set forth in Sections 34.6.3 through 34.6.6 shall also apply to TxDOT's licenses in such Proprietary Intellectual Property.

ARTICLE 35
MISCELLANEOUS

35.1 Replacement of Independent Engineer

35.1.1 The Parties recognize that from time to time it will be necessary to replace the Independent Engineer in the event any party to the Independent Engineer Agreement elects not to extend or renew it at expiration of its term, or in the event it is terminated in accordance with its terms prior to expiration. Whenever it becomes necessary to replace the Independent Engineer, TxDOT shall select and appoint a replacement Independent Engineer according to the terms and procedures set forth in this Section 35.1.

35.1.2 The replacement shall satisfy TxDOT's then existing rules, regulations and applicable written policies concerning organizational conflicts of interest, as well as any comparable written policies of Developer designed to assure neutrality of the Independent Engineer.

35.1.3 If TxDOT then maintains a list of firms qualified to serve as independent engineers under TxDOT comprehensive development agreements, the replacement shall be one of the listed firms and shall be selected either through TxDOT's competitive selection processes or, if permitted by applicable Law and acceptable to TxDOT, through negotiation. Developer shall have the right and obligation to consult and confer with TxDOT in the course of the competitive selection process and to participate with TxDOT in any negotiations. TxDOT may elect, however, not to select a replacement from the list and instead proceed under Section 35.1.4.

35.1.4 If TxDOT does not then maintain such a list of firms, then TxDOT shall procure a replacement through TxDOT's competitive qualification and procurement processes, and Developer shall have the right and obligation to consult and confer with TxDOT regarding the qualifications, evaluation and selection of competing firms.

35.1.5 The right to consult and confer includes the right to observe interviews of firms competing for selection, but does not include any right to observe or participate in meetings or discussions of the evaluation committee or subcommittees.

35.1.6 The Independent Engineer Agreement with the replacement shall be on substantially the same terms and conditions as the prior Independent Engineer Agreement, except for pricing and except

for any changes in scope of work or other terms and conditions mutually acceptable to TxDOT and Developer.

35.1.7 Developer shall be obligated to execute the Independent Engineer Agreement with the replacement unless Developer diligently participates, consults and confers with TxDOT in the selection and delivers to TxDOT, before TxDOT concludes its selection and negotiation process, notice of objection to the firm selected or to pricing or changes in scope of work or other terms and conditions, stating the reasons for objection in reasonable detail. If Developer has the right to refuse, and does refuse, to execute an Independent Engineer Agreement with the replacement due to such a reasonable objection, then TxDOT shall commence a new procurement to select a replacement. All the provisions of this Section 35.1 shall apply to the new procurement.

35.1.8 The Parties shall use diligent efforts to select and appoint a replacement Independent Engineer sufficiently prior to expiration or termination of the existing Independent Engineer Agreement to permit a smooth transition of the Independent Engineer functions and responsibilities from the then-existing Independent Engineer to the replacement. If necessary, the Parties shall grant, and the then-existing Independent Engineer shall accept, short-term extensions of its Independent Engineer Agreement to accommodate selection and appointment of the replacement and its transition into effective service.

35.2 Taxes

35.2.1 Developer shall pay, prior to delinquency, all applicable Taxes. Developer shall have no right to a Compensation Event or, except as provided in Section 35.2.2, to any other Claim due to its misinterpretation of Laws respecting Taxes or incorrect assumptions regarding applicability of Taxes.

35.2.2 With respect to Expendable Materials any Developer-Related Entity purchases, Developer shall submit or cause the Developer-Related Entity to submit a "Texas Sales and Use Tax Exemption Certification" to the seller of the Expendable Materials. In the event any Developer-Related Entity is thereafter required by the State Comptroller to pay sales tax on Expendable Materials, TxDOT shall reimburse Developer for such sales tax. Reimbursement shall be due within 60 days after TxDOT receives from Developer written evidence of the State Comptroller's claim for sales tax, the amount of the sales tax paid, the date paid and the items purchased. Developer agrees to cooperate with TxDOT in connection with the filing and prosecution of any request for refund of any sales tax paid with respect to Expendable Materials. If materials purchased for the Work are not wholly used or expended on the Project, such that they do not qualify as Expendable Materials, Developer will be responsible for applicable sales taxes.

35.3 Amendments. The CDA Documents may be amended only by a written instrument duly executed by the Parties or their respective successors or assigns, except to the extent expressly provided otherwise in this Agreement.

35.4 Waiver

35.4.1 No waiver of any term, covenant or condition of this Agreement or the other CDA Documents shall be valid unless in writing and signed by the obligee Party.

35.4.2 The exercise by a Party of any right or remedy provided under this Agreement or the other CDA Documents shall not waive or preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver by any Party of any right or remedy under this Agreement or the other CDA Documents shall be deemed to be a waiver of any other or subsequent right or remedy under this Agreement or the other CDA Documents. The consent by one Party to any act by the other Party

requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

35.4.3 Except as provided otherwise in the CDA Documents, no act, delay or omission done, suffered or permitted by one Party or its agents shall be deemed to waive, exhaust or impair any right, remedy or power of such Party hereunder, or to relieve the other Party from the full performance of its obligations under this Agreement or the other CDA Documents.

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

35.4.5 Subject to Section 27.2, the acceptance of any payment or reimbursement by a Party shall not waive any preceding or then-existing breach or default by the other Party of any term, covenant or condition of this Agreement or the other CDA Documents, other than the other Party's prior failure to pay the particular amount or part thereof so accepted, regardless of the paid party's knowledge of such preceding or then-existing breach or default at the time of acceptance of such payment or reimbursement. Nor shall such acceptance continue, extend or affect: (a) the service of any notice, any Dispute Resolution Procedures or final judgment; (b) any time within which the other Party is required to perform any obligation; or (c) any other notice or demand.

35.5 Independent Contractor

35.5.1 Developer is an independent contractor, and nothing contained in the CDA Documents shall be construed as constituting any relationship with TxDOT other than that of Project developer and independent contractor, and that of landlord and tenant under the Lease.

35.5.2 Nothing in the CDA Documents is intended or shall be construed to create any partnership, joint venture or similar relationship between TxDOT and Developer; and in no event shall either Party take a position in any tax return or other writing of any kind that a partnership, joint venture or similar relationship exists. While the term "public-private partnership" may be used on occasion to refer to contractual relationships of the type hereby created, the Parties do not thereby express any intention to form or hold themselves out as a de jure or de facto partnership, joint venture or similar relationship, to share net profits or net losses, or to give TxDOT control or joint control over Developer's financial decisions or discretionary actions concerning the Project and Work.

35.5.3 In no event shall the relationship between TxDOT and Developer be construed as creating any relationship whatsoever between TxDOT and Developer's employees. Neither Developer nor any of its employees is or shall be deemed to be an employee of TxDOT. Except as otherwise specified in the CDA Documents, Developer has sole authority and responsibility to employ, discharge and otherwise control its employees and has complete and sole responsibility as a principal for its agents, for all Contractors and for all other Persons that Developer or any Contractor hires to perform or assist in performing the Work.

35.6 Successors and Assigns. The CDA Documents shall be binding upon and inure to the benefit of TxDOT and Developer and their permitted successors, assigns and legal representatives.

35.7 Designation of Representatives; Cooperation with Representatives. TxDOT and Developer shall each designate an individual or individuals who shall be authorized to make decisions and bind the Parties on matters relating to the CDA Documents ("**Authorized Representative**"). Exhibit 2 provides the initial Authorized Representative designations. A Party may change such designations by a subsequent writing delivered to the other Party in accordance with Section 35.12. Developer shall cooperate with TxDOT and all representatives of TxDOT designated as described above.

35.8 Survival. Developer's and TxDOT's representations and warranties, the dispute resolution provisions contained in Article 30 and the Disputes Board Agreement, the indemnifications, limitations and releases contained in Article 12 and Section 26.5, the express obligations of the Parties following termination, and all other provisions which by their inherent character should survive expiration or earlier termination of this Agreement and/or completion of the Work shall survive the expiration or earlier termination of this Agreement and/or the completion of the Work. The provisions of Article 30 and the Disputes Board Agreement shall continue to apply after expiration or earlier termination of this Agreement to all Claims and Disputes between the Parties arising out of the CDA Documents.

35.9 Limitation on Third-Party Beneficiaries. It is not intended by any of the provisions of the CDA Documents to create any third-party beneficiary hereunder or to authorize anyone not a Party hereto to maintain a suit for personal injury or property damage pursuant to the terms or provisions hereof, except to the extent that specific provisions (such as the warranty and indemnity provisions, and the provisions for the protection of certain Lenders under any Lenders' Direct Agreement) identify third parties and state that they are entitled to benefits hereunder. Except as otherwise provided in this Section 35.9, the duties, obligations and responsibilities of the Parties to the CDA Documents with respect to third parties shall remain as imposed by Law. The CDA Documents shall not be construed to create a contractual relationship of any kind between TxDOT and a Contractor or any Person other than Developer.

35.10 No Personal Liability of TxDOT Employees; No Tort Liability. TxDOT's Authorized Representatives are acting solely as agents and representatives of TxDOT when carrying out the provisions of or exercising the power or authority granted to them under this Agreement. They shall not be liable either personally or as employees of TxDOT for actions in their ordinary course of employment. The Parties agree to provide to each other's Authorized Representative notice of any claim which such Party may receive from any third party relating in any way to the matters addressed in this Agreement, and shall otherwise provide notice in such form and within such period as is required by Law.

35.11 Governing Law. The CDA Documents shall be governed by and construed in accordance with the laws of the State of Texas.

35.12 Notices and Communications

35.12.1 Notices under the CDA Documents shall be in writing and (w) delivered personally, (x) sent by certified mail, return receipt requested, (y) sent by a recognized overnight mail or courier service, with delivery receipt requested, or (z) sent by facsimile or email communication followed by a hard copy and with receipt confirmed by telephone, to the following addresses (or to such other address as may from time to time be specified in writing by such Person):

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

Blueridge Transportation Group, LLC
c/o ACS Infrastructure Development, Inc.
One Alhambra Plaza, Suite 1200

Coral Gables, FL 33134
Attn: General Counsel
Telephone: (305) 424-5400
Facsimile: (305) 424-5401
E-mail: USnotices@acsinfra.com

(b) All notices, correspondence and other communications to TxDOT shall be marked as regarding the TxDOT SH 288 Toll Lanes Project in Harris County and shall be delivered to the following address or as otherwise directed by TxDOT's Authorized Representative:

Texas Department of Transportation
Director, Houston District Strategic Projects
7600 Washington Avenue Houston, TX 77007
Attn: Varuna Singh, P.E.
Telephone: (713) -866-7040
Facsimile: (512) 802-5889
E-mail: Varuna.Singh@txdot.gov

With copies to:

Texas Department of Transportation
Interim Director, Strategic Contracts Management
125 East 11th Street
Austin, TX 78701
Attn: Frank P. Holzmann, P.E.
Telephone: (201) 610-4804
E-mail: Frank.Holzmann@txdot.gov

and

Texas Department of Transportation
Houston District Project Manager for SH 288 Toll Lanes Project in Harris County
7600 Washington Avenue
Houston, TX 77007
Attn: Gregory A. Snider, P.E.
Telephone: (832) 652-8275
E-mail: Greg.Snider@txdot.gov

and

Texas Department of Transportation
Houston District Engineer
7600 Washington Avenue
Houston, TX 77007
Attn: Quincy Allen, P.E.
Telephone: (713) 802-5002
E-mail: Quincy.Allen@txdot.gov

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

Texas Department of Transportation
Office of General Counsel
125 East 11th Street
Austin, Texas 78701
Telephone: (512) 463-8630
Facsimile: (512) 475-3070
E-mail: Jack.Ingram@txdot.gov

35.12.2 Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U.S. Postal Service, private carrier or other Person making the delivery. Notwithstanding the foregoing, notices sent by facsimile after 4:00 p.m. Central Standard or Daylight Time (as applicable) and all other notices received after 5:00 p.m. shall be deemed received on the first Business Day following delivery (that is, in order for a fax to be deemed received on the same day, at least the first page of the fax must have been received before 4:00 p.m.). Any technical or other communications pertaining to the Work shall be conducted by Developer's Authorized Representative and technical representatives designated by TxDOT.

35.13 Integration of CDA Documents. TxDOT and Developer agree and expressly intend that, subject to Section 35.14, this Agreement, the Lease and other CDA Documents constitute a single, non-severable, integrated agreement whose terms are interdependent and non-divisible.

35.14 Severability

35.14.1 If any clause, provision, section or part of the CDA Documents or any other Principal Project Document (other than the Design-Build Contract or any O&M Contract) is ruled invalid (including invalid due to Change in Law) by a court having proper jurisdiction, then the Parties shall: (a) promptly meet and negotiate a substitute for such clause, provision, section or part, which shall, to the greatest extent legally permissible, effect the original intent of the Parties, including an equitable adjustment to the Base Case Financial Model Update (or, if there has been no Base Case Financial Model Update, the Base Case Financial Model), except that such adjustment shall not apply where the court ruling (i) results from or entails a breach by TxDOT of its warranties under Section 5.2 but not a corresponding breach by Developer of its warranties under Section 5.1, in which case Developer shall be entitled to the remedies for a TxDOT Default or (ii) results from or entails a breach by Developer of its warranties under Section 5.1 but not a corresponding breach by TxDOT of its warranties under Section 5.2, in which case TxDOT shall be entitled to the remedies for a Developer Default; and (b) if necessary or desirable, apply to the court or other decision maker (as applicable) which declared such invalidity for an interpretation of the invalidated portion to guide the negotiations. The invalidity or unenforceability of any such clause, provision, section or part shall not affect the validity or enforceability of the balance of the CDA Documents or such other Principal Project Documents, which shall be construed and enforced as if the CDA Documents or such other Principal Project Documents did not contain such invalid or unenforceable clause, provision, section or part.

35.14.2 If after the efforts required by Section 35.14.1, the Parties mutually agree that without the section or part of the CDA Documents or such other Principal Project Documents that the court ruled to be invalid, there is no interpretation or reformation of the CDA Documents or such other Principal Project Documents that can reasonably be adopted which will return the Parties to the benefits of their original bargain, the Parties may mutually agree to treat the court order as a Termination by Court Ruling pursuant to Section 31.5.

35.14.3 If after the efforts required by Section 35.14.1, the Parties are unable to mutually agree about whether, without the section or part of the CDA Documents or such other Principal Project Documents that the court ruled to be invalid, there is any interpretation or reformation of the CDA Documents or such other Principal Project Documents that could reasonably be adopted which would return the Parties to the material benefits of their original bargain, either Party can refer that question to the Disputes Board for resolution pursuant to Article 30. The Parties agree that if the Disputes Board determines that there is no interpretation or reformation that can be reasonably adopted which will return the Parties to the material benefits of their original bargain, such a determination by the Disputes Board shall be deemed for all purposes under this Agreement as a Termination by Court Ruling, or in the circumstances described in Section 31.5.3(d) or (e), a Termination for Convenience or a Default Termination Event, as appropriate.

35.14.4 If there is no mutual agreement of the Parties pursuant to Section 35.14.2, a referral to the Disputes Board must occur not later than 60 days after the court order becomes final. Otherwise, the court order shall be treated as a Termination by Court Ruling. The Parties may by mutual agreement extend this deadline.

35.15 Usury Savings. The CDA Documents are subject to the express condition that at no time shall either Party be obligated or required to pay interest on any amount due the other Party at a rate which could subject the other Party to either civil or criminal liability as a result of being in excess of the maximum non-usurious interest rate permitted by Texas Law (the "maximum legal rate"), if any. If, by the terms of the CDA Documents either Party at any time is obligated to pay interest on any amount due in excess of the maximum legal rate, then such interest shall be deemed to be immediately reduced to the maximum legal rate and all previous payments in excess of the maximum legal rate shall be deemed to have been payments in reduction of the principal amount due and not on account of the interest due. All sums paid or agreed to be paid to a Party for the use, forbearance, or detention of the sums due that Party under the CDA Documents shall, to the extent permitted by applicable Texas Law, be amortized, prorated, allocated, and spread throughout the full period over which the interest accrues until payment in full so that the rate or amount of interest on account of the amount due does not exceed the maximum legal rate in effect from time to time during such period. If after the foregoing adjustments a Party still holds interest payments in excess of the maximum legal rate, it shall promptly refund the excess to the other Party.

35.16 Entire Agreement. The CDA Documents contain the entire understanding of the Parties with respect to the subject matter thereof and supersede all prior agreements, understandings, statements, representations and negotiations between the Parties with respect to their subject matter.

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

Signature Page Immediately Follows

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

Developer

Blueridge Transportation Group, LLC

By: _____
Name: Nuria Haltiwanger
Title: Authorized Representative

TxDOT

Texas Department of Transportation

By: _____
James M. Bass
Executive Director

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

Developer

Blueridge Transportation Group, LLC

By: _____
Name: Nuria Haltiwanger
Title: Authorized Representative

TxDOT

Texas Department of Transportation

By: James M Bass
James M. Bass
Executive Director